

ARTICLE

Law Wars:
Experimental Data on the Impact of Legal Labels on Wartime Event Beliefs

Shiri Krebs*

* Senior Lecturer (Assistant Professor) and HDR Director, Deakin Law School. The author wishes to thank Lee Ross, Allen Weiner, Janet Martinez, Robert MacCoun, Jenny Martinez, Michael Tomz, Paul Sniderman, Sarah Nouwen, Doreen Lustig, Michael Becker, Eran Halperin, and Varda Liberman for their thoughtful comments and suggestions on earlier drafts. I am also thankful to Alex Chemerinsky and the editors of the *Harvard National Security Journal* for their efforts and professional editing. I am deeply grateful for the valuable exchange of thoughts and ideas at the 2018 ESIL Research Forum, Hebrew University of Jerusalem, Israel; the 2018 ANZSIL International Peace and Security Workshop, Brisbane, Australia; and the 2017 EJIL Symposium on Commissions of Inquiry, Cambridge, U.K. The writing of this article was made possible thanks to generous research grants awarded by Stanford Law School and the Stanford Center for International Security and Cooperation (CISAC).

Abstract

On June 1, 2018, Razan Al-Najjar, a twenty-one-year-old Palestinian paramedic, was killed by Israeli fire during demonstrations along the Israel-Gaza border. Her death triggered intense debates about whether Israeli soldiers intentionally targeted her, in violation of international law. Before the factual debates could be settled, attention quickly shifted to the legal analysis. Several international and Israeli investigations reached opposing legal conclusions. As more information surfaced, the issues under dispute appeared to multiply. This included disputes about the relevant legal norms and the appropriate modes of interpretation. Despite the many fact-finding efforts, the facts are not settled, the legal debates linger, and meaningful accountability seems further away than ever. This episode highlights the growing focus of wartime investigations on legal truth. Furthermore, it suggests that, in the context of the Israeli-Palestinian conflict, framing facts in legal terms triggers backlash, anger, and denial. In other words, using legal terminology to frame public perception of wartime events is ineffective for dispute resolution.

This Article explores this general claim employing interdisciplinary theories and methods using the 2018 Gaza border demonstrations as an illustrative example. It then tests these hypotheses with a 2017 survey experiment fielded in Israel with a representative sample of 2,000 Jewish-Israeli citizens. This experimental data provides systematic evidence of the effect legal labels have on people's beliefs about contested wartime actions committed by their fellow nationals. The findings demonstrate that discussing events using common legal labels, such as "war crimes," significantly decreases Jewish-Israelis' willingness to believe information about Palestinian casualties and fails to stimulate feelings of empathy toward the victims. Jewish-Israelis tend to reject facts described using war crimes terminology and are more likely to feel anger and resentment than guilt or shame. These findings contribute to the broader debate about the role played by international law during armed conflicts, suggesting that, rather than serving as an educational and informative tool, it is cynically perceived as a political tool.

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‘When crimes begin to pile up they become invisible.’
(Bertolt Brecht, 1935)

‘Your words don’t have memory
They live in temporary displays
In front of a crowd that also lost its memory
Due to events that no one remembers.’
(Iman Mersal, 2006)

I. Introduction

On June 1, 2018, Razan Al-Najjar, a twenty-one-year-old Palestinian paramedic, was killed by Israeli fire during demonstrations along the Israel-Gaza border.¹ Her death triggered intense debates concerning the facts and circumstances of the shooting. Was Al-Najjar the target of Israeli fire, as several human rights organizations concluded?² Or was the deadly bullet directed at other violent demonstrators, as the Israeli military found?³ Was she standing alone, with only other paramedics by her side, as some witnesses reported?⁴ Or was she standing in proximity to violent demonstrators, as the Israeli military maintained?⁵ Was her death caused by a direct bullet,⁶ an explosive bullet,⁷ or a ricochet?⁸ Testimonies, photos, and videos immediately surfaced. Some portray Al-Najjar as

¹ Iyad Abuheweila & Isabel Kershner, *A Woman Dedicated to Saving Lives Loses Hers in Gaza Violence*, N.Y. TIMES (June 1, 2018), <https://www.nytimes.com/2018/06/02/world/middleeast/gaza-paramedic-killed.html> [https://perma.cc/HF2K-ZPCT].

² *Israeli Soldiers Deliberately and Fatally Shot Palestinian Paramedic Rozan a-Najar in the Gaza Strip*, B’TSELEM (July 17, 2018), https://www.btselem.org/gaza_strip/20180718_paramedic_rozan_a_najar_killed_by_deliberate_fire [https://perma.cc/252E-PUFW] [hereinafter *Israeli Soldiers Deliberately and Fatally Shot Palestinian Paramedic*]; *Israeli Forces Kill Paramedic and Injure 100 Palestinians as Great Return March Enters 10th Week*, AL HAQ (June 3, 2018), <http://www.alhaq.org/advocacy/6192.html> [https://perma.cc/9SXX-U3YC] [hereinafter *Israeli Forces Kill Paramedic*].

³ Yaniv Kubovich, *Israeli Army Probe Set to Conclude: No Violation of Open-fire Orders During Deadly Gaza Border Protests*, HAARETZ (July 26, 2018), <https://www.haaretz.com/israel-news/.premium-idf-probe-set-to-conclude-open-fire-orders-followed-at-gaza-protests-1.6316272> [https://perma.cc/UT5W-S5RG].

⁴ *Israeli Soldiers Deliberately and Fatally Shot Palestinian Paramedic*, *supra* note 2.

⁵ An Israeli military probe found that Najjar was seen close to the border fence, treating protesters wounded by Israeli army fire. Yaniv Kubovich, *Gaza Medic Killed on Border Wasn’t Intentionally Shot by Israeli Soldiers, Military Finds*, HAARETZ (June 5, 2018), <https://www.haaretz.com/israel-news/gaza-medic-killed-on-border-wasn-t-intentionally-shot-by-israeli-soldiers-army-finds-1.6153182> [https://perma.cc/ZAF6-58LM].

⁶ *Israeli Soldiers Deliberately and Fatally Shot Palestinian Paramedic*, *supra* note 2.

⁷ Linah Alsaafin & Maram Humaid, *In Gaza, Grief and Pain for Slain ‘Angel of Mercy’ Paramedic*, AL-JAZEERA (June 3, 2018), <https://www.aljazeera.com/news/2018/06/gaza-grief-pain-slain-angel-mercy-paramedic-180602143958100.html> [https://perma.cc/LVS7-8MVG].

⁸ Yoav Zitun & Liad Osmo, *Video Purports to Show Slain Gaza Nurse Throwing Gas Grenade*, YNETNEWS (June 7, 2018), <https://www.ynetnews.com/articles/0,7340,L-5281069,00.html> [https://perma.cc/RD5E-9UH3].

an angel, tending to the wounded under fire.⁹ Others show her as a voluntary human shield, actively participating in the violence.¹⁰

As the dispute over the basic facts of the event waned, attention quickly shifted to the legal analysis. Some proclaimed that Israel had violated international law,¹¹ and that Al-Najjar's killing was a war crime.¹² The United States, however, has maintained that Israel acted lawfully and that Hamas was the only entity responsible for the commission of war crimes during this event.¹³ Several investigations and fact-finding efforts reached opposing legal conclusions.¹⁴ Additional legal investigations are still ongoing.¹⁵ Yet, rather than bringing clarity and consensus, new information seemed only to multiply the number of issues subject to dispute, including the authenticity of the information and its legal interpretation.¹⁶ And while the controversy intensified, Israel entrenched its

⁹ Jack Khoury & Yaniv Kubovich, *Authorities in Gaza: Slain Medic's Teams' Hands Were Raised as They Approached Israeli Border*, HAARETZ (June 2, 2018), <https://www.haaretz.com/middle-east-news/palestinians/authorities-in-gaza-slain-medic-s-team-had-hands-raised-1.6138195> [<https://perma.cc/9TAA-8VVY>]; Middle East Eye, *Who Was Razan Al-Najjar?*, YOUTUBE (June 6, 2018), <https://www.youtube.com/watch?v=0fKnT5nEN08> [<https://perma.cc/NA5X-HL6J>].

¹⁰ See Herbert Buchsbaum, *Israeli Video Portrays Medic Killed in Gaza as Tool of Hamas*, N.Y. TIMES (June 4, 2018), <https://www.nytimes.com/2018/06/07/world/middleeast/gaza-israel-medic-rouzan-al-najjar.html> [<https://perma.cc/5JUX-XBGU>]; Yaniv Kubovich, *Israeli Army: Video Shows Killed Gaza Medic Throwing Gas Canister*, HAARETZ (June 8, 2018), <https://www.haaretz.com/middle-east-news/israeli-army-video-shows-killed-gaza-medic-throwing-gas-canister-1.6156535> [<https://perma.cc/NWR7-PPQF>].

¹¹ *UN Agencies Express Outrage over Killing of Palestinian Volunteer Medic in Gaza*, UN NEWS (June 4, 2018), <https://news.un.org/en/story/2018/06/1011261> [<https://perma.cc/5FFG-E322>]; *UN Official Condemns 'Reprehensible' Killing of Gaza Medic*, TIMES OF ISRAEL (June 3, 2018), <https://www.timesofisrael.com/un-official-condemns-reprehensible-killing-of-gaza-medic/> [<https://perma.cc/TTX8-USCD>]; *Israeli Forces Kill Paramedic*, *supra* note 2.

¹² These include, among others, the Palestinian Medical Relief Society, Palestinian Health Minister Dr. Jawad Awaad, and Israeli-Palestinian MK Ahmad Tibi. See *UN Official Condemns "Reprehensible" Killing of Gaza Medic*, *supra* note 11; Kubovich, *supra* note 5; Khoury & Kubovich, *supra* note 9.

¹³ Rick Gladstone, *U.S. Vetoes U.N. Resolution on Gaza, Fails to Win Second Vote on its Own Measure*, N.Y. TIMES (June 1, 2018), <https://www.nytimes.com/2018/06/01/world/middleeast/gaza-israel-palestinians-.html> [<https://perma.cc/B2X8-ZASV>].

¹⁴ See, for example, the conflicting reports by the Israeli Defense Force, B'Tselem, and Al-Haq; Kubovich, *supra* note 3; *Israeli Soldiers Deliberately and Fatally Shot Palestinian Paramedic*, *supra* note 2; *Israeli Forces Kill Paramedic*, *supra* note 2.

¹⁵ Judah Ari Gross, *IDF Launches Criminal Probe into Killing of Gazan Medic in June*, TIMES OF ISRAEL (Oct. 29, 2018), <https://www.timesofisrael.com/idf-launches-criminal-probe-into-killing-of-gazan-medic-in-june/> [<https://perma.cc/2QJU-K3CW>]. See, also, Al-Haq's call on the UN Human Rights Council to investigate the killing of Razan Al-Najjar as part of the commission of inquiry established under Human Rights Council Resolution S-28. *Israeli Forces Kill Paramedic*, *supra* note 2.

¹⁶ See, e.g., Bethan McKernan, *Israeli Army Edits Video of Palestinian Medic Its Troops Shot Dead to Misleadingly Show She Was 'Human Shield for Hamas'*, INDEPENDENT (June 8, 2018), <https://www.independent.co.uk/news/world/middle-east/gaza-protests-latest-idf-condemned-edited-video-angel-of-mercy-medic-razan-al-najjar-a8389611.html> [<https://perma.cc/BBF5-BU8T>].

position that all of its military actions were consistent with international law. As of this writing, the facts remain uncertain, the legal debates unresolved, and meaningful accountability further away than ever.

The existence of intense disputes about wartime actions, such as those leading to the death of Razan Al-Najjar, is neither new nor surprising. For centuries, truth has been widely known to be the first casualty of war.¹⁷ In the modern era, it is common to address these disputes through investigations and analysis with the goal of producing a conclusive historical account. These investigations should answer outstanding questions and help quell conflict. However, fact-finding efforts often fail to produce a shared understanding of contested events. Some explanations for these failures relate to the legitimacy, credibility, and trustworthiness of the fact-finding bodies.¹⁸ Other explanations are rooted in psychological processes such as cognitive consistency, motivated reasoning, and denial,¹⁹ which motivate people to reject facts inconsistent with their prior beliefs, identities, ideologies, and commitments.²⁰

This article develops a third explanation, focused on the unique impact of legal terminology and legal blame on social beliefs about wartime events.²¹ During

¹⁷ See PHILLIP KNIGHTLEY, *THE FIRST CASUALTY: THE WAR CORRESPONDENT AS HERO AND MYTH-MAKER FROM THE CRIMEA TO IRAQ* (2004); David Keen, *War and Peace: What's the Difference?*, 7 INT'L PEACEKEEPING 1, 7 (2000).

¹⁸ M. Cherif Bassiouni, *Appraising UN Justice-Related Fact-Finding Missions*, 5 WASH. U. J.L. & POL'Y 35 (2001).

¹⁹ For literature concerning cognitive consistency and confirmation bias, see Bertram Gawronski, *Back to the Future of Dissonance Theory: Cognitive Consistency as Core Motive*, 30 SOC. COGNITION 652 (2012); Lee Ross & Andrew Ward, *Psychological Barriers to Dispute Resolution*, 27 ADVANCES IN EXPERIMENTAL SOC. PSYCHOL. 255 (1995). For literature concerning motivated cognition, see Dan M. Kahan, *Foreword: Neutral Principles, Motivated Cognition, and Some Problems for Constitutional Law*, 125 HARV. L. REV. 1 (2012). For literature concerning denial, see STANLEY COHEN, *STATES OF DENIAL: KNOWING ABOUT ATROCITIES AND SUFFERING* (2013). Fact-finders may be further influenced by the false-positive–false-negative bias, meaning a mistake will only be discovered if a dangerous person is set free, but not if he or she is targeted or continues to be preventively detained. See Rinat Kitai-Sangero, *The Limits of Preventive Detention*, 40 MCGEORGE L. REV. 903, 909 (2009).

²⁰ See, e.g., Dan M. Kahan, David A. Hoffman & Donald Braman, *Whose Eyes Are You Going to Believe – Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837 (2009). In a previous study, I analyse the various institutional, social, and psychological barriers to international fact-finding efforts. See Shiri Krebs, *Designing International Fact-Finding: Facts, Alternative Facts, and National Identities*, 41 FORDHAM INT'L L.J. 337 (2018).

²¹ Whether law—and international law in particular—influences people's attitudes and beliefs about war crimes is debated. Some believe that international law has a distinct—and positive—impact on the public's beliefs and preferences. International law, they argue, serves an educational role by transforming the very beliefs of citizens, and it functions as a device for transmitting information to domestic actors. See, e.g., Geoffrey P.R. Wallace, *International Law and Public Attitudes Toward Torture: An Experimental Study*, 67 INT'L ORG. 105, 111 (2013). Others, however, question international law's ability to influence attitudes and beliefs, and argue that it is ineffective in this regard. See, e.g., Adam S. Chilton & Mila Versteeg, *International Law, Constitutional Law, and Public Support for Torture*, 3 RES. & POL. 1 (2016) (noting that empirical studies testing the effectiveness of torture prohibitions have produced mixed results).

intractable armed conflicts, framing facts in legal terms is ineffective as an educational tool and legal blame—similar to other types of blame—triggers backlash, anger, and denial. The incidents surrounding the Gaza border protests serve as an example. It illustrates the importance of legal terminology (particularly the “war crimes” label) and fact-finding efforts concerning wartime controversies as well as demonstrates how legal terminology triggers confrontation, conflict, and dissent.

To test this argument, I utilize a survey experiment fielded in Israel during January 2017, with a representative sample of 2,000 Jewish-Israeli nationals. The experiment provides systematic evidence of the effects of legal terminology on people’s beliefs about contested wartime actions committed by their fellow nationals.²² Querying the mass public affords a direct examination of how various framings of fact-finding reports influence people’s willingness to believe counter-attitudinal findings. The use of an experimental design in this article minimizes problems posed by selection effects that are prevalent throughout much of the existing research on international law and institutions.²³ The experiments were fielded in Israel, as Israeli military actions have been the focus of numerous fact-finding efforts during the past decades.

Section two begins by analyzing international and domestic fact-finding efforts for the 2018 Palestinian protests along the Israel-Gaza border. These events illustrate this article’s main argument: framing facts in legal terms triggers backlash, anger, and denial which are contextualized in the social and political dynamics of the Israeli-Palestinian conflict. Drawing on psychological and political science literature, section three develops several hypotheses on the impact of legal terminology and legal blame on attitudes and beliefs about wartime events among Jewish-Israelis. To test these hypotheses, section four describes and reports the results of the survey experiment and discusses the main implications of these findings. Section five discusses some of the limitations of the study, and section six offers several opportunities and alternatives for future fact-finding interventions. Section seven concludes, urging a reconsideration of the popular legal-framing approach to international fact-finding, and advancing a blame-free approach to wartime investigations.

II. The 2018 Gaza Demonstrations: Legal Fact-Finding and Legal Blame in Context

²² The experiment was fielded by iPanel, a surveying company that uses techniques to generate a sample that approximates the demographic composition of the adult Jewish-Israeli population. The representativeness of the sample was based on five criteria: gender, age, education, religiosity, and place of residence. Additionally, to control for various additional factors, other demographics were also collected, including marital status, income, political ideology, and party identification.

²³ See generally Adam Chilton & Dustin Tingley, *Why the Study of International Law Needs Experiments*, 52 COLUM. J. TRANSNAT’L L. 173 (2013).

During the past decade, international law experts and human rights activists—from both domestic and international organizations—conducted numerous fact-finding efforts to investigate Israeli military activities in the West Bank and Gaza. Their findings were documented in detailed reports containing numerous testimonials. Reports produced by the Israeli military and governmental authorities often countered those of international experts and activists.²⁴ While these fact-finding efforts have been very diverse in their characteristics, processes, and goals, many of them share a common legal focus: examining whether Israel’s military actions violated international law. The investigative response to the recent Palestinian demonstrations along the Israel-Gaza border exemplifies the centrality of legal terminology and legal blame in fact-finding efforts in the context of the Israeli-Palestinian conflict. The next paragraphs explore the controversies surrounding these events, the discourse of the local and international fact-finding efforts, and the Israeli response to these efforts.

A. *Investigating the 2018 Palestinian Demonstrations at the Israel-Gaza Border*

1. Competing Narratives

March 30, 2018, marked the first day of massive, months-long Palestinian demonstrations along the Israel-Gaza border,²⁵ in which 189 Palestinians were

²⁴ Compare U.N. Human Rights Council, *Rep. of the United Nations Fact-Finding Mission on the Gaza Conflict*, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009) (regarding the “cast lead” operation) [hereinafter “Goldstone Report”], and U.N. Human Rights Council, *Rep. of the Detailed Findings of the Independent Commission of Inquiry Established Pursuant to Human Rights Council Res. S-21/1*, U.N. Doc. A/HRC/29/CRP.4 (June 24, 2015) (regarding the “protective edge” operation) [hereinafter “Davis Report”], with *Initial Response to Report of the Fact-Finding Mission on Gaza Established Pursuant to Resolution S-9/1 of the Human Rights Council*, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Sept. 24, 2009) (detailing the Israeli response regarding the “cast lead” operation), http://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GoldstoneReportInitialResponse240909.pdf [<https://perma.cc/E656-A34W>], and *Gaza Operation Investigations: An Update*, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Jan. 29, 2010), http://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GazaOperationInvestigationsUpdate.pdf [<https://perma.cc/E656-A34W>], and *The 2014 Gaza Conflict: Factual and Legal Aspects*, STATE OF ISRAEL (May 2015) (regarding operation “protective edge”), <http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf> [<https://perma.cc/BR25-H4HT>], and Richard Kemp, *High Level Military Group, Smoke and Mirrors: Six Weeks of Violence on the Gaza Border*, HIGH LEVEL MILITARY GROUP (May 2018), <http://www.high-level-military-group.org/pdf/hlmg-smoke-mirrors-six-weeks-violence-gaza-border.pdf> [<https://perma.cc/2FY3-26Z5>].

²⁵ Jack Khoury, Yaniv Kubovich & Almog Ben Zikri, *15 Killed, Dozens Wounded as Thousands Gather on Israel-Gaza Border*, HAARETZ (Mar. 31, 2018), <https://www.haaretz.com/israel-news/.premium-five-palestinians-reportedly-killed-by-israeli-army-as-thousands-rally-for-mass-gaza-protests-1.5962159> [<https://perma.cc/WJ75-WAXP>].

killed by Israeli fire and thousands wounded.²⁶ Israel's official position,²⁷ and the dominant opinion among Jewish-Israelis,²⁸ was that these were violent riots orchestrated by Hamas to further its operational goals, including breaching the border and launching terror attacks into Israel. In contrast, according to the Palestinians, as well as many international and local human rights organizations, these were authentic and peaceful demonstrations protesting Israel's persistent blockade suffocating the Gaza Strip and its inhabitants.²⁹

Early on—even before the demonstrations began, when the plan was announced by the organizers—these conflicting narratives influenced how observers interpreted basic facts. Legal terminology (such as 'self-defense' on the Israeli side or 'occupation' on the Palestinian side) was frequently utilized to give the facts meaning consistent with the observers' narratives.³⁰ As soon as the demonstrations broke out, debates about basic facts surrounding the events, including the level of violence used by the demonstrators and the military, were entangled with controversies about the legal interpretation of these facts.³¹

²⁶ Nick Cumming-Bruce, *U.N. Panel Urges Investigation Into Israeli Shootings at Gaza Border a Year Ago*,

N.Y. TIMES (Mar. 18, 2019), <https://www.nytimes.com/2019/03/18/world/middleeast/israeli-shootings-gaza-border.html> [<https://perma.cc/9KSV-CMBM>].

²⁷ See, e.g., *PM Netanyahu Praises the IDF and the ISA*, ISRAEL MINISTRY OF FOREIGN AFF. (Apr. 4, 2018), <http://mfa.gov.il/MFA/PressRoom/2018/Pages/PM-Netanyahu-praises-the-IDF-and-the-ISA-4-April-2018.aspx> [<https://perma.cc/N6ZY-DJ38>] (quoting the Prime Minister's statement that, by organizing provocations on the security fence, Hamas's goal was "to provide cover for terrorists to carry out acts of terrorism against the State of Israel"); *MFA Response to the UNHCR Resolution*, ISRAEL MINISTRY OF FOREIGN AFF. (May 18, 2018), <http://mfa.gov.il/MFA/PressRoom/2018/Pages/MFA-response-to-the-UNHRC-resolution-18-May-2018.aspx> [<https://perma.cc/8S24-LFF5>] (responding, "Israel is acting legally and correctly in protecting its sovereignty and preventing the masses from charging the border with the aim of killing Israelis and committing terror attacks, all orchestrated by the Hamas terror organization").

²⁸ Ephraim Yaar & Tamar Herman, *The Peace Index: May 2018*, PEACE INDEX (June 5, 2018), <http://www.peaceindex.org/indexMonthEng.aspx?num=332&monthname=May> [<https://perma.cc/B88B-ZEBS>] (finding that 68% of Jewish-Israelis believed the demonstrations were a result of Hamas' planning, rather than a result of Gaza residents' authentic despair over the living conditions there).

²⁹ See, e.g., *Israel: Arms Embargo Needed as Military Unlawfully Kills and Maims Gaza Protesters*, AMNESTY INT'L (Apr. 27, 2018), <https://www.amnesty.org/en/latest/news/2018/04/israel-arms-embargo-needed-as-military-unlawfully-kills-and-maims-gaza-protesters/> [<https://perma.cc/CY5C-GH4D>]; *Gaza Protests: All the Latest Updates*, AL JAZEERA (July 8, 2018), <https://www.aljazeera.com/news/2018/04/gaza-protest-latest-updates-180406092506561.html> [<https://perma.cc/X9FF-W862>].

³⁰ See, e.g., Noa Landau & Jack Khoury, *Israel: Gaza March 'Dangerous' Provocation, Hamas to Blame for Any Violence*, HAARETZ (Mar. 29, 2018), <https://www.haaretz.com/israel-news/israel-s-talking-points-for-gaza-march-violence-is-on-hamas-head-1.5961602> [<https://perma.cc/5GES-FSF9>].

³¹ *Did Israel use Excessive Force at Gaza Protests?*, BBC NEWS (May 17, 2018), <https://www.bbc.com/news/world-middle-east-44124556> [<https://perma.cc/2NZN-FQ6A>].

2. Domestic Fact-Finding Efforts

Within Israel, several investigations were conducted by the military and by human rights organizations, such as B'Tselem. On April 13, 2018, approximately two weeks into the Gaza-Israel border clashes, B'Tselem published a report that documented the killing of unarmed demonstrators by the Israeli military.³² The report included the testimonies of Palestinians who participated in, or were in the vicinity of, the demonstrations. Based on this evidence, B'Tselem concluded that lethal force was deliberately used against unarmed protesters standing hundreds of meters away from the fence. A significant part of the report concerned the debates surrounding the interpretation of the relevant legal rules, emphasizing Israel's violations of international law.³³ The report further criticized the Israeli Defense Force ("IDF") internal investigations system, calling it a mechanism devised for "whitewashing of [war] crimes."³⁴

The relevant laws and facts were put to the test once more when several Israeli and Palestinian human rights organizations submitted petitions to the Israeli Supreme Court, sitting as High Court of Justice.³⁵ The petitioners sought to invalidate any rules of engagement that empower the Israeli security forces to use lethal force against Gazans protesting near the border fence unless they pose an imminent and actual threat to human life.³⁶ On May 24, 2018, the High Court of Justice unanimously dismissed the petitions. The judgment left most of the concrete factual controversies undecided, due to lack of information, "fog of war," and the Court's deference to the government on operational issues.³⁷ Nonetheless, while stating that it limited itself to the legal questions, the Court made important

³² *If the Heart Be Not Callous: On the Unlawful Shooting of Unarmed Demonstrators in Gaza*, B'TSELEM, (last visited Oct. 22, 2019), https://www.btselem.org/publications/summaries/201804_if_the_heart_be_not_callous [<https://perma.cc/KU58-A9SQ>].

³³ *Id.* at 4-9.

³⁴ *Id.* at 9.

³⁵ Petition 3003/18, *Yesh Din v. IDF Chief of Staff* (2018) (HCJ 3003/18) (Isr.) (in Hebrew), <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Gaza+Fire+Regulations+Petition/Gaza+open-fire+regulations+petition.pdf> [<https://perma.cc/JE85-7NKZ>] (submitted on Apr. 15, 2018, by Yesh Din, the Association for Civil Rights in Israel ("ACRI"), Gisha—Legal Center for Freedom of Movement, and HaMoked—Center for the Defence of the Individual); Petition 3250/18, *Yesh Din v. IDF Chief of Staff* (2018) (HCJ 3250/18) (Isr.) (submitted on Apr. 23, 2018, by Adalah—The Legal Center for Arab Minority Rights in Israel and Al Mezan Centre for Human Rights); *Briefing Paper on Israeli Supreme Court Petition Challenging the Israeli Military's Use of Lethal Force Against Gaza Protesters and the State of Israel's Response*, ADALAH (May 15, 2018), https://www.adalah.org/uploads/uploads/Summary_Snipers_petition_and_state's_response_15_May_2018_FINAL.pdf [<https://perma.cc/GG85-B3MF>] (summarizing the course of events and the legal claims made in Petition 3250/18); see also Eliav Lieblich, *Collectivizing Threat: An Analysis of Israel's Legal Claims for Resort to Force on the Gaza Border*, JUST SECURITY (May 16, 2018), <https://www.justsecurity.org/56346/collectivizing-threat-analysis-israels-legal-claims-resort-force-gaza-border/> [<https://perma.cc/L5Z7-UBCT>].

³⁶ See ADALAH, *supra* note 35.

³⁷ HCJ 3003/18, 3250/18 *Yesh Din v. IDF Chief of Staff* (2018) (Isr.).

factual determinations consistent with the Israeli narrative. For example, the Court described the demonstrations as organized violent acts serving as a cover for terrorist activities against Israeli citizens, infrastructure, and security forces.³⁸ The Court went on to reject the petitioners' factual description of events, stating that "the Petitioners' attempt to present the events as 'unarmed civilian protests' . . . does injustice to the reality of the matter, to say the least."³⁹ Finally, the Court on several occasions expressed its dissatisfaction that the petitioners refused to allow the respondents to present confidential information *ex parte* to the Court about the identity of the targets, the nature of their violent acts, their organizational affiliation and involvement in terrorism, and the way in which they posed immediate danger justifying lethal force.⁴⁰ The Court stressed that the petitions must be denied as a direct consequence of this refusal, which had created an incomplete factual framework.⁴¹ At the same time, the Court declared that the Israeli open-fire policy is consistent with international and Israeli law, despite its reliance upon several highly controversial claims.⁴²

On July 26, 2018, Haaretz newspapers reported that an internal Israeli Defense Forces' ("IDF") investigation into the death of 153 Palestinians during protests along the Gaza-Israel border "is expected to find that none of the incidents involved violations of open-fire orders and therefore there are no grounds for referring any of the cases to the military police for further investigation."⁴³ Particularly, it was reported that the military investigation found that the fatal shooting that killed Razan Al-Najjar was directed at other demonstrators, who were in close proximity to Najjar.⁴⁴ The findings of the internal military

³⁸ *Id.* ¶¶ 5–6 (Justice Hendel concluded by stating "Not only is the State of Israel permitted to fight back at terrorist organizations that are trying to abuse the rules in order to harm its civilians and soldiers, but it has a duty to do so.") (Hendel, J., concurring).

³⁹ *Id.* ¶ 55.

⁴⁰ *Id.* ¶¶ 9, 62 (Hayut, J., concurring).

⁴¹ *Id.* ¶ 62.

⁴² For example, referencing the novel idea that both the law enforcement and the law of armed conflict regimes may apply simultaneously, or accepting the existence of a special category for "main inciters" in international law, which justify lethal force under some vague circumstances. For further discussion of these issues see Elena Chachko & Yuval Shany, *The Supreme Court of Israel Dismisses a Petition Against Gaza Rules of Engagement*, LAWFARE (May 26, 2018), <https://www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement> [<https://perma.cc/EGQ4-ANPF>]; Solon Solomon, *The Israeli Supreme Court Decision on the Gaza Riots: Factual and Legal Confusion*, JUST SECURITY (June 5, 2018), <https://www.justsecurity.org/57359/israeli-supreme-court-decision-gaza-riots-factual-legal-confusion/> [<https://perma.cc/7K72-5ETK>]; see also Lieblich, *supra* note 35.

⁴³ Yaniv Kubovich, *Israeli Army Probe Set to Conclude: No Violation of Open-fire Orders During Deadly Gaza Border Protests*, HAARETZ (July 26, 2018), <https://www.haaretz.com/israel-news/premium-idf-probe-set-to-conclude-open-fire-orders-followed-at-gaza-protests-1.6316272> [<https://perma.cc/3MT9-8484>]; see also Yaniv Kubovich, *Gaza Medic Killed on Border Wasn't Intentionally Shot by Israeli Soldiers, Military Finds*, HAARETZ (June 5, 2018), <https://www.haaretz.com/israel-news/gaza-medic-killed-on-border-wasn-t-intentionally-shot-by-israeli-soldiers-army-finds-1.6153182> [<https://perma.cc/NJ9W-D7PB>].

⁴⁴ Kubovich, *Gaza Medic Killed on Border Wasn't Intentionally Shot by Israeli Soldiers*, *supra* note 43.

investigation were not released to the public. Nonetheless, the IDF's Military Advocate General, Brigadier General Sharon Afek, ultimately rejected the findings of the preliminary military investigation and ordered the Military Police to open a criminal investigation into the death of Razan Al-Najjar.⁴⁵ On March 20, 2019, the military further announced that it will launch criminal investigations into the deaths of 10 more Palestinians who were killed by live fire while protesting along the coastal enclave's border in 2018.⁴⁶

3. International Fact-Finding Efforts

May 14, 2018 was a day of massive bloodshed that resulted in more than 60 Palestinian casualties. Four days later, on May 18, 2018, the United Nations Human Rights Council (“UNHRC”) held a special session on the situation in Gaza. The session ended with a resolution condemning Israel and calling for cessation of all attacks. Section 5 of the resolution was devoted to urgently dispatching an independent international commission of inquiry. The commission’s mandate included investigating “all alleged violations and abuses of international humanitarian law and international human rights law” in the context of the military assaults on the large-scale civilian protests that had begun on March 30, establishing the facts of the alleged violations and abuses, including war crimes, identifying those responsible, and making recommendations on accountability measures.⁴⁷ After the death of Palestinian paramedic Razan Al-Najjar, Palestinian human rights organization Al-Haq called on the UN Human Rights Council to add an investigation of the circumstances of her death, and its legal implications, as a part of the international fact-finding mission.⁴⁸

On February 25, 2019, the commission issued its final report on the protests in the Occupied Palestinian Territory. The commission adopted the Palestinian narrative, determining that the demonstrations were civilian in nature, invoking law enforcement legal framework and international human rights law.⁴⁹ However, due to the ongoing armed conflict, the commission found that the rules of international humanitarian law were also in effect and operated as *lex specialis* during active hostilities.⁵⁰ Importantly, out of the 189 Palestinian fatalities investigated by the commission, it found the Israeli security forces use of live ammunition to be considered lawful in only two incidents. In all other cases,

⁴⁵ Yaniv Kubovich, *Israeli Army Opens Criminal Investigation Into Killing of Gaza Medic*, HAARETZ (Oct. 29, 2018), <https://www.haaretz.com/israel-news/israeli-army-opens-criminal-investigation-into-killing-of-gaza-medic-1.6609021> [<https://perma.cc/7UTX-DYAP>].

⁴⁶ Yaniv Kubovich, *Female Medic, Teen Shot in the Head: These Are the Palestinian Deaths the Israeli Army Is Probing*, HAARETZ (Mar. 20, 2019), <https://www.haaretz.com/israel-news/premium-israeli-army-releases-details-of-probes-into-deaths-of-11-palestinian-protesters-1.704181> [<https://perma.cc/8Y4E-ZMTW>].

⁴⁷ Human Rights Council Res. S-28, U.N. Doc. A/HRC/S-28/L.1 (May 18, 2018).

⁴⁸ *Israeli Forces Kill Paramedic*, *supra* note 2.

⁴⁹ Human Rights Council, *Rep. of the Independent Int’l Commission of Inquiry on the Protests in the Occupied Palestinian Territory* ¶ 5, U.N. Doc. A/HRC/40/74 (Feb. 25, 2019).

⁵⁰ *Id.*

including the killing of Razan Al Najjar, the commission concluded that the use of live ammunition by Israeli security forces against Palestinian demonstrators was unlawful and found reasonable grounds to believe that some of these violations may constitute international crimes, including war crimes and crimes against humanity.⁵¹ It is significant that, although the report included some factual findings, the majority of the report focuses on the legal framework and on legal analysis, without shedding new light on the events or the circumstances in which most of the victims were killed. This focus emanated, as the commission emphasized several times throughout the report, from its mandate, which instructed the commission members to focus on legal accountability in general, and on individual criminal responsibility in particular.⁵²

On December 30, 2018, a few months before the UNHRC commission of inquiry issued its final report, the New York Times published an article focused on the killing of Razan Al-Najjar. Based on numerous interviews as well as on hundreds of crowd-sourced videos and photographs, the New York Times's investigation concluded that Al-Najjar was killed by a ricochet from a bullet fired by an Israeli sniper into a crowd that included white-coated medics in plain view. The report further determined that neither the medics nor anyone around them posed a threat to Israeli personnel. While the New York Times's report focused on factual findings and analysis, it nonetheless included legal determinations, concluding that the shooting "possibly" constitutes a war crime.⁵³ Additionally, in a report based on its own investigations, Amnesty International described Israel's use of force in Gaza as "an abhorrent violation of international law" that "appears to be willful killing constituting war crimes."⁵⁴ On June 13, 2018, Human Rights Watch published its own report on the Gaza demonstrations, documenting the testimony of several Palestinians, and elaborating on the unlawfulness of the Israeli actions, which were described as "war crimes."⁵⁵

B. The Israeli Response

The Israeli government and general public were not moved by the international criticism, legal blame, or fact-finding efforts, instead insisting that the Israeli military acted lawfully in self-defense. A public opinion poll from June

⁵¹ *Id.* ¶¶ 1, 18, 20.

⁵² *Id.* ¶¶ 1–2.

⁵³ David M. Halbfinger, *A Day, a Life: When a Medic Was Killed in Gaza, Was It an Accident?*, N.Y. TIMES (Dec. 30, 2018), <https://www.nytimes.com/2018/12/30/world/middleeast/gaza-medical-shooting.html> [<https://perma.cc/WU8L-N285>].

⁵⁴ *Israel/OPT: Use of Excessive Force in Gaza an Abhorrent Violation of International Law*, AMNESTY INT'L (May 14, 2018), <https://www.amnesty.org/en/latest/news/2018/05/israelopt-use-of-excessive-force-in-gaza-an-abhorrent-violation-of-international-law/> [<https://perma.cc/2Z4H-ZWNP>].

⁵⁵ *Israel: Apparent War Crimes in Gaza*, HUMAN RIGHTS WATCH (June 13, 2018), <https://www.hrw.org/news/2018/06/13/israel-apparent-war-crimes-gaza>. <https://www.hrw.org/news/2018/06/13/israel-apparent-war-crimes-gaza> [<https://perma.cc/9R2N-QHDR>] [hereinafter *Human Rights Watch Report*].

2018 found that 76% of Jewish-Israelis (and 65% of the general public) believed that the way in which the IDF has dealt with the Palestinians' ongoing struggle along the border with Gaza was either "good" or "excellent."⁵⁶ In response to the UNHRC decision to dispatch a new fact-finding mission to investigate the events, the Israeli foreign ministry issued a statement that the council was dominated by "hypocrisy and absurdity," and reiterated its stance that "Israel is acting legally and correctly in protecting its sovereignty and preventing the masses from charging the border with the aim of killing Israelis and committing terror attacks, all orchestrated by the Hamas terror organization."⁵⁷ Immediately after the release of the commission's final report, Israeli Prime Minister Benjamin Netanyahu said that Israel outright rejects the report. Netanyahu further stated that "[t]he council has set new records of hypocrisy and lies out of an obsessive hatred for Israel."⁵⁸ Israeli Foreign Minister Yisrael Katz called the report "hostile, mendacious and biased," and Education Minister Naftali Bennett said in response that it is "hard to imagine the UN could sink any lower."⁵⁹

Moreover, as the controversy escalated, Israel adopted several legislative measures in response to what it considered, "efforts to demoralize Israeli society and break[] its soldiers' and inhabitants' spirits."⁶⁰ On June 20, 2018, the Israeli Parliament, the Knesset, approved in a preliminary vote a bill criminalizing audio or visual documentation of IDF soldiers.⁶¹ The bill would establish a new criminal offense, punishable by a five-year prison term, for anyone filming, recording, or distributing audio or visual content documenting IDF soldiers, with intent to "break the spirit" of Israeli soldiers and inhabitants.⁶² The bill's sponsor, MK Robert Ilatob, explained that the bill's purpose is to prevent "biased, anti-Israeli coverage" against Israeli soldiers.⁶³ The bill's addendum specifically names Israeli non-governmental organizations ("NGO") B'Tselem and Breaking the Silence, among others, as exemplifying anti-Israeli groups whose efforts documenting

⁵⁶ Ephraim Yaar & Tamar Herman, *The Peace Index: June 2018*, PEACE INDEX (July 2, 2018), <http://www.peaceindex.org/indexMonthEng.aspx?num=333&monthname=June> [<https://perma.cc/JA99-KSYJ>].

⁵⁷ *MFA Response to the UNHCR Resolution*, *supra* note 27.

⁵⁸ Noa Landau, *UN Human Rights Chief Raps Israel Over 'Immediate Dismissal' of Report on Killed Gaza Protesters*, HAARETZ (Mar. 6, 2019), <https://www.haaretz.com/israel-news/un-human-rights-chief-raps-israeli-dismissal-of-report-on-dead-gazan-protesters-1.6998149> [<https://perma.cc/32KJ-KFMS>].

⁵⁹ *Id.*

⁶⁰ *First Stage of Legislation Approved: Prohibition of Documenting IDF Soldiers*, KNESSET ANNOUNCEMENTS (June 20, 2018), <http://m.knesset.gov.il/News/PressReleases/pages/press200618-2.aspx> [<https://perma.cc/L9FP-SWTC>].

⁶¹ Jonathan Lis, *Israeli Plan to Jail Anyone Filming Soldiers in West Bank Passes Preliminary Vote Despite AG's Objections*, HAARETZ (June 20, 2018), <https://www.haaretz.com/israel-news/premium-bill-jailing-anyone-filming-west-bank-soldiers-passes-preliminary-vote-1.6197042> [<https://perma.cc/CZY6-7NMM>].

⁶² *Id.*

⁶³ *Id.*

Israeli military activities must be frustrated.⁶⁴ Both organizations were known to have cooperated with, and provided information to, previous fact-finding missions established by the UNHRC, including the 2015 Davis report and the 2009 Goldstone report.⁶⁵

This new piece of legislation came as a direct response to the fact-finding efforts by the UNHRC, Amnesty International, Human Rights Watch, and domestic organizations like B'Tselem.⁶⁶ In other words, these fact-finding efforts, rather than helping to abate conflict, instead produced intense rejection of information, to the point of criminalizing fact-finding activities. Moreover, this law is not unique. It is entirely consistent with the Israeli public's broader rejection of civil society and human rights organizations, and with a series of additional laws limiting the activities of left-wing NGOs.⁶⁷

C. Conflating Law and Facts

On all fronts, the fact-finding efforts devoted to the Gaza border protests were focused on legal analysis. The relevant information was gathered not solely for the purpose of finding what happened, but rather for the purpose of determining whether legal rules had been violated and crimes committed. During this information-gathering process, facts were collected based on their relevance to the normative framework. In other words, only evidence and information which was deemed relevant to potential violations of international humanitarian law or international human rights law was considered. Moreover, after collecting and assessing the relevant facts, the various fact-finding bodies focused on the legal analysis of this information. At this stage, the established facts were analyzed to reach legal conclusions concerning potential violations of international law, and specifically to determine whether war crimes were committed.

⁶⁴ *First Stage of Legislation Approved: Prohibition of Documenting IDF Soldiers*, *supra* note 60.

⁶⁵ Goldstone Report, *supra* note 24; Davis Report, *supra* note 24.

⁶⁶ The bill's sponsor, MK Robert Ilatov, acknowledged this connection: "I think that the incident that truly woke us was when the IDF was preparing for the provocations in the Gaza border, and we saw activists who attacked them and shoved cameras at them." Yoav Zaitun, *Political Damage or Soldiers' Protection? The Law that Will Prohibit Documenting Soldiers*, YNET NEWS (June 16, 2018), <https://m.ynet.co.il/Articles/5289450> [<https://perma.cc/9YEG-73YC>].

⁶⁷ For example, on May 7, 2019, Israeli authorities revoked the work permit for Omar Shakir, the Human Rights Watch Israel and Palestine Director, and ordered him to leave the country within fourteen days, citing his anti-Israel activities. Additionally, on July 17, 2018, the Knesset approved a bill prohibiting NGOs "acting against IDF soldiers" from entering schools or meeting with students. The bill's sponsors specifically named B'Tselem's CEO as an example of one who would be banned from lecturing at schools under the new law. Jonathan Lis, *The Knesset Approved the Law Intending to Prohibit Breaking the Silence from Entering Schools*, HAARETZ (July 17, 2018), <https://www.google.com/amp/s/www.haaretz.co.il/amp/news/politi/1.6280369> [<https://perma.cc/GA9Q-97HW>]. On the growing public animosity in Israel toward human rights NGOs, see Neve Gordon, *Human Rights as a Security Threat: Lawfare and the Campaign against Human Rights NGOs*, 48 L. & SOC'Y REV. 311, 333 (2014).

The report produced by B'Tselem described the events in terms of “human rights violations” and “illegal, widespread, use of military power,”⁶⁸ the military orders were considered to be “manifestly illegal,”⁶⁹ and the internal Israeli investigations were deemed “whitewashing of crimes.”⁷⁰ Similarly, Human Rights Watch produced a report concluding that the IDF’s use of lethal force “may amount to war crimes.”⁷¹ In fact, the report used the word “crime” fifteen times, including within the context of individual criminal responsibility and with reference to the International Criminal Court’s potential jurisdiction over the case.⁷² Finally, the Human Rights Council’s decision to dispatch a fact-finding mission to investigate these events focused solely on legal blame and accountability. It specifically instructed the fact-finders to “investigate all alleged violations and abuses of international humanitarian law and international human rights law,” to establish facts and circumstances “that may amount to war crimes; to identify those responsible; [and] to make recommendations, in particular on accountability measures, ... including individual criminal and command responsibility.”⁷³ It is of no surprise, therefore, that the report issued by the commission of inquiry provided mainly legal analysis focused on individual criminal responsibility.⁷⁴

The Israeli accounts were quick to adopt a similar approach and terminology, albeit with very different conclusions. Despite acknowledging the missing facts, Justice Melcer ended his decision by accepting the respondents’ declaration that “the IDF soldiers act[ed] in accordance with international law and Israeli law and fully respect the humanitarian responsibilities laid upon them by the law of war.”⁷⁵ Chief Justice Hayut emphasized that the lack of factual findings did not obligate the court, at that stage, to find that the military orders, or the way in which they had been implemented in the field, were unlawful.⁷⁶ The military investigation similarly concluded that despite apparent mistakes or mishaps, the soldiers acted lawfully, and the only determination that was (initially) released to the public was that “no violation” had occurred.⁷⁷

Ultimately, the legal terminology, and particularly the war crimes label, dominated the debates about the Israel-Gaza border incidents. And while the controversy about the legality of the Israeli actions is far from settled, basic facts—including the range of the fire, the type of ammunition used, the protestors’ distance from the border fence, and the victims’ particular role in the protests—

⁶⁸ B’TSELEM, *supra* note 32, at 6, 9.

⁶⁹ B’TSELEM, *supra* note 32, at 7.

⁷⁰ B’TSELEM, *supra* note 32, at 9.

⁷¹ *Human Rights Watch Report*, *supra* note 55.

⁷² *Human Rights Watch Report*, *supra* note 55.

⁷³ Human Rights Council Res. S-28, *supra* note 47, ¶ 45.

⁷⁴ *See Rep. of the Independent Int’l Commission of Inquiry on the Protests in the Occupied Palestinian Territory*, *supra* note 49.

⁷⁵ H CJ 3003/18, 3250/18 *Yesh Din v. IDF Chief of Staff* ¶ 66 (2018) (Melcer, J.).

⁷⁶ *Id.* ¶ 13 (Hayut, J.).

⁷⁷ Kubovich, *supra* note 3.

have also remained largely unexplored. Did the legal focus of the fact-finding efforts influence the controversy? Did it contribute to the backlash that followed? Could other types of fact-finding have had different outcomes? The next section develops some theoretical arguments concerning the impact of legal labels and legal blame on dissemination of facts during armed conflicts.

III. Do Legal Terminology and Legal Blame Influence People's Beliefs about Wartime Events?

A. *Legal Framing Effects*

In any communication, the language and exact words used influence how the message will be processed and comprehended,⁷⁸ creating a “framing effect,” subtly shaping the way in which people interpret this information.⁷⁹ Social scientists have documented framing effects on public opinion in a wide range of social contexts (such as abortions, poverty, and crime policies),⁸⁰ by using a variety of research methods, including surveys, experiments, and actual political campaigns.⁸¹

Legal terms—similarly to other organizing structures—create “frames” under which information is categorized and interpreted. Different legal terms therefore have a distinct impact on people's cognition. For example, McCaffery, Kahneman, and Spitzer demonstrate how different legal framings of jury instructions influenced law students and lay people alike to award substantively different compensation to litigants in otherwise identical cases.⁸² In another study,

⁷⁸ See generally Daniel Kahneman & Amos Tversky, *Choices, Values, and Frames*, 39 AM. PSYCHOLOGIST 341, 346 (1984); ERVING GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE* 21 (1974); see also William A. Gamson & Andre Modigliani, *The Changing Culture of Affirmative Action*, in 3 RESEARCH POL. SOC. 137, 147 (Richard G. Braungart & Margaret M. Braungart eds., 1987).

⁷⁹ Kahneman & Tversky, *supra* note 78.

⁸⁰ See, e.g., Shanto Iyengar, *Framing Responsibility for Political Issues: The Case of Poverty*, 12 POL. BEHAV. 19 (1990); Jon Hurwitz & Mark Peffley, *Playing the Race Card in the Post-Willie Horton Era: The Impact of Racialized Code Words on Support for Punitive Crime Policy*, 69 PUB. OPINION Q. 99 (2005); R. Michael Alvarez & John Brehm, *American Ambivalence Toward Abortion Policy: Development of a Heteroskedastic Probit Method of Competing Values*, 39 AM. J. POL. SCI. 1055 (1995); Paul M. Sniderman, *Taking Sides: A Fixed Choice Theory of Political Reasoning*, in ELEMENTS OF REASON: COGNITION, CHOICE, AND THE BOUNDS OF RATIONALITY 67 (Arthur Lupia et al. eds., 2000).

⁸¹ For a comprehensive analysis of the literature on framing effects, see James N. Druckman, *The Implications of Framing Effects for Citizen Competence*, 23 POL. BEHAV. 225 (2001).

⁸² Edward J. McCaffery, Daniel J. Kahneman & Matthew L. Spitzer, *Framing the Jury: Cognitive Perspectives on Pain and Suffering Awards*, 81 VA. L. REV. 1341, 1344 (1995). In this study, the authors examined how different framings of jury instructions might affect monetary awards for pain and suffering. In particular, they measured the difference in monetary awards for pain and suffering in a personal injury case based on two alternative jury instructions' framings: the first instructed participants to name the amount one needs to be paid to be made whole, once an injury

Cupp and Polage focus on the framing effects of two different legal doctrines, strict liability and negligence, on jury decision-making.⁸³ They find that jurors were more likely to award damages if the information they received was presented using a negligence framing (a moral failing by the manufacturer to act reasonably) than if the information was presented using a strict liability framing (a technical legal doctrine that allows liability regardless of blameworthiness).⁸⁴

Why do different legal framings of the same information lead to different outcomes? Legal framing, as any other organizing theme, may trigger several socio-psychological dynamics which influence the way individuals process new information. These include cognitive consistency,⁸⁵ confirmation bias,⁸⁶ motivated cognition,⁸⁷ and collective memories and beliefs.⁸⁸ Social-psychological studies

has already taken place (a ‘making whole’ perspective); the second instructed participants to name the amount one would have to be paid to subject herself to the injury in the first place (a ‘selling price’ perspective). The experimental findings demonstrated that members of the jury tend to award significantly higher awards for pain and suffering when the selling price framing is used.

⁸³ Richard L. Cupp Jr. & Danielle Polage, *The Rhetoric of Strict Products Liability Versus Negligence: An Empirical Analysis*, 77 N.Y.U. L. REV. 874, 900 (2002).

⁸⁴ *Id.* While these studies were specifically designed to imitate jury decision-making processes (and targeted either law students or people on actual jury duty), their findings are consistent with the general scholarship on framing effects, indicating that legal terminology influences the way people perceive and interpret information. Consequently, we now know that different framings may influence public opinion on various political issues and that legal framing may influence jury decision-making. The experiments reported in this article continue this line of scholarship, by further examining the impact of legal framing on the perceived credibility of fact-finding reports among the general public.

⁸⁵ According to cognitive consistency theories, human cognition is substantially affected by mutual interaction among pieces of psychological knowledge. Mounting evidence further demonstrates processes of biased assimilation of new information—meaning that people tend to interpret subsequent evidence so as to maintain their initial beliefs. Charles Lord, Lee Ross & Mark Leper, *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, 37 J. PERSONALITY & SOC. PSYCHOL. 2098 (1979); Dan Simon, Chadwick J. Snow & Stephen J. Read, *The Redux of Cognitive Consistency Theories: Evidence Judgments by Constraint Satisfaction*, 86 J. PERSONALITY & SOC. PSYCHOL. 814 (2004).

⁸⁶ The term “confirmation bias” connotes the seeking or interpreting of evidence in ways that are partial to existing beliefs, expectations, or hypothesis in hand. Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCHOL. 175 (1998).

⁸⁷ Kunda explains that a motivation to arrive at particular conclusions may affect reasoning through reliance on a biased set of cognitive processes (strategies for accessing, constructing, and evaluating beliefs) that are considered most likely to yield the desired conclusion. There is considerable evidence that people are more likely to arrive at conclusions that they want to arrive at, but their ability to do so is constrained by their ability to construct seemingly reasonable justifications for these conclusions. Ziva Kunda, *The Case for Motivated Reasoning*, 108 PSYCHOL. BULL. 480 (1990).

⁸⁸ Societal beliefs and collective memories are cognitions shared by society members on topics and issues that are of special concern for the particular society, and which contribute to the sense of uniqueness of the society's members. See Daniel Bar-Tal, *Societal Beliefs in Times of Intractable Conflict: The Israeli Case*, 9 INT'L J. CONFLICT MGMT. 22, 25–26 (1998) [hereinafter *Societal Beliefs*]; Daniel Bar-Tal, *Collective Memory of Physical Violence: Its Contribution to the Culture of Violence*, in THE ROLE OF MEMORY IN ETHNIC CONFLICT 77 (Ed Cairns & Mícheál D. Roe eds., 2003).

have demonstrated that individuals tend to search for and absorb information that is in line with their core social beliefs, while omitting or distorting contradictory information.⁸⁹ The construction and evaluation of information in social settings is influenced by the prior beliefs, interests, and needs of those involved.⁹⁰ In his book on the psychology of denial, Cohen explains that information is selected to fit existing perceptual frames, while information which is too threatening is shut out altogether.⁹¹ Cohen further develops the concept of interpretive denial, where the raw facts are accepted but are given a different meaning from what seems apparent to others.⁹² In Cohen's words, "a perceptual filter is placed over reality"⁹³ and some knowledge has to be rejected or be given a different meaning.

Therefore, a legal framing which threatens or deviates from the recipients' social beliefs might trigger a defensive reaction and lead to rejection or distortion of the new information. In heterogeneous societies, in which different groups hold conflicting social beliefs and ideologies, contested legal framing might trigger belief perseverance or polarization.⁹⁴ For example, the legal categories used to frame the Gaza border protests threatened core societal beliefs engrained within the Jewish-Israeli society, including the belief that "the IDF is the most moral army in the world."⁹⁵

⁸⁹ The various psychological mechanisms which contribute to biased assimilation of information include: (1) cognitive consistency and confirmation bias, Lee Ross & Andrew Ward, *Psychological Barriers to Dispute Resolution*, 27 *ADVANCES IN EXPERIMENTAL SOC. PSYCHOL.* 255, 263–64 (1995); (2) motivated cognition, Dan Kahan, *Foreword: Neutral Principles, Motivated Cognition, and Some Problems for Constitutional Law*, 125 *HARV. L. REV.* 1, 19 (2012); and (3) threatened social identities, Terrell A. Northrup, *The Dynamics of Identity in Personal and Social Conflict*, in *INTRACTABLE CONFLICTS AND THEIR TRANSFORMATION* 55 (Louis Kriesberg et al. eds., 1989); Anne Maass & Mark Schaller, *Intergroup Biases and the Cognitive Dynamics of Stereotype Formation*, 2 *EUR. REV. SOC. PSYCHOL.* 189 (1991); Daniel Bar-Tal, *Sociopsychological Foundations of Intractable Conflicts*, 50 *AM. BEHAV. SCIENTIST* 1430, 1445–46 (2007).

⁹⁰ Ifat Maoz et al., *Reactive Devaluation of an "Israeli" vs. "Palestinian" Peace Proposal*, 46 *J. CONFLICT RESOL.* 515, 543 (2002); see also Roy F. Baumeister & Stephen Hastings, *Distortions of Collective Memory: How Groups Flatter and Deceive Themselves*, in *COLLECTIVE MEMORY OF POLITICAL EVENTS: SOCIAL PSYCHOLOGICAL PERSPECTIVES* 277, 287 (J.W. Pennebaker et al. eds., 1997). Chan, Burtis, and Bereiter's study on knowledge construction found that individuals distort and twist information to make it fit with prior beliefs. Carol Chan, Jud Burtis & Carl Bereiter, *Knowledge Building as a Mediator of Conflict in Conceptual Change*, 15 *COGNITION & INSTRUCTION* 1, 5 (1997).

⁹¹ COHEN, *supra* note 19, at 6.

⁹² COHEN, *supra* note 19, at 7–8.

⁹³ COHEN, *supra* note 19, at 13.

⁹⁴ Kahan, Hoffman & Braman, *supra* note 20, at 842–43, 879; see, e.g., Thomas Kelly, *Disagreement, Dogmatism, and Belief Polarization*, 105 *J. PHIL.* 611 (2008); Dan M. Kahan et al., *They Saw a Protest: Cognitive Illiberalism and the Speech-Conduct Distinction*, 64 *STAN. L. REV.* 851 (2012).

⁹⁵ Neta Oren, Rafi Nets-Zehngut & Daniel Bar-Tal, *Construction of the Israeli-Jewish Conflict-Supportive Narrative and the Struggle over Its Dominance*, 36 *POL. PSYCHOL.* 215, 219 (2015); *Barak: No Doubt IDF Is Most Moral Army in the World*, *YNET NEWS* (Mar. 25, 2009), <http://www.ynetnews.com/articles/0,7340,L-3692383,00.html> [<https://perma.cc/F938-XU59>]; see also Daniel Bar-Tal, Eran Halperin & Neta Oren, *Socio-psychological Barriers to Peace Making: The Case of the Israeli Jewish Society*, 4 *SOC. ISSUES & POL'Y REV.* 63, 84 (2010).

B. Framing Categories of Wartime Events: Legal Terminology and Assignment of Blame

The legal facts established after the Gaza border protests fall into two categories: legal terminology (violation/war crime), and assignment of blame (yes/no). The terminology category signals differences in gravity, responsibility, and punishment.⁹⁶ War crimes terminology indicates a higher gravity or scale of the wrongdoing, criminal responsibility of group members, and a strong sense of social ostracism; violations terminology indicates a lower scale of wrongdoing, state responsibility, and a weak sense of social ostracism (if any).⁹⁷ Therefore, war crimes framing is expected to trigger backlash and denial within the perpetrators' social group, as well as feelings of anger and resentment. In contrast, while violation terminology still carries some degree of legal condemnation, its vague and weaker form is expected to trigger weaker resistance.⁹⁸

The assignment of blame category indicates a binary outcome, either absolving the conflict participants or attributing fault. This simple binary structure of fault/no-fault, lawful/unlawful, is a fundamental characteristic of the legal process, and it often creates inconsistencies between the legal categories and the complex reality on the ground.⁹⁹ About two decades ago, with the establishment of the ad-hoc international criminal tribunals, the developments around individual criminal responsibility were celebrated as a significant and vital development to achieve justice and accountability for international crimes.¹⁰⁰ While blaming individuals for the outcomes of their actions during armed conflicts serves several

⁹⁶ See generally David Scheffer, *Genocide and Atrocity Crimes*, 1 GENOCIDE STUD. & PREVENTION 229 (2006).

⁹⁷ See, e.g., Theodor Meron, *War Crimes in Yugoslavia and the Development of International Law*, 88 AM. J. INT'L L. 78 (1994); Thomas W. Smith, *Moral Hazard and Humanitarian Law: The International Criminal Court and the Limits of Legalism*, 39 INT'L POL. 175 (2002).

⁹⁸ The study therefore tests the following hypotheses: Jewish-Israelis attribute lower credibility to reports framed by a 'war crime' label than those framed with a 'no crime' label, 'no conclusion' label, or even a 'violation' label. It is hypothesized that as the level of condemnation increases (from 'no crime' to 'no conclusion' to 'violation' and finally to 'war crime'), the perceived credibility of the report by Jewish-Israelis decreases [H1: Credibility(war crimes) < Credibility(violation) < Credibility(no conclusion) < Credibility(no crime)]. Additionally, the study tests the hypothesis that as the level of condemnation increases, Jewish-Israelis' feeling of anger towards the report intensifies [H2: Anger(war crimes) < Anger(violation) < Anger(no conclusion) < Anger(no crime)].

⁹⁹ Yuval Shany, *Binary Law Meets Complex Reality: The Occupation of Gaza Debate*, 41 ISR. L. REV. 68, 69 (2008).

¹⁰⁰ See generally Antonio Cassese, *On the Current Trends Towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law*, 9 EUR. J. INT'L L. 2 (1998); MICHAEL S. MOORE, *PLACING BLAME: A THEORY OF THE CRIMINAL LAW* (2010); Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?*, 95 AM. J. INT'L L. 7 (2001); Theodor Meron, *War Crimes Law Comes of Age*, 92 AM. J. INT'L L. 462 (1998).

important purposes, it also carries unique perils for prospects of reconciliation,¹⁰¹ necessary systemic changes,¹⁰² and the development of a shared history and dissemination of information.¹⁰³

Discussing the lessons learned from the experience of the South African Truth and Reconciliation Commission, Gibson argues that promoting an alternative of “shared blame” was the single most important characteristic of the South African truth and reconciliation process.¹⁰⁴ In his words: “sharing responsibility, blame, and victimhood creates a common identity, which can provide a basis for dialogue. If people are no longer dogmatically attached to a ‘good versus evil’ view of the struggle, then perhaps a space for reconciliation is opened.”¹⁰⁵ Instead, binary allocation of individual blame necessarily threatens one of the opposing rigid social narratives that develop during armed conflicts, and thus frustrates dissemination of information that challenges these narratives and triggers processes of denial.¹⁰⁶ When threatening information about ingroup offending triggers processes of denial, ingroup members are less likely to experience guilt or shame, as well as empathy toward members of the outgroup.¹⁰⁷ This is significant as guilt was found to motivate reparative action, such as confessing or apologizing;¹⁰⁸ fostering an acceptance of responsibility rather than a tendency to blame others;¹⁰⁹ and instigate feelings of empathy.¹¹⁰

¹⁰¹ See generally Brownwyn Anne Leebaw, *The Irreconcilable Goals of Transitional Justice*, 30 HUM. RTS. Q. 95 (2008); Mirjan Damaska, *What Is the Point of International Criminal Justice*, 83 CHI.-KENT L. REV. 329 (2008).

¹⁰² See generally NEAL FEIGENSON, *LEGAL BLAME: HOW JURORS THINK AND TALK ABOUT ACCIDENTS* (rev. ed. 2000).

¹⁰³ See generally Sara Kendall & Sarah M.H. Nouwen, *Speaking of Legacy: Toward an Ethos of Modesty at the International Criminal Tribunal for Rwanda*, 110 AM. J. INT’L L. 212 (2016); Marko Milanović, *The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem*, 110 AM. J. INT’L L. 233 (2016); Ralph Zacklin, *The Failings of Ad Hoc International Tribunals*, 2 J. INT’L CRIM. JUST. 541 (2004).

¹⁰⁴ James L. Gibson, *The Contributions of Truth to Reconciliation Lessons from South Africa*, 50 J. CONFLICT RESOL. 409, 417 (2006).

¹⁰⁵ *Id.*

¹⁰⁶ See Mark A. Drumbl, *Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda*, 75 N.Y.U. L. REV. 1221, 1324 (2000).

¹⁰⁷ It is generally accepted that individuals experience guilt in an intergroup context when they believe that their ingroup is responsible for specific negative actions. See, e.g., Bertjan Doosje et al., *Guilty by Association: When One’s Group Has a Negative History*, 75 J. OF PERSONALITY AND SOC. PSYCHOL. 872 (1998); Brian Lickel et al., *Vicarious Shame and Guilt*, 8 GROUP PROCESSES & INTERGROUP RELATIONS 145 (2005); Aarti Iyer, Toni Schmader & Brian Lickel, *Why Individuals Protest the Perceived Transgressions of Their Country: The Role of Anger, Shame, and Guilt*, 33 PERSONALITY AND SOC. PSYCHOL. BULL. 572 (2007).

¹⁰⁸ June P. Tangney, Jeffrey Stuewig & Andres G. Martinez, *Two Faces of Shame: The Roles of Shame and Guilt in Predicting Recidivism*, 25 PSYCHOL. SCI. 799, 799 (2014).

¹⁰⁹ Bas Van Stokkom, *Moral Emotions in Restorative Justice Conferences: Managing Shame, Designing Empathy*, 6 THEORETICAL CRIMINOLOGY 339, 347 (2002).

¹¹⁰ *Id.* at 348; Susanne Karstedt, *Emotions and Criminal Justice*, 6 THEORETICAL CRIMINOLOGY 299, 312 (2002).

Applying the two legal categories discussed above (*legal terminology* and *assignment of blame*) to the fact-finding efforts concerning the Gaza border protests generally, and to the death of Razan al-Najjar particularly, reveals a dynamic of denial and distortion within Jewish-Israeli society in response to threatening legal accusations, including the use of the term “war crimes.” A different approach could have been taken, invoking different legal categories, or a different discourse altogether. Just as the legal terms of “strict liability” and “negligence” were used by Cupp and Polage to describe a similar situation (factually and legally),¹¹¹ the use of legal terms such as “war crimes” could have been replaced by other, less threatening, legal concepts, such as “violations.” Alternatively, the investigations could have focused on brute facts or on organizational processes, leaving the legal analysis to courts or other competent legal institutions, or to a later date, after the end of the active hostilities and the completion of the initial fact-finding processes.

C. Facts’ Believability, Trust, and Institutional Legitimacy

Evidence shows that the perceived legitimacy and credibility of an institution significantly influences the trustworthiness of the information it produces.¹¹² Institutional legitimacy in the eyes of key constituencies is, therefore, an important factor in fact-finding efforts and in dissemination of information.¹¹³ The impact of institutional legitimacy on information’s trustworthiness is not homogeneous, but rather situational, mediated by various aspects relating to the content of the information, and the audiences’ prior beliefs, attitudes, and ideological commitments.¹¹⁴

Studies in procedural justice have examined the impact of perceived fairness of the legal process on people’s acceptance of their judgments. In their book *Trust in the Law*, Taylor and Huo demonstrated that acceptance of legal decisions increases when people regard the agents of the legal system as acting in a way they perceive to be fair and trustworthy.¹¹⁵ In other studies, focused on the institutional legitimacy of the police, Tyler demonstrated that when authorities act in ways that people experience as being fair, people are more willing to voluntarily accept the

¹¹¹ Cupp & Polage, *supra* note 83.

¹¹² For a meta-analysis surveying the relevant literature, see Miriam J. Metzger et al., *Credibility for the 21st Century: Integrating Perspectives on Source, Message, and Media Credibility in the Contemporary Media Environment*, 27 COMM. Y.B. 293, 299–300 (2003); see also Carl I. Hovland & Walter Weiss, *The Influence of Source Credibility on Communication Effectiveness*, 15 PUB. OPINION Q. 635, 635 (1951); Chanthika Pornpitakpan, *The Persuasiveness of Source Credibility: A Critical Review of Five Decades’ Evidence*, 34 J. APPLIED SOC. PSYCHOL. 243, 246–47 (2004).

¹¹³ Yuval Shany, *Assessing the Effectiveness of International Courts: A Goal-Based Approach*, 106 AM. J. INT’L L. 225, 266 (2012); see also Erik Voeten, *Public Opinion and the Legitimacy of International Courts*, 14 THEORETICAL INQUIRIES L. 411 (2013).

¹¹⁴ See generally Eric Haley, *Exploring the Construct of Organization as Source: Consumers’ Understandings of Organizational Sponsorship of Advocacy Advertising*, 25 J. ADVER. 19 (1996).

¹¹⁵ TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS 7 (2002).

authorities' decisions.¹¹⁶ Nonetheless, Skitka, Lytle and Bauman demonstrated that the effects of procedural fairness are influenced by people's moral convictions concerning the relevant issue, and that institutional legitimacy is enhanced or eroded as a function of whether the institutions' decisions are consistent or inconsistent with perceivers' morally held policy preferences.¹¹⁷ The combined conclusion from these two sets of studies is that strong moral commitments on an issue often override the otherwise mollifying effect of fair treatment. In other words, when the issue is sufficiently close to a person's value structure, they will reject the fairness of a process that disagrees with their preferred outcome.

In our case, the various fact-finding efforts conducted regarding the Gaza border protests did not take into account issues relating to dissemination of information, including the perceived legitimacy and trustworthiness of their findings by diverse audiences. The fact-finding mission established by the UN Human Rights Council is particularly problematic in this regard, as this body is infamous for its politicized, anti-Israeli agenda, which has been strongly criticized by both the former and the current secretary-general.¹¹⁸ The institution faces a significant legitimacy deficit, at least in the eyes of the Jewish-Israeli society. Of course, the Israeli military faces a similar legitimacy deficit in the eyes of Palestinians and other groups. Thus, findings by the Israeli military have been discredited by Palestinian and Israeli human rights organizations and described as a sham due to their lack of independence and impartiality.¹¹⁹

Based on this theoretical literature, I suggest that discrepant or threatening messages will be evaluated more positively when produced by a trusted institution than an untrusted one. Within the Israeli society, the United Nations is generally perceived as an anti-Israeli institution that does not enjoy the public's trust. In fact,

¹¹⁶ See, e.g., Tom R. Tyler, *Enhancing Police Legitimacy*, 593 ANNALS AM. ACAD. POL. & SOC. SCI. 84, 91 (2004).

¹¹⁷ Linda J. Skitka, Christopher W. Bauman, & Brad L. Lytle, *Limits on Legitimacy: Moral and Religious Convictions as Constraints on Deference to Authority*, 97 J. PERSONALITY & SOC. PSYCHOL. 567, 576 (2009).

¹¹⁸ Press Release, U.N. Secretary-General, Secretary-General Urges Human Rights Activists to 'Fill Leadership Vacuum', Hold World Leaders to Account, in Address to International Day Event, U.N. Doc. SG/SM/10788-HR/4909-OBV/6016018 (Dec. 8, 2006), <http://www.un.org/press/en/2006/sgsm10788.doc.htm> [<https://perma.cc/4LK3-Z27G>] (stating, in reference to the Human Rights Council, that "I am worried by its disproportionate focus on violations by Israel"); Press Release, U.N. Secretary-General, Secretary-General Urges Human Rights Council to Take Responsibilities Seriously, Stresses Importance Of Considering All Violations Equally, U.N. Doc. SG/SM/11053-HRC/8 (June 20, 2007), <http://www.un.org/press/en/2007/sgsm11053.doc.htm> [<https://perma.cc/W7WC-TR3K>]; see also John Sharman, *UK Puts UN Human Rights Council 'On Notice' Over 'Anti-Israel Bias'*, INDEPENDENT (Mar. 25, 2017) <https://www.independent.co.uk/news/world/middle-east/uk-un-human-rights-council-on-notice-israel-bias-palestinian-settlement-a7649171.html> [<https://perma.cc/EXB4-MRBJ>].

¹¹⁹ *Sham Investigation by Israel's Military Advocate General into IOF Killing of Razan Al-Najjar*, AL HAQ (June 13, 2018), <http://www.alhaq.org/advocacy/6187.html> [<https://perma.cc/M9AH-XL98>].

a global public opinion poll conducted by the Pew Research Center revealed that, of all the countries surveyed, the Israeli public holds the least favorable opinion of the United Nations.¹²⁰ In contrast, the Israeli military enjoys a uniquely high level of public trust (81%), the highest of all Israeli institutions.¹²¹ Accordingly, I argue that Jewish-Israelis will be more likely to trust counter-attitudinal information (reports condemning Israeli soldiers for killing Palestinian civilians), if that information is conveyed by an internal Israeli military investigation report rather than a UN fact-finding report.¹²²

This is not to suggest that military investigations are preferable over international investigations. Clearly, there are reasons to question the efficacy of military investigations, and while their legitimacy is high among some internal groups, that is not the case with regard to the international community and among Palestinian society.¹²³ However, this section suggests that institutional legitimacy is important for dissemination of information. It is now clear that more information does not necessarily mean more shared knowledge, and that sometimes more information serves only to intensify the controversy. In addition to the content of the information and the ideological commitments and prior beliefs of its audience, the identity of the institutions producing and disseminating the information significantly influences the way in which this information is perceived.

In summary, legal terminology, assignment of blame, and institutional legitimacy are important factors influencing the way new information about wartime events is received and assessed by members of various social groups. Would alternative framings make a difference? Does war crimes framing impede dissemination of controversial facts? And if so, could the controversy have been mitigated by adopting a different terminology? Would the outcome have been different if negative conclusions were disseminated from a trusted institution? To answer these questions, I fielded a large-scale survey-experiment in Israel during January 2017. The next section describes the design and structure of the experiment and reports its main findings.

¹²⁰ *UN Retains Strong Global Image*, PEW RESEARCH CENTER (Sept. 17, 2013), <https://www.pewresearch.org/global/2013/09/17/united-nations-retains-strong-global-image/> [<https://perma.cc/2U8X-UYV7>].

¹²¹ Tamar Hermann et al., *The Israeli Democracy Index*, ISRAEL DEMOCRACY INSTITUTE (2017), <https://en.idi.org.il/media/9837/israeli-democracy-index-2017-en-summary.pdf> [<https://perma.cc/T3JX-8HUU>].

¹²² The study therefore tests the following hypotheses: Jewish-Israelis attribute greater credibility to reports issued by the Israeli Ministry of Defense (MoD) than those issued by the United Nations (UN) [H3: Credibility(MoD) > Credibility(UN)]. In particular, it is hypothesized that condemning fact-finding reports framed by a ‘violation’ label or a ‘war crime’ label will be viewed more favourably by Jewish-Israelis when issued by an internal MoD investigation than by external UN investigation.

¹²³ See, for example, the international and Palestinian calls for international investigations following the death of Razan Al-Najjar. *Supra* Sections II(A)(2)–(3).

IV. Experimental Data on the Impact of Legal Terminology and Blame on Beliefs About Wartime Events

To empirically assess the impact of legal terminology and blame on beliefs about wartime events, I designed a survey-experiment to measure the effect of war crime framing on beliefs about Palestinian fatalities within the Jewish-Israeli society, against various alternative framings. The experiment was fielded in Israel during January 2017, with a representative sample of 1,983 Jewish-Israelis drawn from across Israel. The sample was generated by iPanel, a surveying company that uses established sampling techniques to generate a sample that approximates the demographic composition of the adult Jewish-Israeli population.¹²⁴

A. Design

The approximate two thousand respondents were randomly assigned to one of four legal framings and to one of two institutions. The four legal framings were that Israel: (1) Did not violate international law (absolving framing); (2) Violated international law (violation framing); (3) Committed war crimes (war crimes framing); (4) No judgment was made (no blame framing). The two institutions rendering the facts were: (1) The Office of the United Nations Secretary General (“UN”); and (2) The Israeli Ministry of Defense (“MD”). Participants were also randomly assigned to one of two numbers of casualties. While half of the respondents read that four Palestinians were killed in the described events, the other half read that fourteen Palestinians were killed.

Respondents were told that they would be asked questions about a military operation in the West Bank that had happened a few months prior to the survey. They were also told that since the facts of the case were unclear (especially how many people died, and whether the victims were Hamas members or innocent civilians), an investigation was conducted by one of the two institutions mentioned above. Respondents were then presented with the investigation’s executive summary which included two parts: a “summary of facts” and a “summary of the judgment.” Both parts were designed to look like a formal institutional report, including the institution’s logo, the document’s serial number, and the date.

The summary of facts described an event that had happened recently in the West Bank, in which a Hamas fighter killed an IDF soldier with an explosive device. Three IDF soldiers, who witnessed the explosion, chased the attacker into a nearby marketplace, shooting their guns repeatedly. Eventually, they killed the attacker, but a number of unarmed Palestinian bystanders were also killed by IDF gunfire. The wording of the “summary of facts” was identical for all experimental conditions, and the only differences were the logo and name of the institution producing the report, as well as the number of casualties.

¹²⁴ See Appendix II for further information about the descriptive statistics of the sample.

After reading the factual summary of the events, respondents were presented with the report's judgment. First, the report stated that soldiers are obliged to exercise reasonable care to protect civilians during armed conflicts. Second, the report applied this standard to the facts of the case, concluding that the IDF soldiers: (1) did not violate international law; (2) violated international law; (3) committed war crimes; or (4) that no conclusions could be made based on limited and inconclusive evidence.

After reading the report's summary, respondents were asked several questions about the credibility of the report (its accuracy, objectivity, completeness, believability, and fairness). Additionally, the survey took account of demographic, political, social, and economic measurements, including age, gender, education, ideology, political identification, religiosity, and income. The structure of four legal conclusion conditions, two institution conditions, and two casualty-number conditions implies a factorial design with 16 experimental groups. The full text for this and the subsequent survey instrument are provided in Appendix I.

This design was carefully constructed to be as realistic as possible without inserting any bias (or additional framings) that would influence the perceived believability of the experimental conditions. First, the vignette captured a generic incident, of the type that has often been reported in the news.¹²⁵ As in typical news reporting about border clashes in Israel-Palestine, it briefly described the outcomes of a concrete military operation (the number of casualties and fatalities), interpreted by a concrete legal conclusion. To enhance the believability of the vignette, it anchored its information in familiar concepts and circumstances, such as " Hamas," " explosive device," " fatalities," " casualties," " terrorists," and " civilians."

While carefully tailoring the scenario to capture Jewish-Israelis' reaction to fact-finding reports employing legal interpretations, particularly those with " war crimes" framing, several features had to be used to distinguish the experimental scenario from recent events. First, because the Gaza border protests became extremely well known in Israel, it was essential to dissociate the experiment's report from the recent event about which most of the Jewish-Israelis had already formed an opinion. If participants believed the experimental report was essentially about the recent border clashes, we would have simply received the attitudes and specific biases directed against the existing reports, and would be unable to manufacture a credible experimental manipulation. Therefore, to create such a distinction, the experimental scenario occurred during hostilities in the West Bank (rather than the Gaza border). Additionally, this location neutralizes some of the additional biases that may have been triggered by locating the

¹²⁵ See, e.g., *UN Probe: Evidence of War Crimes in Gaza Conflict*, YNET NEWS (Sept. 15, 2009), <https://www.ynetnews.com/articles/0,7340,L-3777382,00.html> [<https://perma.cc/37HS-TQ7N>]; Shlomo Shamir & Barak Ravid, *UN Probe: Israel, Palestinians Both Guilty of Gaza War Crimes*, HAARETZ (Sept. 15, 2009), <https://www.haaretz.com/1.5461930> [<https://perma.cc/CZY6-7NMM>].

experimental scenario at the Gaza Strip, an area perceived by Jewish-Israelis as an independent hostile area controlled by a terror organization (and thus deserving of severe treatment). Cognitively and emotionally, it would have been too easy for respondents to rationalize and justify killings in a war-like scenario in an area controlled by a terror organization, and to reject findings that war crimes were committed against this terror organization or the population under its control. Setting the scenario in the West Bank was therefore helpful in both distinguishing the experimental report from the recent clashes, and in mitigating other factors that increase denialism.

Second, the scale or severity of the event was calibrated to allow for credible variation in the legal judgment and decrease social desirability bias. A mass killing scenario would have decreased the credibility of the vignette, as an absolving judgment may have seemed incongruous following a description of a large-scale massacre. In such a case, a rejection of the report's finding by some of the treatment groups may have been influenced by the discrepancy between the facts and their interpretation, and not by the legal framing itself. To be able to convincingly vary the legal judgment based on the same facts, it was necessary to describe a smaller-scale incident. In order to alleviate concerns that rejection of the facts would be triggered by the scale of the event, the number of casualties was varied, so that half of the respondents were told that four unarmed Palestinians were killed, and the remaining respondents were told that fourteen unarmed Palestinians were killed. This variation in the number of casualties allowed me to test the impact of the gravity of the event on the believability of the reported facts, while still maintaining a credible scenario that resembled real-life events that Israelis regularly encounter in everyday lives and in news reports.

Third, typically, individuals in Israel are exposed to this type of information through the media. However, I decided not to use a news report as the basis of the vignette but instead to present participants with a direct "quote" of an executive summary of a fact-finding report. This design allowed me to observe respondents' reaction to the content and source of the report itself, rather than to the media outlet reporting about it. Informing participants about the findings of a fact-finding report through a news article rather than directly from the fact-finding report could have introduced additional biases, such as the "hostile media bias"¹²⁶ and various source biases,¹²⁷ which would have made it extremely challenging to isolate and measure the legal framing effect.

Finally, by design, random assignment improves the chances experimental groups differ only with respect to the treatment. As expected, tests indicate groups

¹²⁶ See generally Robert P. Vallone, Lee Ross & Mark R. Lepper, *The Hostile Media Phenomenon: Biased Perception and Perceptions of Media Bias in Coverage of the Beirut Massacre*, 49 J. PERSONALITY & SOC. PSYCHOL. 577 (1985).

¹²⁷ See, e.g., William P. Eveland & Dhavan V. Shah, *The Impact of Individual and Interpersonal Factors on Perceived News Media Bias*, 24 POL. PSYCHOL. 101 (2003); Metzger, *supra* note 112.

assigned to the various treatment groups were comparably distributed across all observed characteristics.¹²⁸

B. Measures

Report's Credibility. The literature suggests that the perceived credibility of information has several dimensions, including accuracy, objectivity, and fairness.¹²⁹ On the basis of these previous studies, I assessed perceptions of the report's credibility over seven items: (1) the accuracy of the factual findings, (2) the objectivity of the determined facts, (3) the completeness of the facts, (4) the believability of the facts determined, (5) the objectivity of the conclusion, (6) the correctness of the conclusion, and (7) the overall fairness of the report. Respondents indicated their attitudes on a 6-point scale; this data was later recoded to range from 0 (completely unfair/inaccurate) to 100 (completely fair/accurate). The same response scale was used for all other measures unless otherwise noted. A credibility scale consisted of these seven items was found to be highly reliable ($\alpha = .958$). For simplicity, transparency, and accuracy, the analysis presents the results for the fairness and believability variables, which capture the overall reaction to the report as a whole and the willingness to believe its findings.

Feeling Thermometers. To complement the credibility variables and to add a few measurements directed at the emotional reaction to the fact-finding report, respondents were asked to indicate their level of anger towards the report, feelings of guilt, and empathy towards the victims, on a 6-point scale which was later recoded to range from 0 (no anger/guilt/empathy at all) to 100 (a lot of anger/guilt/empathy).

Political Ideology. Participants rated their political identity on a 5-point scale (1= "left"; 2= "moderate left"; 3= "center"; 4= "moderate right"; 5= "right") and indicated the political party they voted for in the 2015 elections. They were also asked to report which party they identify with today. Additionally, participants rated their political ideology on a 5-point scale (1= "very liberal"; 2= "liberal"; 3= "moderate"; 4= "conservative"; 5= "very conservative").

¹²⁸ I conducted an extensive series of balance tests comparing the distribution across treatment groups for all available baseline covariates that likely affect attitudes concerning war crimes, including gender, age, education, income, religiosity, and political ideology.

¹²⁹ See generally Andrew J. Flanagin & Miriam J. Metzger, *Perceptions of Internet Information Credibility*, 77 JOURNALISM & MASS COMM. Q. 515 (2000); Cecilie Gaziano & Kristin McGrath, *Measuring the Concept of Credibility*, 63 JOURNALISM Q. 451 (1986); Philip Meyer, *Defining and Measuring Credibility of Newspapers: Developing an Index*, 65 JOURNALISM Q. 567 (1988); John Newhagen & Clifford Nass, *Differential Criteria for Evaluating Credibility of Newspapers and TV News*, 66 JOURNALISM Q. 277 (1989); Tony Rimmer & David Weaver, *Different Questions, Different Answers? Media Use and Credibility*, 64 JOURNALISM & MASS COMM. Q. 28 (1987); Eugene F. Shaw, *Media Credibility: Taking the Measure of a Measure*, 50 JOURNALISM & MASS COMM. Q. 306 (1973); Mark West, *Validating a Scale for the Measurement of Credibility: A Covariance Structure Modeling Approach*, 71 JOURNALISM Q. 159 (1994).

Religiosity. Participants rated their level of religiosity on a 4-point scale (1= “secular”; 2= “traditionalist”; 3= “religious”; 4= “orthodox”).

Control Variables. Participants answered several demographic questions providing information about their gender, age, level of education, geographical region, marital status, and financial situation.

C. Results and Discussion

1. War Crimes Framing Triggers Denial and Impedes Dissemination of Information

The main hypothesis that the experiment was designed to test is whether the legal framing of the facts influences their perceived credibility, and specifically, the willingness of those within the perpetrators’ society to believe the facts. The results demonstrate that legal framing matters: the main effect of legal framing on the believability of the facts and the perceived fairness of the report was dramatically significant. As shown in Figure 1, as the level of legal condemnation intensifies (from “no violation,” to “no conclusion,” to “violation,” and to “war crime”), respondents’ willingness to believe the facts decreased significantly. While only the absolving report received a positive believability rating, there was a significant drop in the willingness to believe the facts with every escalation of the harshness of the legal conclusion. Ultimately, reports adopting a “war crime” finding were rated significantly lower on their credibility by Jewish-Israelis than reports adopting a “no conclusion” or even a “violation” finding.¹³⁰ The same pattern was observed with all additional credibility variables (both as separate items and as a part of a credibility scale).¹³¹ Figure 2 presents the mean of the report fairness variable, by the legal framing condition.

¹³⁰ An independent-sample t-test indicated that the ‘war crime’ conclusion (Mean=37.17, SD=28.65) resulted in a significantly lower believability rating than the ‘no conclusion’ condition (Mean=47.16, SD=27.96) ($t(988)=5.55, p<.001, d=.35$), or the ‘violation’ conclusion (Mean=42.29, SD=27.65) ($t(990)=2.86, p<.001, d=.18$).

¹³¹ The credibility scale consisted of 7 items which were found to be highly reliable ($\alpha = .958$). An independent-sample t-test demonstrated a similar pattern to that observed with the believability item, indicating that the ‘war crime’ conclusion resulted in a significantly lower believability rating than the ‘no conclusion’ condition ($t(988)=8.34, p<.001, d=.52$), or the ‘violation’ conclusion ($t(990)=3.78, p<.001, d=.24$). While the observed effects of the experimental treatments were stronger when the 7-item scale was used (as demonstrated above), I deliberately decided to focus the analysis on two items—the facts’ believability and the report’s fairness—as these provide an accurate and transparent measurement of the main point of interest in this paper, which is the perceived believability of the reported facts, and the overall perception of the report.

Figure 1. Facts Believability, by Legal Framing Condition

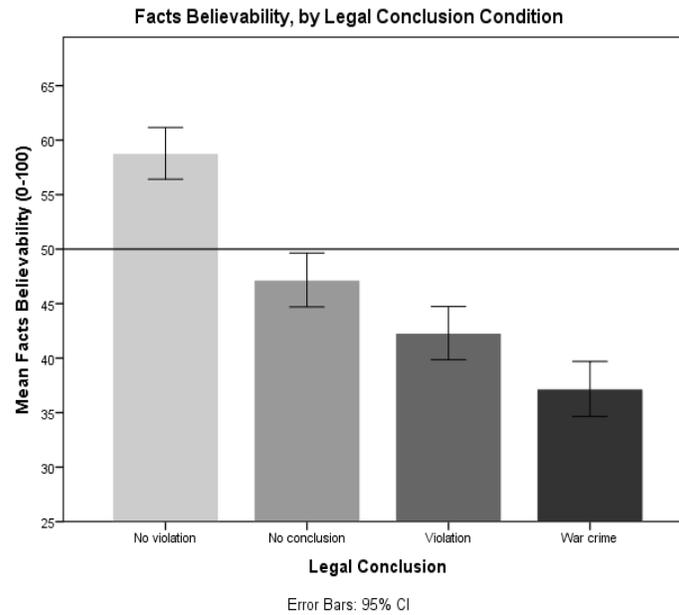


Figure 1 presents the mean values of the facts' believability rating, by legal framing condition. 95% CI's shown.

Figure 2. Report Fairness, by Legal Framing Condition

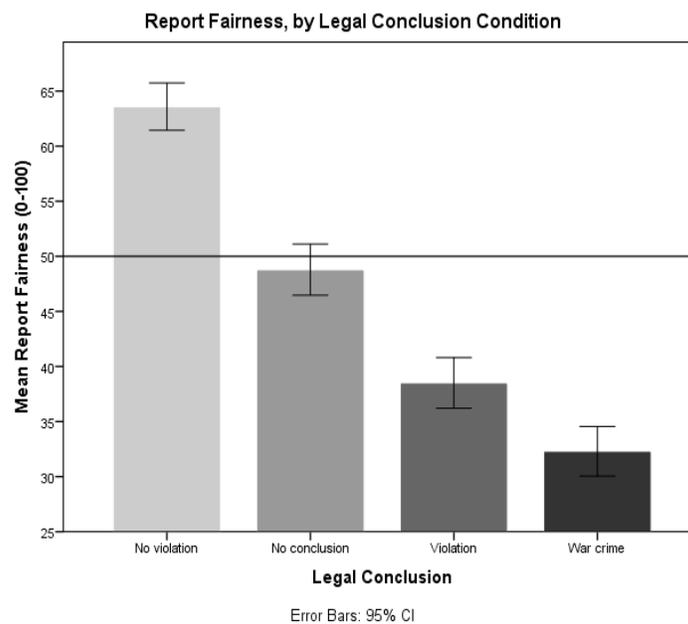


Figure 2 presents the mean values of the reports' perceived fairness, by legal framing condition. 95% CI's shown.

To alleviate concerns that the “war crime” effect may be attributed solely to the relatively low level of conflict involved in the events, participants were randomly assigned to different numbers of Palestinian fatalities (either four or fourteen). As predicted, the number of Palestinian fatalities did not influence participants’ willingness to believe the reported facts across all subjects ($t(1,981)=-.001, p=.99$), nor was this factor influential in the “war crime” condition ($t(494)=-.88, p=.37$).

Another way to look at the impact of the legal framing on the perceived believability of the facts by Jewish-Israelis is by computing the percentage of participants who believed the reported facts, and those who disbelieved these facts, in each of the legal conclusion conditions. As shown in Table 1, in the absolving (“no violation”) condition, a 65% majority of Jewish-Israelis believed the reported facts were true; while in the war crimes condition, only a minority of 36% believed that the reported facts were true. Table 1 demonstrates that as the legal conclusion becomes harsher, the percentage of Jewish-Israelis who believed the report decreased, and the percentage of those rejecting the report increased.

Table 1. Reported Believability on Legal Framing

<i>Legal Conclusion</i>	<i>Report’s Believability</i>	
	‘True’	‘False’
No violation (absolving conclusion)	65%	35%
No conclusion (neutral conclusion)	49%	51%
Violation (legal responsibility conclusion)	44%	56%
War crime (incriminating conclusion)	36%	64%

2. War Crimes Framing Triggers Anger and Resentment, Does not Influence Guilt or Empathy

Figure 3 demonstrates that, in accordance with the credibility variables, as the legal conclusion becomes harsher, the respondents’ feeling of anger towards the report increased. In fact, the results show that reports adopting a “war crime” legal conclusion resulted in an increase of 22 percentage-points on the anger thermometer over reports without any legal conclusion. In other words, the adoption of “war crimes” legal terminology had a significant impact on respondents’ feelings of anger and resentment toward the report and its findings. Figure 3 presents the means of the anger thermometer, by the legal judgment condition.

Figure 3. Anger towards the Report, by Legal Framing Condition

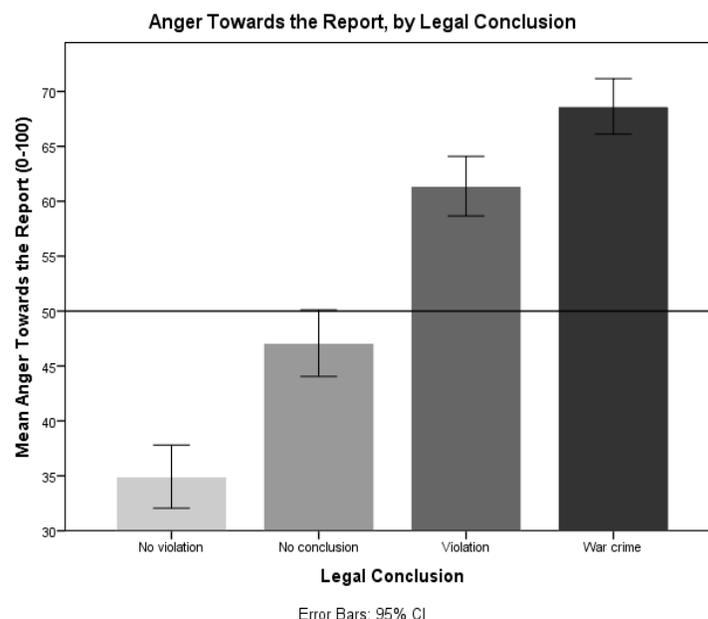


Figure 3 presents the mean values of the anger towards the report, by legal framing condition. 95% CI's shown.

While feelings of anger and resentment towards the report were significantly influenced by the legal conclusion, participants' feelings of guilt and empathy for the victims remained low throughout; these measures were not influenced by the legal conclusion, nor were they affected by the gravity of the events and the number of Palestinian casualties.¹³² That is to say, "war crimes" reports were perceived as false and triggered anger and resentment among Jewish-Israelis. Consequently, such reports failed to generate feelings of guilt or empathy towards the victims by this specific audience.¹³³ Figure 4 demonstrates the guilt thermometer, by legal framing.

¹³² A linear regression analysis was used to test if the legal conclusion predicted participants' feeling of guilt. The results of the regression indicated that the legal conclusion did not explain the level of guilt ($R^2=.00$, $F(1981)=.45$, $p=.5$). Another linear regression was used to test if the number of casualties predicted the level of guilt. As anticipated, the results of the regression indicated that the number of casualties did not predict the level of guilt ($R^2=.00$, $F(1981)=2.15$, $p=.14$).

¹³³ Jewish-Israelis are not a homogeneous society, and the heterogeneity within this group is discussed in more detail *infra* subsection *iv*.

Figure 4. Guilt Thermometer, by Legal Framing Condition

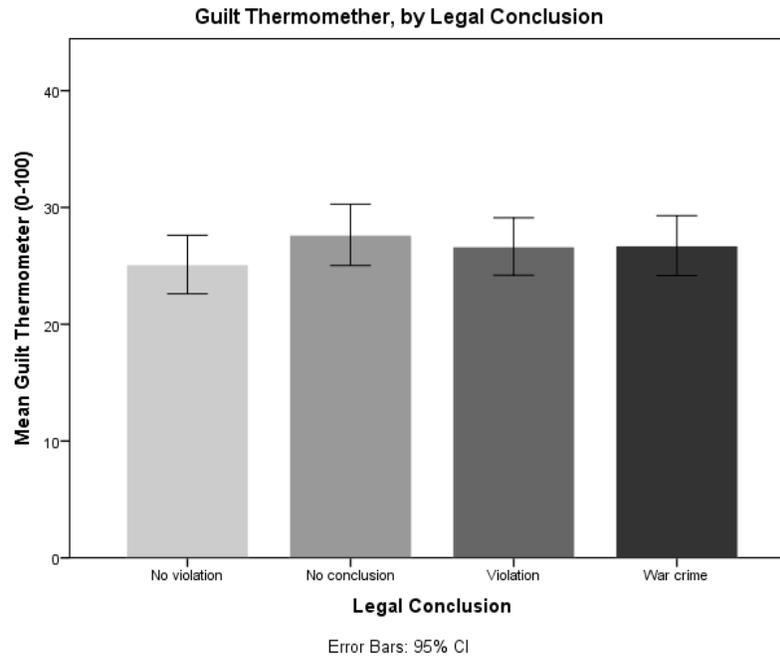


Figure 4 presents the mean values of the guilt thermometer, by legal framing condition. 95% CI's shown.

3. The Identity of the Body Rendering the Facts Influences Their Perceived Credibility

The experiment compared the impact of two fact-finding institutions on the perceived credibility of the findings by Jewish-Israelis. The results demonstrate that the identity and type of fact-finding body significantly influenced its perceived credibility. The main effect of the institutional source on the report's credibility variables was significant across all credibility variables. Reports produced by the Israeli Ministry of Defense resulted in significantly higher credibility rates than reports produced by the United Nations Secretary-General. Specifically, the Israeli report resulted in 12 percentage-points increase in believability rating, when compared to the otherwise identical UN report.¹³⁴ Figure 5 demonstrates the effect of the institution on the facts' believability variable.

¹³⁴ An independent-sample t-test indicated that reports produced by the Israeli Ministry of Defense (Mean=50.46, SD=28.58) resulted in significantly higher levels of facts' believability than identical reports produced by the UN Secretary-General (Mean=40.32, SD=28.13), $t(1,985)=-7.96$, $p<.001$, $d=.35$.

Figure 5. Facts' Believability, by Institution Condition

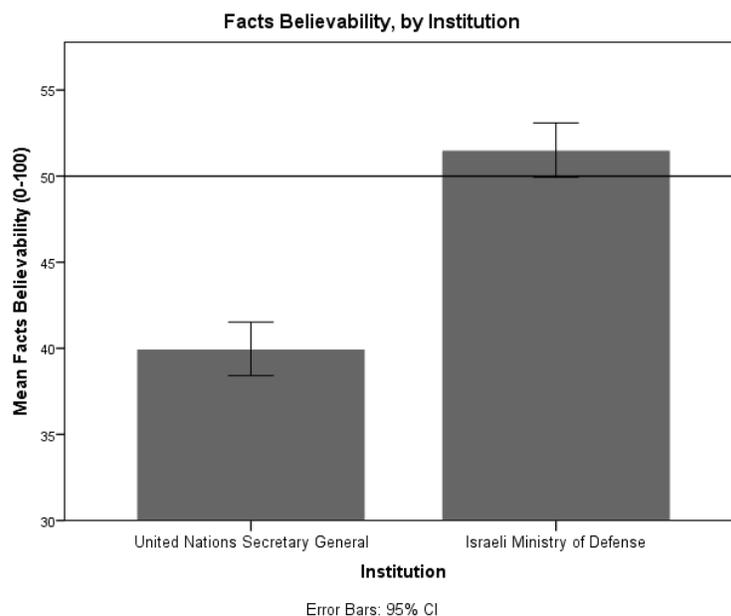


Figure 5 presents the mean values of facts' believability, by institution condition. 95% CI's shown.

Additionally, reports produced by the UN Secretary-General triggered significantly higher feelings of anger and resentment toward the report and its findings than reports produced by the Israeli Ministry of Defense.¹³⁵ Similarly, reports produced by the UN Secretary-General generated significantly lower levels of guilt and empathy toward the victims than identical reports produced by the Israeli Ministry of Defense.¹³⁶

Finally, a two-way analysis of variance was conducted on the influence of institution and legal conclusion and their interaction on the perceived believability of the facts. All effects were statistically significant at the $p < .001$ level.¹³⁷ The

¹³⁵ An independent-sample t-test indicated that reports produced by the UN Secretary-General (Mean=57.13, SD=33.36) drew significantly higher levels of anger than identical reports produced by the Israeli Ministry of Defense (Mean=48.87, SD=34.54), $t(1,981)=5.41$, $p < .001$, $d=.24$.

¹³⁶ An independent-sample t-test indicated that reports produced by the UN Secretary-General (Mean=23.77, SD=27.27) resulted in significantly lower levels of guilt than identical reports produced by the Israeli Ministry of Defense (Mean=29.29, SD=29.89), $t(1,981)=-4.29$, $p < .001$, $d=.19$, as well as lower levels of empathy towards the Palestinian victims ($t(1,981)=-4.32$, $p < .001$, $d=.19$).

¹³⁷ The main effect for institution yielded an F ratio of $F(1, 1,983)=114.38$, $p < .001$, indicating a significant difference between the Israeli Ministry of Defense report ($M=51.51$, $SD=28.24$) and the UN Secretary-General report ($M=39.96$, $SD=27.86$). The main effect for legal conclusion yielded an F ratio of $F(3, 1,983)=58.34$, $p < .001$, indicating significant differences between the 'no

results of the two-way ANOVA are demonstrated by Figure 6. Interestingly, in the “no conclusion” condition, the believability rating for the Israeli Ministry of Defense was 17 percentage-points higher than the believability rating for the UN Secretary-General report (a shift from disbelieving the facts in the UN Secretary-General condition (Mean=38.53, SD=26.76) to believing the facts in the Israeli Ministry of Defense condition (Mean=55.72, SD=26.5)).

This result suggests that Jewish-Israelis are more likely to be receptive to information about Palestinian fatalities, when these facts are unaccompanied by any legal conclusion, as long as the facts are produced and reported by a security-oriented domestic institution such as the Israeli Ministry of Defense. Conversely, when information about Palestinian fatalities is produced and reported by an international organization such as the UN Secretary-General, Jewish-Israelis are more likely to reject such findings as false and biased—unless the report explicitly absolves the IDF from any wrongdoing.

Figure 6. Facts Believability, by Legal Framing and Institution Conditions

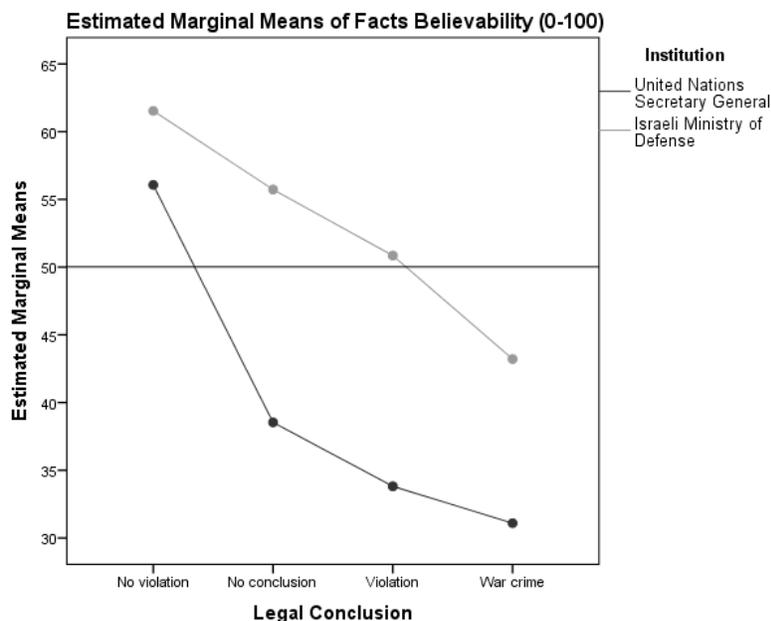


Figure 6 presents the results of a two-way ANOVA of the marginal effects of legal framing and institution conditions on facts believability.

4. Religiosity and Political Views Influence Perceived Credibility of Fact-Finding Reports

violation’ condition (M=58.79, SD=26.94), ‘no conclusion’ condition (M=47.16, SD=27.96), ‘violation’ condition (M=42.29, SD=27.65), and ‘war crime’ condition (M=37.17, SD=28.65). The interaction effect was significant, $F(3, 1,983)=5.19, p<.001$.

The Jewish-Israeli society is not a homogeneous one. Rather, its members hold different political views and ideologies, diverse levels of religiosity and nationalism, and a complex set of other identities, such as gender and ethnicity.¹³⁸ According to the framing and social biases literature discussed above, different segments of society are expected to demonstrate diverse attitudes and beliefs concerning fact-finding reports and the institutions producing them, depending on their set of existing beliefs, ideologies, and identities.¹³⁹ While a full analysis of the impact of group and individual attributes on reactions to fact-finding reports is beyond the scope of this article, the following paragraphs introduce two key variables which significantly influence Jewish-Israelis' reactions to information about Palestinian fatalities.

As discussed previously, the Jewish-Israeli society holds a strong societal belief that the IDF is "the most moral army in the world." Similarly, the 2015 Israeli Central Bureau of Statistics' "Social Survey" found that the IDF is the most trusted institution in Israel (trusted by 82% of all survey respondents, and over 90% of Jewish-Israelis).¹⁴⁰ As incriminating reports about war crimes inevitably conflict with positive attitudes and beliefs about the IDF, such reports attract criticism and resistance. Nonetheless, some subgroups in Jewish-Israeli society are more likely than others to give credence to critical information about the IDF.¹⁴¹ Moreover, reactions to war crime accusations also involve attitudes and beliefs concerning other domestic (and international) institutions, such as the legal system

¹³⁸ See Michael Lipka, *7 Key Findings About Religion and Politics in Israel*, PEW RESEARCH CENTER (Mar. 8, 2016), <https://www.pewresearch.org/fact-tank/2016/03/08/key-findings-religion-politics-israel/> [<https://perma.cc/9BJ3-H948>]; see also Dana Kaplan & Rachel Werczberger, *Jewish New Age and the Middle Class: Jewish Identity Politics in Israel under Neoliberalism*, 51 SOCIOLOGY 575 (2017); CALVIN GOLDSCHIEDER, *ISRAEL'S CHANGING SOCIETY: POPULATION, ETHNICITY, AND DEVELOPMENT* (2002); Sammy Smooha & Theodor Hanf, *The Diverse Modes of Conflict-Regulation in Deeply Divided Societies*, 33 INT'L J. COMP. SOC. 26 (1992).

¹³⁹ See generally Brian J. Gaines et al., *Same Facts, Different Interpretations: Partisan Motivation and Opinion on Iraq*, 69 J. POL. 957 (2007); John G. Bullock et al., *Partisan Bias in Factual Beliefs About Politics*, 10 Q. J. POL. SCI. 519 (2015); Robert Y. Shapiro & Yaeli Bloch-Elkon, *Do the Facts Speak for Themselves? Partisan Disagreement as a Challenge to Democratic Competence*, 20 CRITICAL REV. 115, 116 (2008).

¹⁴⁰ ISRAEL CENTRAL BUREAU OF STATISTICS, TRUST IN PUBLIC BODIES, ORGANIZATIONS, AND INSTITUTIONS (2015) [in Hebrew], https://www.cbs.gov.il/he/mediarelease/DocLib/2016/207/19_16_207b.pdf [<https://perma.cc/67TC-NTNF>].

¹⁴¹ For example, one study found that the further to the right Jewish-Israelis located themselves on the political spectrum, the less they tended to agree with statements such as, "The behavior of our soldiers toward Palestinians at the check-points is, in many cases, humiliating, hurtful, and cruel." Sabina Čehajić-Clancy et al., *Affirmation, Acknowledgment of In-Group Responsibility, Group-Based Guilt, and Support for Reparative Measures*, 101 J. PERSONALITY & SOC. PSYCHOL. 256, 259 (2011).

and the government. The variation in such attitudes and beliefs can be approximated by measures of political ideology and level of religiosity.¹⁴²

Therefore, it is expected that political ideology as well as level of religiosity will influence the reaction to fact-finding reports about war crimes allegedly committed by the IDF. To test this hypothesis, a two-way analysis of variance was conducted on the influence of legal conclusion, religiosity, and their interaction, on the perceived believability of the facts. All effects were statistically significant at the $p < .001$ level.¹⁴³ Another ANOVA was conducted on the influence of legal conclusion, political ideology, and their interaction, on the perceived believability of the facts, with similar results.¹⁴⁴ For simplicity, Figures 7 through 10 employ grouped variables (“right-wing”/“left-wing” and “secular”/“religious”) to demonstrate the impact of political ideology and religiosity on facts’ believability and anger towards the report.

¹⁴² For example, the percentage of trust in the legal system drops dramatically as the level of religiosity increases (from 70% among secular Jews to only 22.3% among orthodox Jews). *Id.* Additionally, political ideology in Israel is closely linked with the level of religiosity, as most religious Jews in Israel identify with right wing parties and sentiments. *See Israel’s Religiously Divided Society*, PEW RESEARCH CENTER (Mar. 8, 2016), <http://www.pewforum.org/2016/03/08/israels-religiously-divided-society/> [<https://perma.cc/JYD9-S67B>].

¹⁴³ The main effect for legal conclusion yielded an F ratio of $F(3, 1,983)=40.94$, $p < .001$, indicating a significant difference between the ‘no violation’, ‘no conclusion’, ‘violation’, and ‘war crime’ conditions. The main effect for Religiosity yielded an F ratio of $F(3, 1,983)=23.1$, $p < .001$, indicating a significant difference between seculars ($M=50.71$, $SD=27.31$), conservatives ($M=44.28$, $SD=29.38$), religious ($M=37.16$, $SD=30.09$), and orthodox Jews ($M=36.33$, $SD=28.65$). The interaction effect was significant, $F(9, 1,983)=4.06$, $p < .001$.

¹⁴⁴ The main effect for legal conclusion yielded an F ratio of $F(3, 1,983)=37.99$, $p < .001$. The main effect for political ideology yielded an F ratio of $F(4, 1,983)=49.94$, $p < .001$, indicating a significant difference between left ($M=58.79$, $SD=26.94$), moderate left ($M=47.16$, $SD=27.96$), center ($M=42.29$, $SD=27.65$), moderate right ($M=42.29$, $SD=27.65$), and right ($M=37.17$, $SD=28.65$) political ideologies. The interaction effect was significant, $F(12, 1,983)=8.08$, $p < .001$.

Figure 7. Facts' Believability, by Legal Framing and Religiosity Conditions

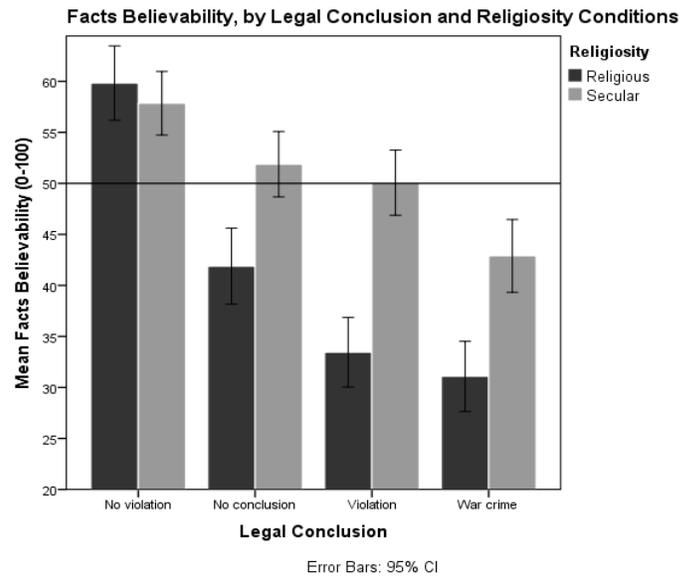


Figure 7 presents the mean values of the facts' believability, by legal framing and religiosity conditions. 95% CI's shown.

Figure 8. Facts' Believability, by Legal Framing and Political Ideology Conditions

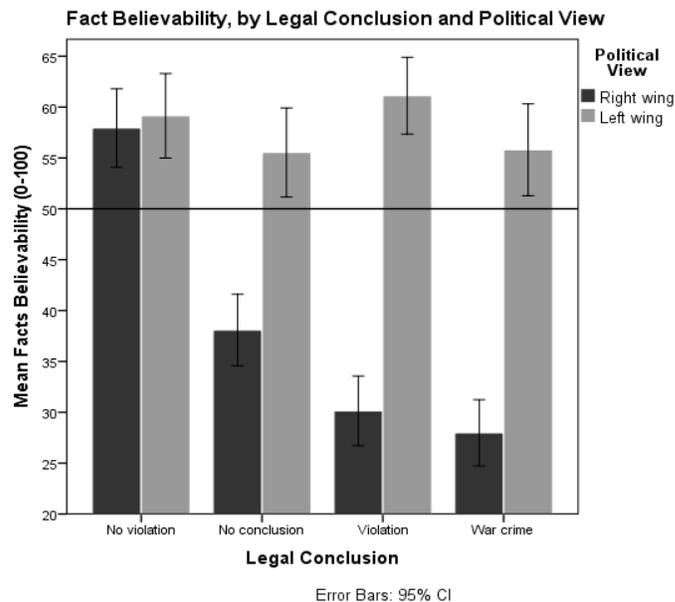


Figure 8 presents the mean values of the facts' believability, by legal framing and political ideology conditions. 95% CI's shown.

Figure 9. Anger Towards the Report, by Legal Framing and Religiosity Conditions

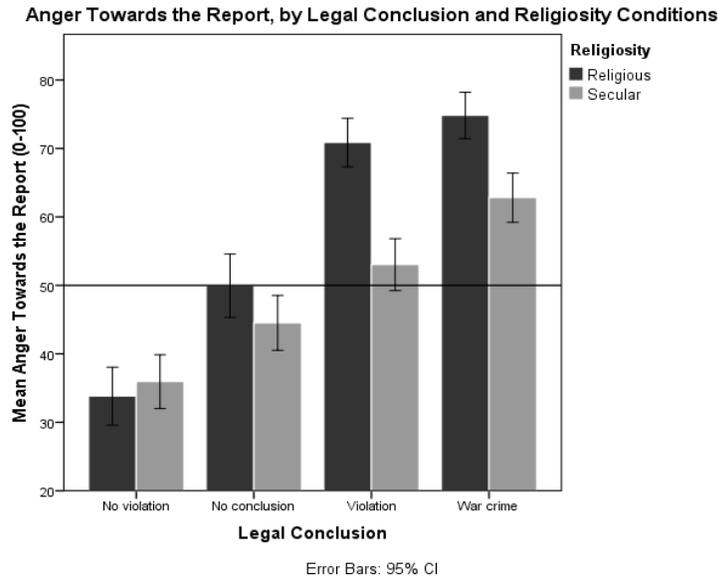


Figure 9 presents the mean values of the anger towards the report, by legal framing and religiosity conditions. 95% CI's shown.

Figure 10. Anger Towards the Report, by Legal Framing and Political Ideology Conditions

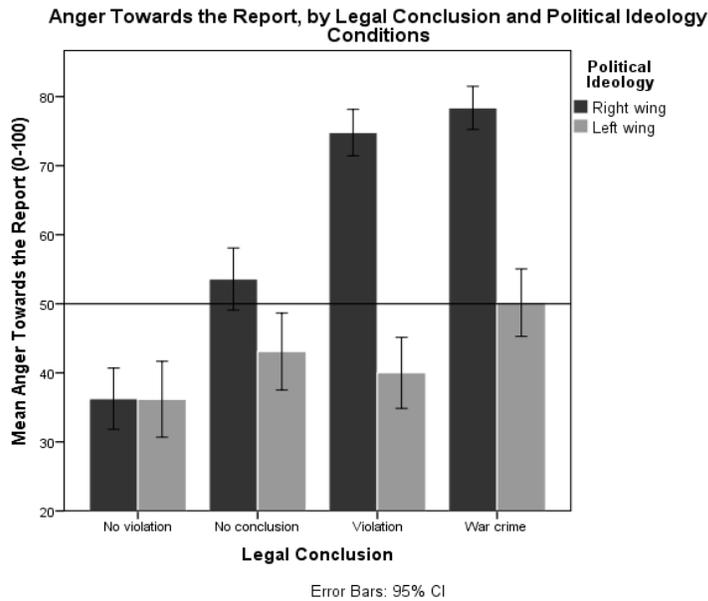


Figure 10 presents the mean values of the anger towards the report, by legal framing and political ideology conditions. 95% CI's shown.

Overall, Figures 7 through 10 demonstrate that religious individuals, as well as those holding right-wing political ideology, were more likely to reject incriminating fact-finding reports than secular individuals or those holding left-wing political ideology. Similarly, religious individuals, as well as those who identify with right-wing political ideology, were more likely to feel anger and resentment towards incriminating fact-finding reports, as compared to secular individuals or those holding left-wing political ideology. However, while religious individuals, as well as those holding right-wing political ideology felt anger toward any incriminating report, feelings of anger significantly increased among secular individuals and those holding left-wing ideology in response to reports adopting a “war crime” conclusion, as compared with these groups’ responses toward reports adopting a “violation” conclusion (seculars: $t(518)=-3.67$, $p<.001$; left-wing: $t(247)=-2.83$, $p<.001$). Additionally, feelings of anger were significantly increased among religious individuals, as well as those holding right-wing political ideology, in response to reports adopting a “violation” conclusion, as compared with these groups’ response toward reports adopting no legal conclusion (religious: $t(463)=7.07$, $p<.001$; right-wing: $t(453)=7.3$; $p<.001$).

V. Limitations and Reservations

This article employs experimental methods to explore the impact of legal framing of facts on beliefs about wartime events. Our survey approach allows us to estimate the influence of carefully specified interventions (different legal conclusions and fact-finding institutions) on an outcome (the perceived credibility of fact-finding reports).¹⁴⁵ The main advantage of experimental methodology lies in the unique capacity to control the data-generation process by randomly assigning participants to treatment groups. Nonetheless, this method is not without limitations.

First, this article demonstrates that individuals respond in different ways to new information, depending on their national, social, cultural, and political affiliations. While the study design effectively captures the variety of responses across subgroups of the studied community, the findings of the experiments described in this article are limited to that one society, mainly Jewish Nationals of Israel. Other social groups may hold different beliefs and respond differently to legal conclusions and to fact-finding institutions.

Second, the experimental findings address responses to fact-finding reports about a specific type of event: a small-scale military engagement, which can tolerate different legal conclusions. While this scenario was carefully designed for the purposes of the experiment, other contexts may result in different outcomes and should be further explored.

¹⁴⁵ Chilton & Tingley, *supra* note 23, at 178.

Third, the experimental design presented respondents with an executive summary of a fact-finding report. A more realistic scenario would have presented the information to the research subjects in the form of a news article—the typical medium by which most individuals consume information about the findings and conclusions of fact-finding reports. An alternative design, presenting this information as a news report, was considered but rejected to ensure the legal conclusion effect would not be muddied by perception about the news outlet or the “media” effect. While this design may have a lower internal validity than the news item design, 73% of the participants reported that they believed they were reading a real fact-finding report.¹⁴⁶

Finally, the underlying assumption of this article is that societal beliefs about the facts of wartime events and specific episodes of militarized conflict matter. While others may argue that researchers should analyze fact-finding efforts solely in terms of their impact on domestic elites and legal accountability outcomes, this article promotes the view that we should look to the influence fact-finding efforts may have on social processes of dissemination of information, denial, and contestation. Resolving or at least mitigating social controversies about wartime events, and influencing otherwise rigid social narratives, has an intrinsic value of its own. Ongoing violent conflicts can benefit from efforts to infuse new perspectives and information into the situation. Socio-psychological research has thus far demonstrated that third parties—such as international fact-finding mechanisms—can potentially play a valuable role in the process of re-evaluating social narratives and beliefs.¹⁴⁷

Despite the potentially significant effect of fact-finding efforts on intense social controversies concerning wartime events, academic and policy research has given very little attention to this issue. Most of the literature addressing international fact-finding mechanisms focuses on their impact on governments and political elites.¹⁴⁸ This article begins to fill this gap by providing data on the impact of legal terminology on beliefs about wartime events within the perpetrators’ society. Rigid beliefs about war crimes serve as societal foundations, which preserve and intensify conflicts. Fact-finding efforts should be sensitive to those beliefs and designed to mitigate, rather than intensify, this problem.

¹⁴⁶ After being asked whether they believed the vignette represented real-life events, and before finalizing the survey, participants were told that while the vignette was broadly based on real events, the details were changed for the purposes of the study.

¹⁴⁷ Bar-Tal, *Societal Beliefs*, *supra* note 88. Other research finds that third-party activities to open or maintain lines of communication are the most consistently effective conflict management techniques for preventing escalation. *See, e.g.*, William J. Dixon, *Third-Party Techniques for Preventing Conflict Escalation and Promoting Peaceful Settlement*, 50 INT’L ORG. 653, 671 (1996).

¹⁴⁸ *See generally* Philip Alston & Sarah Knuckey, *The Transformation of Human-Rights Fact-Finding: Challenges and Opportunities*, in THE TRANSFORMATION OF HUMAN RIGHTS FACT-FINDING 3, 4 (Philip Alston & Sarah Knuckey eds., 2016).

VI. The Future of International Fact-Finding Concerning Wartime Events: Opportunities and Alternatives

The experimental data presented above demonstrate that legal blame, and particularly, war crimes terminology, triggers anger and denial within the perpetrators' community. In our experiment, Jewish-Israelis tended to reject facts described using legal blame and war crimes terminology and were more likely to feel anger and resentment than guilt or shame.

The analysis of the experimental data demonstrates that information about wartime events may trigger backlash, anger, resentment, and denial, and may intensify the very factual controversies that instigated the fact-finding process. The findings reported in this article suggest that the common choice to produce and present information using legal framing, and centering fact-finding efforts on the legal interpretation of the facts, is counterproductive. At least with regard to Jewish-Israelis' perception of facts about Palestinian casualties, the empirical findings indicate that as the legal terminology of the fact-finder becomes harsher (absolving < no blame < violation < war crimes), the willingness to believe information about Palestinian fatalities is decreased. In particular, the "war crime" terminology triggered significantly higher levels of rejection and denial than its alternatives. This means that legal fact-finding practices, and in particular, their 'war crime' terminology and focus, have undesirable outcomes with regard to information dissemination and conflict resolution. These potential negative outcomes should at least be taken into consideration by governmental and non-governmental organizations, when they explore avenues for action and design fact-finding mechanisms.

A possible alternative to this popular legal structure is to focus fact-finding processes on finding facts relating to the relevant incident, leaving the legal categorization of these facts to other bodies and to competent criminal investigations (where appropriate). Focusing fact-finding efforts around what happened—without referring to concrete crimes or legal lenses—will allow the investigation to include additional information that may be relevant to a broader social understanding of the events, but which is not necessarily relevant to the narrow legal questions. Another possibility is to use legal lenses but to avoid the use of criminal terminology, which is perceived as more threatening and triggers anger among some of the relevant audiences. This will not only mitigate processes of denial and distortion, but will also be legally accurate. This is because nonbinding legal investigations tend to rely on partial information (lacking cooperation from the alleged perpetrators and their countries, and often denied access to significant evidence). This lack of information means that any conclusion regarding individual criminal responsibility could not be adequately substantiated. Such a change in terminology may seem trivial. However, the results of the experiments discussed above show that such a terminological change may be significant, and may reduce levels of denial, anger, and rejection.

The empirical findings also suggest that the identity of the institution rendering the facts influences its ability to disseminate threatening facts—that is, facts that are inconsistent with social identities, beliefs and narratives. Specifically, in the Jewish-Israeli society, security-oriented domestic Israeli institutions, such as the Israeli Ministry of Defense, are better suited to disseminate controversial or threatening findings about Palestinian casualties caused by IDF operations than international institutions such as the UN Secretary-General. Facts reported by the UN Secretary-General were perceived as less credible and trigger more anger and resentment than facts reported by the Israeli Ministry of Defense. By reporting these findings, I do not suggest that internal fact-finding efforts—or military investigations—are preferable to international or external fact-finding efforts. The point here is that the *legitimacy* of the fact-finding body matters, and that a lack of institutional legitimacy undermines the dissemination of the facts.

Several design factors may be used to enhance the legitimacy of fact-finding bodies, and thus improve the perceived credibility of their findings and conclusions. The first is the level and extent of *participation*.¹⁴⁹ While this factor is important for many legal institutions, it is especially important for nonbinding fact-finding bodies. While it may be challenging to gain cooperation and enhance participation, some design choices may increase potential for participation. One way to motivate significant stakeholders to participate is by enhancing *structural flexibility*—the possibility of modifying fact-finding structures or procedures in response to changing needs or circumstances—and by offering a menu of processes and structures to choose from, as different processes entail diverse incentives for the relevant parties.¹⁵⁰ The second factor is *objectivity and trustworthiness*.¹⁵¹ People feel that procedures are fairer when they trust the motives of decision makers. This means, that the political agenda and reputation of some international and local organizations may affect their legitimacy—and the perceived credibility of their findings—in the eyes of some audiences. Therefore, while designing international fact-finding bodies, it is important to think not only about the goals, processes and structures, but also about the identity of the mandate provider and its perceived or actual political ties.

Returning to the Razan Al-Najjar case, the fact-finding efforts, as detailed above, triggered intense responses of denial and rejection among Israeli politicians, to the point of criminalizing fact-finding activities altogether.¹⁵² It also played a part in the continuous de-legitimation of civil society and human rights organizations within Israeli society. Based on the experimental findings presented above, we can infer that the intense use of the ‘war crimes’ terminology in this

¹⁴⁹ Tyler, *supra* note 116116.

¹⁵⁰ See Stephanie Smith & Janet Martinez, *An Analytic Framework for Dispute Systems Design*, 14 HARV. NEGOT. L. REV. 123, 131 (2009); see also Carrie Menkel-Meadow, *Are There Systemic Ethics Issues in Dispute System Design - And What We Should [Not] Do About It: Lessons from International and Domestic Fronts*, 14 HARV. NEGOT. L. REV. 195 (2009).

¹⁵¹ See Tyler, *supra* note 116.

¹⁵² See *supra* Section II(B).

case also intensified processes of denial and feelings of anger among Jewish-Israelis, and failed to instigate feelings of guilt, shame, or empathy.

As of this writing, and more than a year after the incident, all we are left with are conflicting factual findings, an ongoing military investigation, and a big question mark around important factual issues; in particular, what could have been done to prevent Al-Najjar's senseless killing, or what should be done to prevent other similar deaths in the future. The focus on criminal responsibility and blame not only triggered anger, confusion, and denial, but also shifted attention away from important factual questions concerning military culture and military processes that enable and even facilitate such incidents.

Relinquishing the commitment to analyzing facts through legal lenses and categories could have mitigated the negative responses within Jewish-Israeli society, and perhaps even prevented the legislation initiatives that followed. It also has the potential of focusing the investigation and its outcomes on the facts, and on a wider variety of facts than those typically collected for the purpose of criminal proceedings. Even a minor change, such as moving away from the 'war crimes' terminology and using a more general 'violations' terminology instead, could have positively influenced the perceived credibility and believability of the facts described. Additionally, conducting such a fact-finding process in collaboration with Israeli authorities, or at least with their partial participation, could have significantly enhanced the perceived credibility of the findings among Jewish-Israelis.

VII. Conclusion

People are motivated to believe what they already know, and to reject facts that are inconsistent with their prior beliefs and political ideology.¹⁵³ Loyal to Israel's national narrative of moral integrity and threatened by harsh legal accusations that challenge core societal beliefs, an overwhelming majority of Jewish-Israelis rejected the accusations that IDF soldiers have committed war crimes in Gaza. The empirical findings suggest that the attribution of legal fault and blame, contributed to this backlash and perhaps even prevented consensus on some of the basic facts (such as the level of violence used by the protestors).

As evidence of backlash and rejection of legal fact-finding reports mount, it is time to develop ways to evaluate the intended and unintended outcomes of international and domestic investigations of wartime events, including their impact on the factual controversies they investigate. Based on the experimental findings reported in this article, I attribute some of this backlash to the emphasis on legal conclusions by international and local fact-finding bodies, and to their focus on legal accountability and blame, as well as on the lack of attention to institutional legitimacy and trust.

¹⁵³ See generally Bertram Gawronski, *Back to the Future of Dissonance Theory: Cognitive Consistency as a Core Motive*, 30(6) SOCIAL COGNITION 652 (2012).

Henry Kissinger once defined the creation of a fact-finding mission as, “the standard device for diplomats signaling that inaction is the desired outcome.”¹⁵⁴ Insofar as the goal of such a mission is the determination of legal responsibility and punishment of guilty parties, history confirms Kissinger’s cynical observation. However, the experimental findings described in this article suggest that, regardless of whether “inaction” may be the intended outcome of (some) commissions of inquiry, these mechanisms may trigger a variety of unintended outcomes, including backlash, denial, de-legitimization of international and local bodies, and the constant production of competing factual accounts. In our “fake news” era, where alternative facts are often generated to counter unwelcomed facts and narratives, it is more important than ever to seek new and better ways to produce and introduce information, and prompt reforms based on the lessons learned.

¹⁵⁴ HENRY KISSINGER, *DIPLOMACY*, 285-87 (1994).

Appendix I: Experimental Design and Questionnaire (English)

I. Treatments

Conclusion_rand

1. Absolving conclusion (AC): Israel did not violate international law.
2. No conclusion (NC): No conclusions can be made.
3. Violation conclusion (VC): Israel violated international law.
4. War crimes conclusion (WCC): Israel committed war crimes.

Institution_rand

1. United Nations Secretary General (UN)
2. Israeli Minister of Defense (IMD)

Institution_logo

1. UN logo:

Ministry of Defence

Investigation Report

Distr.

GENERAL

A/SG/11/65

2. IMD logo:

United Nations

Investigation Report

Distr.

GENERAL

A/SG/11/65

Fatalities_rand:

1. 4
2. 14

II. Vignette

The following questions are about an incident that happened a few months ago in Kalandia at the West Bank. Initially, it was unclear what happened, how many people were killed, and

whether they were Hamas members or innocent civilians. Therefore, the **institution_rand** appointed a commission of experts to investigate.

The summary of the **institution_rand** report includes 2 parts (which are reprinted in the next 2 screens): in the *first* part the investigators give their account of what happened (the facts of the case). In the *second* part the investigators give their conclusion, finding that **judgment_rand**.

Please read both parts carefully. Afterwards, we will ask for your opinions about each part of the report.

New page

Institution_logo

Kalandia incident Report:
Summary of the Facts

On February 17, 2016, a member of Hamas military wing detonated an explosive device near an IDF patrol vehicle in Kalandia, killing an IDF soldier.

Three IDF soldiers who witnessed the explosion, chased the attacker into a nearby marketplace. They shot their guns repeatedly until they killed the attacker.

Fatalities_rand Palestinians who were near the shooting area were also killed from the gunshots, and nine others were wounded. The IDF soldiers said they saw weapons and thought the people killed were Hamas members. After thoroughly examining the evidence, the commission found that these people were unarmed Palestinian civilians.

New page

Institution_logo

Kalandia incident Report:
Summary of the conclusions

According to international law military forces are obligated to exercise reasonable care to protect civilians during armed conflict.

Having investigated the facts of the case, the investigators concluded that **conclusion_rand**

New page

1. Facts Accuracy

The investigation was conducted because the facts of this case were highly contested. Therefore, we want to know your opinion concerning the accuracy of the facts determined by the commission (including finding that **fatalities_rand** unarmed Palestinian civilians were killed).

Do you think that the **factual findings** determined by the commission are –

- 1 Completely inaccurate
- 2 Mostly inaccurate
- 3 Somewhat inaccurate
- 4 Somewhat accurate
- 5 Mostly accurate
- 6 Completely accurate

2. Facts Objectivity

In your opinion, were the **facts** determined by the investigators –

- 1 Completely biased
- 2 Mostly biased
- 3 Somewhat biased
- 4 Somewhat objective
- 5 Mostly objective
- 6 Completely objective

New page

3. Facts completeness

How much do you agree or disagree with the following sentence:

“The facts, as determined by the commission, present the full picture of what happened.”

- 1 Disagree strongly
- 2 Disagree somewhat
- 3 Disagree slightly
- 4 Agree slightly
- 5 Agree somewhat
- 6 Agree strongly

New page

4. Facts believability

How much do you **believe the facts** determined by the commission?

- 1 Completely disbelieve
- 2 Mostly disbelieve
- 3 Somewhat disbelieve
- 4 Somewhat believe
- 5 Mostly believe
- 6 Completely believe

New page

5. Conclusion Objectivity

We now want to know your opinion about the commission's conclusions (according to which **conclusion_rand**).

In your opinion, was the commission's **conclusion** –

- 1 Completely biased
- 2 Mostly biased
- 3 Somewhat biased
- 4 Somewhat objective
- 5 Mostly objective
- 6 Completely objective

New page

6. Conclusion correctness

In your opinion, was the commission's **conclusion** –

- 1 Completely incorrect
- 2 Mostly incorrect
- 3 Somewhat incorrect
- 4 Somewhat correct
- 5 Mostly correct
- 6 Completely correct

New page

7. Report Fairness

Based on the two parts of the Report's summary, we now want to know your opinion about the complete **report**.

In your opinion, was the **report** overall –

- 1 Completely unfair
- 2 Mostly unfair
- 3 Somewhat unfair
- 4 Somewhat fair

- 5 Mostly fair
- 6 Completely fair

New page

8. **Best way**

Now we want to know your **personal opinion about the events**.

How much do you agree or disagree with each of the following statements?

“The Israeli security forces did the best they could under the circumstances.”

- 1 Disagree strongly
- 2 Disagree somewhat
- 3 Disagree slightly
- 4 Agree slightly
- 5 Agree somewhat
- 6 Agree strongly

New page

9. **Prosecute**

“The Israeli soldiers who participated in the shooting should be prosecuted.”

- 1 Disagree strongly
- 2 Disagree somewhat
- 3 Disagree slightly
- 4 Agree slightly
- 5 Agree somewhat
- 6 Agree strongly

New page

10. **Compensate**

“The Palestinian victims should be compensated.”

- 1 Disagree strongly
- 2 Disagree somewhat
- 3 Disagree slightly
- 4 Agree slightly
- 5 Agree somewhat
- 6 Agree strongly

New page

11. **Empathy**

We now want to know your feelings about the report.

To what extent (if any) did reading the report make you feel **empathy** towards the Palestinian casualties?

- 1 A great deal
- 2 A lot
- 3 Somewhat
- 4 A little
- 5 Very little
- 6 Not at all

New page

12. Anger

To what extent (if any) did reading the report make you feel **anger** towards the report?

- 1 A great deal
- 2 A lot
- 3 Somewhat
- 4 A little
- 5 Very little
- 6 Not at all

New page

13. Guilt

To what extent (if any) did reading the report make you feel feelings of **guilt**?

- 1 A great deal
- 2 A lot
- 3 Somewhat
- 4 A little
- 5 Very little
- 6 Not at all

New page

14. Manipulation check: conclusion

Finally, it is important for us to know how did you understand the conclusions of the report. Please answer the next question based on your understanding of the summary of the report you read.

The final conclusion of the report is –

- 1 Israel did not violate international law
- 2 Israel violated international law

- 3 Israel committed war crimes
- 4 No final conclusion was made

New page

15. Manipulation check: institution

The commission which produced the report was established by –

- 1 UN General-Secretary
- 2 Israeli Ministry of Defense
- 3 Amnesty International
- 4 The Israeli Supreme Court

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Thank you very much for participating! Please notice, that while some of the information presented was based on real events, many of the details were modified for research purposes.

Appendix II: Sample Descriptive Statistics (N=1,983)

<i>Measurements</i>	<i>Proportion/Mean</i>
<i>Experimental treatments</i>	
<i>Conclusion</i>	
No violation	0.251
No conclusion	0.249
Violation	0.250
War crime	0.250
<i>Institution</i>	
UN General Secretary	0.50
Israeli Minister of Defense	0.50
<i>Covariates</i>	
<i>Political Ideology</i>	
Left	0.125
Moderate left	0.137
Center	0.265
Moderate right	0.240
Right	0.232
<i>Religiosity</i>	
Secular	0.525
Traditional	0.297
Religious	0.142
Orthodox	0.036
<i>Education</i>	
No high school education	0.092
High school education	0.182
College education (or partial)	0.553
Graduate education	0.162
<i>Gender (female)</i>	0.508
<i>Age</i>	40.67 (s.d.=14.881, min=18, max=70)