

# War under transnational surveillance: framing ambiguity and the politics of shame

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**Abstract.** ‘Naming and shaming’ those accused of abuse and misconduct is one of the most common strategies of transnational activists. Yet both qualitative and quantitative studies show that the policy and behavioural effects of naming and shaming are often contradictory. Named and shamed actors do respond at least partially by adjusting their policies and behaviour to some extent, but the actions challenged publicly as human rights violations may not cease and can even become more widespread. This ambivalent outcome is usually explained by the uneven capacity of the target to reform or by its ‘strategic’ response to escape the consequences of naming and shaming. By contrast, I show that naming and shaming can be brought to a standstill when the frame used by transnational activists is ambiguous. I trace the role of framing ambiguity during the Human Rights Watch (HRW) ‘naming and shaming’ campaigns against the Israel Defence Force (IDF) in the course of the July–August 2006 Israel-Hezbollah war (Lebanon war), and the December 2008–January 2009 Israel-Hamas war (Gaza war). I argue that HRW’s use of International Humanitarian Law (IHL) as a frame led to an argumentative deadlock (frame implication contest). This legal frame, and the process of legal framing, did genuinely constrain the IDF, affecting its operations and behaviour. However, the ambiguity of the frame also provided the IDF with a range of material and ideational assets that gave it scope to claim that its actions were actually in conformity with applicable law, and to justify continuing to use force in densely populated areas.

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**Introduction: legal framing, ambiguity, and the effects of naming and shaming**

‘Naming and shaming’ those accused of abuse and misconduct is one of the most common strategies of transnational activists. By showing that a target actor is violating international obligations or, even more powerfully, not living up to its own normative claims, international non-governmental organisations (INGOs) such as Human Rights Watch, Amnesty International, and Greenpeace hope to jeopardise the abuser’s credibility, and thus motivate a change in its policy and behaviour.<sup>1</sup> Yet both qualitative and quantitative studies show that the policy and behavioural effects of naming and shaming are often ambivalent and even contradictory.<sup>2</sup> On the one hand, named and shamed actors do respond at least partially by adjusting their policies and behaviour to some extent. On the other hand, actions challenged publicly as human rights violations may not cease and can even become more widespread. Why? Emilie Hafner-Burton suggests that the ability of targeted actors to reform is greater in some policy domains – such as by passing a law or organising an election – than in others, such as imposing effective control over paramilitary groups.<sup>3</sup> She also explains that targeted actors often engineer strategic responses in sequence: shamed government officials may decide to hold elections to alleviate international pressure, but may then resort to terror to counter the effects of the nascent political reforms thus initiated.<sup>4</sup>

In addition to the mechanisms identified by Hafner Burton, I show that naming and shaming can be brought to a standstill when the frame used by transnational activists is ambiguous. By frame, I mean an interpretative structure embedded in political discourse that organises reality and provides meaning of an issue or an event.<sup>5</sup> In this article, I trace the role of framing ambiguity during the Human Rights Watch (HRW) ‘naming and shaming’ campaigns against the Israel Defence Force (IDF) in the course of the July–August 2006 Israel-Hezbollah war (Lebanon war) and the December 2008–January 2009 Israel-Hamas war (Gaza war). I argue that HRW’s use of International Humanitarian Law (IHL) as a frame led to an argumentative deadlock (frame implication contest). This legal frame, and the process of legal framing, did genuinely constrain the IDF, affecting its operations and behaviour. However, the ambiguity of the frame also provided the IDF with a range of material

<sup>1</sup> M. Keck and K. Sikkink, *Activists Beyond Borders* (Ithaca, NY: Cornell University Press, 1998), p. 24; E. M. Hafner-Burton, ‘Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem’, *International Organization*, 62:4 (2008), pp. 689–716. See also J. W. Busby, *Moral Movements and Foreign Policy* (Cambridge: Cambridge University Press, 2010); K. Sikkink, *The Justice Cascade. How Human Rights Prosecutions are Changing World Politics* (New York: W. W. Norton & Company, 2011). More generally on the rise of accountability pressures, see P. Rosanvallon, *Counter-Democracy. Politics in an Age of Distrust* (Cambridge: Cambridge University Press, 2008).

<sup>2</sup> E. M. Hafner-Burton, ‘Sticks and Stones’, pp. 689–716; E. M. Hafner-Burton and J. Ron, ‘Seeing Double. Human Rights Impact through Qualitative and Quantitative Eyes’, *World Politics*, 61:2 (2009), pp. 360–401.

<sup>3</sup> E. M. Hafner-Burton, ‘Sticks and Stones’, pp. 691, 707–13.

<sup>4</sup> *Ibid.*, pp. 707–13.

<sup>5</sup> D. R. Kinder and L. M. Sanders, *Divided By Color: Racial Politics and Democratic Ideals* (Chicago: University of Chicago Press, 1996), p. 164. See also F. Polletta and M. K. Ho, ‘Frames and their Consequences’, in R. E. Goodin and C. Tilly (eds), *The Oxford Handbook of Contextual Political Analysis* (Oxford: Oxford University Press, 2006), pp. 189–92; D. Chong, J. M. Druckman, ‘Framing Theory’, *Annual Review of Political Science*, 10 (2007), pp. 104–6. I provide a full discussion of the notion of ambiguity below.

and ideational assets that gave it scope to claim that its actions were actually in conformity with applicable law, and to justify continuing to use force in densely populated areas. I select these two cases – the contests between HRW and the IDF during the Lebanon war and the Gaza war – for three reasons. First, the IDF has frequently been engaged in significant military operations involving a high degree of civilian exposure, including the Palestinian Intifada, the conflicts with Hezbollah in Southern Lebanon and Northern Israel, and Palestinian suicide bombers.<sup>6</sup> These uses of force take place in a regional system, and an anarchical international system, where power distribution is the master variable. But, equally significant, they are also embedded in a global context<sup>7</sup> in which transnational advocacy by international NGOs, such as Human Rights Watch, direct significant resources and efforts at monitoring the IDF and publicising what they identify as human rights violations by the IDF. I focus on HRW because it has a lengthy history of reporting on human rights abuses in Israel, the Occupied Territories, and Lebanon, including during the conflict (not only afterwards). These wars in a transnational environment are therefore especially rich and relevant to examine the logics of rhetorical coercion and its consequences. In addition, examining two cases involving the same actors, both state and non-state, in two proximate wars enables assessment of adjustments and adaptations by the actors over time. It is also an opportunity to challenge the conventional argument that the Israeli case is ‘unique’ and that the Lebanon and Gaza wars are ‘unique’ as well.<sup>8</sup> I show that, in fact, a theory of rhetorical coercion developed in other contexts can shed light on these cases and help to locate them in the larger issue of the changing character of wars fought in a transnational environment.

The distinctive contribution of this article is threefold. First, I complement recent quantitative efforts attempting to establish the scope conditions of the success of naming and shaming.<sup>9</sup> These quantitative studies have been valuable but less progress has been made in unpacking the mechanisms of influence, in particular tracing how framing and publicity induces a variety of reactions from the target. Second, I develop a realist-constructivist theory of legal framing that emphasises the ambiguity of framing based on international humanitarian law (IHL), and its effects on power relations

<sup>6</sup> Z. Maoz, *Defending the Holy Land: A Critical Analysis of Israel's Security and Foreign Policy* (Ann Arbor: University of Michigan Press, 2006), pp. 231–300; S. Catignani, *Israeli Counter-Insurgency and the Intifadahs: Dilemmas of a Conventional Army* (London: Routledge, 2008).

<sup>7</sup> M. Shaw, *The New Western Way of War. Risk-Transfer War and its Crisis in Iraq* (Cambridge: Polity Press, 2005), pp. 60–1; U. Ram, *The Globalization of Israel: McWorld in Tel Aviv, Jihad in Jerusalem* (London: Routledge, 2007); A. Aran, ‘Foreign Policy and Globalization Theory: The Case of Israel’, *International Politics*, 48 (2011), pp. 707–30.

<sup>8</sup> M. Barnett, ‘The Politics of Uniqueness: The Status of the Israeli Case’, in Michael Barnett (ed.), *Israel in Comparative Perspective: Challenging the Conventional Wisdom* (Albany: SUNY Press, 1996), pp. 3–28; G. Merom, ‘Israel's National Security and the Myth of Exceptionalism’, *Political Science Quarterly* 114:3 (1999), pp. 409–34; S. Smooha, ‘Is Israel Western?’, in E. Ben-Rafael and Y. Sternberg (eds), *Comparing Modernities: Pluralism versus Homogeneity: Essays in Homage to Shmuel N. Eisenstadt*. (Leiden-Boston: Brill Academic Publishers, 2005), pp. 413–42.

<sup>9</sup> Hafner-Burton, ‘Sticks and Stones’; J. H. Lebovic, E. Voeten, ‘The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR’, *International Studies Quarterly*, 50:4 (2006), pp. 861–88; J. C. Franklin, ‘Shame on You: The Impact of Human Rights Criticism on Political Repression in Latin America’, *International Studies Quarterly*, 52:1 (2008), pp. 187–211; A. M. Murdie and D. R. Davis, ‘Shaming and Blaming: Using Events Data to Assess the Impact of Human Rights INGOs’, *International Studies Quarterly*, 56:1 (2012), pp. 1–16; J.H.R. DeMeritt, ‘International Organizations and Government Killing: Does Naming and Shaming Save Lives?’, *International Interactions*, 38:5 (2012), pp. 597–621; M. Krain, ‘J'accuse! Does Naming and Shaming Perpetrators Reduce the Severity of Genocides or Politicides?’, *International Studies Quarterly*, 56 (2012), pp. 574–89.

in general and on naming and shaming in particular.<sup>10</sup> Following the conceptualisation of Jacqueline Best, I highlight three layers of ambiguity in legal framing: technical, contested, and normative.<sup>11</sup> Although these ambiguities provide scope for naming and shaming, they can also backfire and blunt its effects. Third, I show empirically how the ambiguity of framing based on international humanitarian law shapes the leverage of social actors in a wartime context.<sup>12</sup>

My analytic goal in this article is not to establish covariance but to generate causal-process observations. Covariance, which underlies approaches such as regression analysis or small-N controlled comparison, helps to investigate the degree to which changes in antecedents are associated with changes in outcomes. In order to assess the effect of the presence (or of the absence) of framing ambiguity, the standard prescription is to add more cases which would show, for example, that a less ambiguous frame led to a different outcome, provided that one could hold other factors constant. However, contrary to a widespread belief, this mechanical advice to ‘add new cases’ to gain inferential leverage in addressing rival explanation is no methodological panacea and is even misguided when the goal is to generate causal-process observations. First, there is no guarantee that adding new cases necessarily establishes a stronger basis for causal inference.<sup>13</sup> The result, in addition to forcing an artificial shift in the domain of analysis, often risk becoming a crude correlation analysis with such a small N that evaluating causal claim remains deeply problematic. Second, the ‘adding new case’ prescription misunderstands and underestimates the contribution of causal-process observations.<sup>14</sup> My goal is to establish a causal-process observation (not a data-set observation), that is to uncover ‘an insight or piece of

<sup>10</sup> On the theory of ambiguity, see in particular J. Best, *The Limits of Transparency. Ambiguity and the History of International Finance* (Ithaca, NY: Cornell University Press, 2005); J. Best, ‘Ambiguity, Uncertainty, and Risk: Rethinking Indeterminacy’, *International Political Sociology*, 2 (2008), pp. 355–74. See also B. C. Rathbun, ‘Uncertain about Uncertainty: Understanding the Multiple Meanings of a Crucial Concept in International Relations Theory’, *International Studies Quarterly*, 51 (2007). On constructivist realism, see J. S. Barkin, *Realist Constructivism. Rethinking International Relations Theory* (Cambridge: Cambridge University Press, 2010), pp. 4–8, 165–73.

<sup>11</sup> Best, *The Limits of Transparency*, pp. 3–5, 14–21; Best, ‘Ambiguity, Uncertainty, and Risk’, pp. 355–74.

<sup>12</sup> International Humanitarian Law (IHL) is the branch of international law which seeks to limit the use of violence in armed conflicts by protecting those who do not, or no longer, directly participate in hostilities and limiting the violence to the amount necessary to achieve the aim of the conflict. IHL is largely codified in the four 1949 Geneva Conventions and the 1977 Additional Protocols. My focus here is on the *jus in bello*, that is, the law which applies once the decision to resort to force has been taken and fighting has started. While Israel, along with the US, Iran, Pakistan, India, the Philippines, Sri Lanka, and a number of other states, has not ratified Additional Protocol I, many of its provisions are considered part of customary international law. M. Sassoli and A. A. Bouvier (eds), *How Does Law Protect in War? Cases, Documents, and Teaching Materials on Contemporary Practice in International Humanitarian Law* (Geneva: International Committee of the Red Cross, 1999); M. Sassoli, ‘*Jus ad Bellum and Jus in Bello – The Separation between the Legality of the Use of Force and Humanitarian Rules to Be Respected in Warfare: Crucial or Outdated?*’, in M. Schmitt and J. Pejic (eds), *International Law and Armed Conflict: Exploring the Faultlines* (Leiden: Martinus Nijhoff Publishers, 2007), pp. 242–44. My argument is not about IHL as such but about the ways in which activists and their target use that body of law as a framing device in rhetorical coercion.

<sup>13</sup> D. Collier, H. E. Brady, and J. Seawright, ‘Introduction to the Second Edition: A Sea Change in Political Methodology’, in H. E. Brady and D. Collier, *Rethinking Social Inquiry. Diverse Tools, Shared Standards* (2nd edn, Lanham: Rowman & Littlefield Publishers, 2010), p. 10.

<sup>14</sup> H. E. Brady, D. Collier, and J. Seawright, ‘Refocusing the Discussion of Methodology’, in H. E. Brady and D. Collier, *Rethinking Social Inquiry. Diverse Tools, Shared Standards* (2nd edn, Lanham: Rowman & Littlefield Publishers, 2010), pp. 24–6.

data that provides information about context or mechanism'.<sup>15</sup> These observations about context and process provide an alternative source of insight into the relationships among the explanatory variables, and between these variables and the dependent variable. Through process tracing, I seek to assess the logic of the association between antecedents and outcomes: here, I examine the specific ways in which legal framing made possible the outcome of rhetorical coercion that I call a 'discursive quagmire'.<sup>16</sup> It is by establishing such a causal-process observation that this analysis provides a distinctive leverage in causal inference.

My analytical framework, rooted in Schelling's theory of coercion, builds on the work of those scholars who have focused on the ways in which language is used strategically and instrumentally in international power struggles.<sup>17</sup> I seek to push this approach further in three ways: by advancing our theoretical understanding of legal framing ambiguity in naming and shaming; by explaining why and how the target of rhetorical coercion is sometimes not silenced and instead makes use of frame-based resources to resist and preserve its freedom of action; and by providing new insights into the specific importance and effects of legal framing in transnational advocacy.<sup>18</sup>

<sup>15</sup> D. Collier, H. E. Brady, and J. Seawright, 'Sources of Leverage in Causal Inference: Toward an Alternative View of Methodology', in H. E. Brady and D. Collier (eds), *Rethinking Social Inquiry. Diverse Tools, Shared Standards* (2nd edn, Lanham: Rowman & Littlefield Publishers, 2010), pp. 184, 184–91. See also Donatella Della Porta and Michael Keating (eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (Cambridge: Cambridge University Press, 2008), pp. 19–39; J. Mahoney, 'After KKV. The New Methodology of Qualitative Research', *World Politics*, 62:1 (2010), pp. 123–31; D. Collier, H. E. Brady, and J. Seawright, 'Outdated Views of Qualitative Methods: Time to Move On', *Political Analysis*, 18:4 (2010), pp. 506–13; G. Goertz and J. Mahoney, *A Tale of Two Cultures: Qualitative and Quantitative Research in the Social Sciences* (Princeton, NJ: Princeton University Press, 2012), pp. 87–99, 100–14.

<sup>16</sup> P. F. Steinberg, 'Causal Assessment in Small-N Policy Studies', *The Policy Studies Journal*, 35:2 (2007), p. 193. See also D. Dessler, 'Constructivism within a Positivist Social Science', *Review of International Studies*, 25:1 (1999), pp. 129–30, 135–7; A. L. George and A. Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, Mass.: MIT Press, 2005), pp. 205–32; M. Kurki, *Causation in International Relations. Reclaiming Causal Analysis* (Cambridge: Cambridge University Press, 2008), pp. 218–41; T. Falletti and J. F. Lynch, 'Context and Causal Mechanisms in Political Analysis', *Comparative Political Studies*, 42:9 (2009), pp. 1143–66. While selecting on the dependent variable can lead to biases in inferences when probabilistic associations are of interest, this is not so for a within case analysis which focuses on causal-process observation and 'does not depend on examining relationships among variables across cases'. D. Collier, J. Mahoney, and J. Seawright, 'Claiming Too Much: Warnings about Selection Bias', in H. E. Brady and D. Collier (eds), *Rethinking Social Inquiry: Diverse Tools, Shared Standards* (Lanham: Rowman & Littlefield Publishers, 2004), pp. 96, 92–4, 95–7.

<sup>17</sup> F. Schimmelfennig, 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', *International Organization*, 55:1 (2001), pp. 47–80; J. Bially Mattern, 'Why "Soft Power" Isn't So Soft: Representational Force and the Sociolinguistic Construction of Attraction in World Politics', *Millennium*, 33 (2005), pp. 583–612; J. Lyall, 'Pocket Protests: Rhetorical Coercion and the Micropolitics of Collective Action in Semiauthoritarian Regimes', *World Politics*, 58:3 (2006), pp. 378–412; S. Cardenas, 'Violators' Accounts: Hypocrisy and Human Rights Rhetoric in the Southern Cone', *Journal of Human Rights*, 5 (2006), pp. 439–51; R. R. Krebs and P. T. Jackson, 'Twisting Tongues and Twisting Arms: The Power of Political Rhetoric', *European Journal of International Relations*, 13:1 (2007); K. M. Greenhill, *Weapons of Mass Migration: Force Displacement, Coercion, and Foreign Policy* (Ithaca, NY: Cornell University Press, 2010). On the theoretical foundations of the notion of coercion, see T. C. Schelling, *The Strategy of Conflict* (Cambridge, Mass. Harvard University Press, 1980 [orig. pub. 1960]); T. C. Schelling, *Arms and Influence* (New Haven, CT: Yale University Press, 1966); B. O'Neill, *Honor, Symbols and War* (Ann Arbor: The University of Michigan Press, 2001 [orig. pub. 1999]).

<sup>18</sup> T. Risse, S. C. Ropp, and K. Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999); K. Sikkink, 'Transnational Advocacy Networks and the Social Construction of Legal Rules', in Y. Dezalay and B. G. Garth (eds),

My argument also extends and refines Best's theory of ambiguity beyond international political economy by focusing on international law and politics, and by taking more fully into consideration the interplay between framing ambiguity and the dynamics of rhetorical coercion. This work also adds to the limited number of case studies that explore the reasons of ambivalent results – neither clear-cut success nor outright failure – of human rights activism in the realm of international security.<sup>19</sup>

This article proceeds in the following three steps. In the first section, I define rhetorical coercion, including the role of legal framing, and I specify its potential outcomes. I then develop a strategic constructivist theory of framing ambiguity. In the second section, I examine the conflictual relationship between HRW and the IDF during the Lebanon war and the Gaza war, highlighting in each case the effects of legal framing ambiguity on 'naming and shaming'. In the conclusion, I review my main findings, discuss counter-arguments and scope conditions, and spell out an agenda for further research.

### **'Naming and shaming', ambiguity, and frame implication contests**

#### *Rhetorical coercion and legal framing: definition and outcomes*

Naming and shaming is a type of rhetorical coercion, meaning the use of rhetoric to change the behaviour of a state by manipulating symbolic and material costs and benefits related to the objectionable actions.<sup>20</sup> I focus on one of the most effective means of rhetorical coercion: the situations in which the rhetorical coercer seeks to show that its target country's actual practices are in conflict with its declared commitment to normative standards of conduct, and to expose this contradiction publicly. By so doing, the rhetorical coercer seeks to challenge the credibility of its target country in order to create dissatisfaction both within the target and with the broader domestic and/or international public. The coercer hopes that this dissatisfaction will put pressure on the target to concede to the coercer's demands in order to avoid

*Global Prescriptions. The Production, Exportation, and Importation of a New Legal Orthodoxy* (Ann Arbor: The University of Michigan Press, 2002), pp. 37–64; C. Reus-Smit (ed.), *The Politics of International Law* (Cambridge: Cambridge University Press, 2004); H. Kinsella, 'Discourses of difference: civilians, combatants, and compliance with the laws of war', *Review of International Studies*, 31 (2005), pp. 163–85.

<sup>19</sup> J. Ron, 'Varying Methods of State Violence', *International Organization*, 51:2 (1997), pp. 275–300; D. Cortright and R. Pagnucco, 'Limits to Transnationalism: the 1980s Freeze Campaign', in J. Smith, C. Chatfield, and R. Pagnucco (eds), *Transnational Social Movements and Global Politics: Solidarity beyond the State* (Syracuse, NY, 1997), pp. 159–74; S. E. Mendelson and J. K. Glenn (eds), *The Power and Limits of NGOs: A Critical Look at Building Democracy in Eastern Europe and Eurasia* (New York: Columbia University Press, 2002); T. R. Davies, *The Possibilities of Transnational Activism: The Campaign for Disarmament between the Two World Wars* (Leiden: Martinus Nijhoff, 2007); J. L. Snyder and L. Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', *International Security*, 28:3 (2003–4), pp. 5–44; S. Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure* (Philadelphia: University of Pennsylvania Press, 2007).

<sup>20</sup> Alistair I. Johnston, 'Treating International Institutions as Social Environments', *International Studies Quarterly*, 45 (2001), pp. 499–506; Schimmelfennig, 'The Community Trap', pp. 62–6; Krebs and Jackson, 'Twisting Tongues and Twisting Arms', pp. 43–4; Greenhill, *Weapons of Mass Migration*, pp. 52–60. For simplicity here I refer to the target as a state, but a campaign of naming and shaming may equally well be aimed at an international organisation, like the World Bank, or a non-state actor, like a multinational corporation.

further consequences, symbolic or material. The targeted actor does not have to be genuinely persuaded or to have internalised the relevant norm for rhetorical coercion to be influential. It may be enough that it values its normative standing and perception.<sup>21</sup>

At what audiences is rhetorical coercion aimed? The coercer targets directly those responsible for the objectionable behaviour, for example, the political, military, and administrative leaders and agents of the state. Among these individuals and organisations, there will be some who sincerely believe in the professed norms of the state but felt they had to deviate from them; they may feel shamed by the coercer's 'naming and shaming', which pushes them to alter their, and others, behaviour.<sup>22</sup> Even those who pay only lip service to the commitment and who have other priorities may be worried about public exposure, either domestically and internationally, of the behaviour in question.<sup>23</sup> As its intermediate goal, therefore, the coercer targets audiences composed of journalists, public opinion, and civil society groups in the targeted country as well as in like-minded and allied countries.

Frames are a key component of rhetorical coercion. They are defined as interpretative structures, embedded in political discourse that organise reality and provide meaning of an issue or an event. New frames can reshape the prevailing definitions of the situation, and can put into question the dominant discourses and practices previously perceived as self-evident. In reframing an issue or an event, transnational activists seek to describe it by emphasising a subset of potentially relevant considerations in order to mobilise supporters and coerce antagonists.<sup>24</sup> In the cases under consideration in this article, for example, Human Rights Watch framed the situation as a war, in which international humanitarian law must be respected. The organisation's stated aim was to monitor and publicise the behaviour of the belligerents to pressure them to fulfil their obligations under international humanitarian law, and specifically to refrain from carrying out direct, indiscriminate, or disproportionate attacks on civilians, and to refrain from using artillery, mortars, and similar weapons systems in densely populated areas.

While the attempts to name and shame using a variety of frames are frequent, the outcomes of episodes of rhetorical coercion are uneven. Ronald Krebs and Patrick

<sup>21</sup> The goal of the article is not to explore the conditions under which a rhetorical coercer adopt one frame over another. My focus is on the outcomes of rhetorical coercion, that is, what happens when the selected frame is actually put to the task to name and shame a target. Still, in the conclusion I address the counterfactual question of what could have happened if HRW had used another frame.

<sup>22</sup> Schimmelfennig, 'The Community Trap', p. 64.

<sup>23</sup> On this aspect, my argument is consistent with the rationalist literature on the role of reputational costs in compliance with international law. See B. A. Simmons, 'Compliance with International Agreements', *Annual Review of Political Science*, 1:1 (1998), pp. 75–93; G. Downs and M. A. Jones, 'Reputation, Compliance, and International Law', *Journal of Legal Studies*, XXXI (2002), pp. S95–S114; A. T. Guzman, 'A Compliance-Based Theory of International Law', *California Law Review*, 90 (2002), pp. 1823–87; J. von Stein, 'Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance', *American Political Science Review*, 99:4 (2005), pp. 611–22.

<sup>24</sup> W. A. Gamson, 'Political Discourse and Collective Action', in B. Klandermans, H. Kriesi, and S. Tarrow (eds), *From Structure to Action: Social Movement Participation Across Cultures* (Greenwich, CT: JAI Press, 1988), pp. 219–44; R. D. Benford and D. A. Snow, 'Framing Processes and Social Movements: An Overview and Assessment', *Annual Review of Sociology*, 26 (2000); D. A. Snow and R. D. Benford, 'Ideology, Frame Resonance, and Participant Mobilization', in B. Klandermans, H. Kriesi, and S. Tarrow (eds), *From Structure to Action: Comparing Social Movement Research across Cultures* (Greenwich, Conn.: JAI Press, 1988), pp. 197–217; Polletta and Ho, 'Frames and their Consequences', pp. 189–92. See also Keck and Sikkink, *Activists Beyond Borders*, pp. 2–3; M. Barnett, 'Culture, Strategy and Foreign Policy Change: Israel's Road to Oslo', *European Journal of International Relations*, 5:1 (1999), pp. 5–36; R. A. Payne, 'Persuasion, Frames and Norm Construction', *European Journal of International Relations*, 7:1 (2001), pp. 37–61.

Jackson have suggested a heuristic way to identify these results.<sup>25</sup> There are two main elements that the coercer seeks to affect: the frame that characterises the issue at hand (here, respect for international humanitarian law) and the policy and behavioural implications of that frame, according to the coercer. It will not be enough that the claim of the coercer emerges as dominant in the global media: success requires that the target's loss of legitimacy constrains it to stop contesting the coercer's claims publicly, and to alter its behaviour to the satisfaction of the coercer. In responding to the coercer's claims, the target may accept or reject, completely or partially, either the frame or the resultant policy and behavioural implications, or both.

	<i>Target Accepts Frame</i>	<i>Target Rejects Frame</i>
<i>Target Accepts Implications</i>	1. Change in frame-related policy and/or behaviour	2. Change in non frame-related policy and/or behaviour
<i>Target Rejects Implications</i>	3. Implication contest, discursive quagmire	4. Framing contest

Table 1. *Outcomes of rhetorical coercion*<sup>26</sup>

When the target accepts both the frame and the implications (for policy and/or behaviour) specified by the coercer, rhetorical coercion has been successful and the policy and behaviour of the target are changed accordingly (Table 1, quadrant 1). In such a situation of 'frame-related policy and/or behavioral change', the coercer has achieved most or all of its objectives: naming and shaming has successfully silenced the target's opposition to the norm-conforming policy and has led the target to refrain from or alter the contested behaviour.<sup>27</sup> When the target changes its policy and behaviour, but not in response or in reference to the frame, naming and shaming has not been the efficient source of adjustment and the change cannot be attributed to NGO advocacy (Table 1, quadrant 2). In both cases, the rhetorical coercion tends to end, at least temporarily.

When the target accepts the frame but contests the interpretation of the coercer, and/or the implications for policy and behaviour that the coercer draws from the frame, the political contestation is taking place within a common frame and leads to a frame implication contest or what I call a 'discursive quagmire' (Table 1, quadrant 3).<sup>28</sup> The coercer and the target agree about the frame, but they invoke contrasting understandings of its provisions and they disagree about its policy and behavioural consequences. In a frame implication contest, the target is neither silenced nor paralysed: it continues to contest publicly the policy and behavioural implications of the frame used by the coercer, and it continues to evade at least some of the policy and behavioural consequences that the coercer deems necessary for a full compliance with the frame. It might be said that every political struggle, indeed every war, is

<sup>25</sup> Krebs and Jackson, 'Twisting Tongues and Twisting Arms', pp. 43–4.

<sup>26</sup> Slightly modified from Krebs, Jackson, 'Twisting Tongues and Twisting Arms', p. 43.

<sup>27</sup> This is analogous to the 'rule-consistent behavior' phase in Thomas Risse and Kathryn Sikkink's 'spiral model'. T. Risse and K. Sikkink, 'The socialization of international human rights norms into domestic practices: introduction', in T. Risse, S. C. Ropp, and K. Sikkink (eds), *The Power of Human Rights. International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999), pp. 31–3.

<sup>28</sup> This situation is mostly consistent with the 'tactical concessions' phase and partially overlaps with the 'prescriptive status' phase. See T. Risse and K. Sikkink, *ibid.*, pp. 25–8, 29–31.



marked by this type of frame implication contest. During armed conflicts, state officials and other actors always make claims and counterclaims and neither side accepts the implications of the frame put forward by the other; this was true even before the advent of transnational NGOs. While the struggle between HRW and the IDF has been characterised, I argue, by a frame implication contest leading to a discursive quagmire, scholarship on rhetorical coercion has shown that not every political struggle or every war is marked by this type of outcome. Frame implication contests have repeatedly proved socially unsustainable in both peacetime and in wartime.<sup>29</sup> A fourth outcome arises when the target rejects both the frame and the implications; then, the contestation is more wide-ranging and fundamental (Table 1, quadrant 4).<sup>30</sup>

### *Ambiguity and international humanitarian law as a frame*

To argue that governments try to justify or obfuscate their practices without rejecting the normative standards themselves is not new to any scholar of human rights or compliance. We know less, however, about the various ways in which targeted states successfully wage this strategy. To uncover these processes, I develop a realist-constructivist theory of legal framing that emphasises the ambiguity of framing based on international humanitarian law (IHL), and its effects on power relations in general and on naming and shaming in particular. My focus here is on a transnational group, Human Right Watch, and a set of transnational rules and norms, international humanitarian law.<sup>31</sup> I contend that ambiguity – the capability of being understood in two or more ways – plays a pervasive and substantive role in international humanitarian law-based framing and shapes the process and outcome of naming and shaming. I highlight three layers of legal framing ambiguity: technical, contested, and normative.<sup>32</sup>

International humanitarian law as a frame is ambiguous in part because of the intrinsic legal challenges that are at its core, notably the inevitability of interpretation (including the differences between the ‘letter of the law’ and the ‘spirit of the law’) and the limits of information available to appraise allegations of violation (*technical*

<sup>29</sup> Krebs and Jackson, ‘Twisting Tongues and Twisting Arms’; Risse and Sikkink, ‘The socialization of international human rights norms’; Schimmelfennig, ‘The Community Trap’; J. W. Legro, *Cooperation Under Fire: Anglo-German Restraint During World War II* (Ithaca, NY: Cornell University Press, 1995); Greenhill, *Weapons of Mass Migration*.

<sup>30</sup> This combines Risse and Sikkink’s ‘repression and activation of network’ and ‘denial’ phases. T. Risse and K. Sikkink, ‘The socialization of international human rights norms’, pp. 22, 22–4.

<sup>31</sup> My focus on transnational actors should not be seen as implying that these organisations somewhat ‘represent’ global civil society against the interstate system. It is by now well established that states routinely support, fund, and encourage nonstate actors. Rather, the growing role of these nonstate actors is taken here as an expression of changes of relations of power, in the exercise of power, and in the practices of governing more generally. See O. J. Sending and I. B. Neumann, ‘Governance to Governmentality: Analyzing NGOs, States, and Power’, *International Studies Quarterly*, 50 (2006), pp. 651–72.

<sup>32</sup> Best, *The Limits of Transparency*, pp. 3–5, 14–21. While not unique to IHL as a frame, these three dimensions of ambiguity provide a fruitful way to disentangle the effects of ‘name and shame’-related framing and their consequences. Ambiguity and contestation are related but analytically distinct: a non-ambiguous frame can be contested, like the enlargement of the European Union as a pan-European community of liberal-democratic states or the non-use of nuclear weapons. See respectively: Schimmelfennig, ‘The Community Trap’; N. Tannenwald, *The Nuclear Taboo. The United States and the Non-Use of Nuclear Weapons Since 1945* (Cambridge: Cambridge University Press, 2007).

*ambiguity*).<sup>33</sup> Interpretation is unavoidable in comparing the heterogeneous elements that go into operational military decisions, such as civilian losses and military advantage, or in assessing the extent to which a military commander must expose his own forces to danger in order to limit civilian casualties or damage to civilian property. Moreover, gathering and interpreting the information needed to assess the conformity of an action with international humanitarian law is challenging. For example, the appraisal of an operational decision to open fire that engendered incidental loss of civilian life would depend on a retrospective evaluation of the initial expectation and anticipation of the commander present at the scene, including his intended means and ultimate aims.

The ambiguity of international humanitarian law as a frame also arises from political contestation (*contested ambiguity*). The actors involved in framing do not have equal power, which leads to an unequal distribution of framing capacity. For framing to be influential, the coercer must be perceived by the target audiences as possessing legal and factual expertise and knowledge, as well as being balanced and trustworthy. This expertise and credibility are vigorously disputed, since legal framing leads to political gains and losses.

The ambiguity of international humanitarian law as a frame also comes from conflicting ideas about what international humanitarian law is and should be, including its underlying ‘social purpose’ (*normative ambiguity*). This source of ambiguity lies in the fact that actors articulate different understanding of the issues at stake and the concepts involved in the frame. At the intersection of law, politics, and war is a common legal vocabulary that is fluid and pluralist; this contributes to the ambiguity of international humanitarian law-based legal framing.<sup>34</sup> Martti Koskeniemi’s conception of international law as an argumentative practice provides a useful theoretical foundation to identify the source of this normative ambiguity. Koskeniemi argues that international law is, at its most general level, both ‘apologetic’ and ‘utopian’.<sup>35</sup> It is ‘apologetic’ because international legal arguments can be presented to legitimise whatever is in a state’s self-interest. This is the concreteness of international law, its political or instrumental aspect, in which international lawyers rely on an ascending pattern of justification starting with states’ behaviour and moving up the ladder to define order and obligations.<sup>36</sup> But international law is simultaneously ‘utopian’ in the sense that it would have no power without a degree of autonomy from particular state behaviour, will, and interests. This normative aspect allows international law to be opposed to state policy; it leads international lawyers to rely on a descending pattern of justification, referring to a pre-existing, superior, normative code to apply to states’ behaviour.

As a consequence, international law remains indeterminate: arguments based on international law, and international law discourses more generally, constantly shift between the two opposing positions – apologetic and utopian – while remaining

<sup>33</sup> M. Sassoli, ‘The Implementation of International Humanitarian Law: Current and Inherent Challenges’, *Yearbook of International Humanitarian Law*, 10 (2007).

<sup>34</sup> N. Berman, ‘Privileging Combat? Contemporary Conflict and the Legal Construction of War’, *Columbia Journal of Transnational Law*, 43:1 (2004–5); D. Kennedy, *Of War and Law* (Princeton: Princeton University Press, 2006), pp. 111–41.

<sup>35</sup> M. Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2005 [orig. pub. 1989]); M. Koskeniemi, ‘International Law and Hegemony: A reconfiguration’, *Cambridge Review of International Affairs*, 17:2 (2004), pp. 197–218.

<sup>36</sup> Koskeniemi, *From Apology to Utopia*, pp. 19, 59.

open to challenge from the opposite argument.<sup>37</sup> Therefore, Koskeniemi concludes, ‘... international law is singularly useless as a means for justifying or criticizing international behaviour’.<sup>38</sup> While this conception of international law is debatable, I argue that this perspective is well suited to explore more narrowly defined effects of international humanitarian law, specifically *jus in bello*, as a frame in ‘naming and shaming’ contests.<sup>39</sup> Embedded and even exacerbated in international humanitarian law we find many of the same tensions identified by Koskeniemi for international law as a whole.<sup>40</sup>

On the one hand, the normative logic is pervasive in the ways in which transnational activists use the frame strategically to identify or name war-related social wrongs and injustice so as to magnify symbolic normative power. While, for example, HRW’s demands are not limited to civilian immunity, it puts special emphasis on the protection of vulnerable groups from bodily harm, a key aspect of international humanitarian law.<sup>41</sup> Using military force in heavily populated areas is not simply a bad tactical and operational idea or a misguided course of action, argues HRW, it is a policy that is likely to violate international humanitarian law and it might constitute a war crime or even a crime against humanity.

On the other hand, however, when international humanitarian law is the frame, the targeted actor can activate the instrumentalist logic embedded in international humanitarian law: humanitarian concerns have to balance against military necessity.<sup>42</sup> Under international humanitarian law, civilians should not be deliberately attacked, but the law accepts that civilians are sometimes killed or civilian property damaged as a result of an attack on a military objective.<sup>43</sup> From an international humanitarian law standpoint, the question is whether a loss of civilian life or damage to civilian

<sup>37</sup> Koskeniemi, *From Apology to Utopia*, p. 591. See also pp. 19, 513–61, 589–615.

<sup>38</sup> Koskeniemi, *From Apology to Utopia*, pp. 67, 600.

<sup>39</sup> L. Henkin, *How Nations Behave. Law and Foreign Policy* (2nd edn, New York: Columbia University Press, 1979), pp. 12–27, 88–98; R. Higgins, *Problems and Process. International Law and How We Use It* (Oxford: Clarendon Press, 1994), pp. 1–16. See also Koskeniemi, *From Apology to Utopia*, pp. 562–617.

<sup>40</sup> N. Berman, ‘Privileging’; D. Kennedy, *Of War and Law*, pp. 99–172.

<sup>41</sup> J. Turner Johnson, *Morality and Contemporary Warfare* (New Haven: Yale University Press, 1999), pp. 119–58; A.P.V. Rogers, *Law on the Battlefield* (2nd edn, Manchester: Manchester University Press, 2004); Y. Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (Cambridge: Cambridge University Press, 2004), pp. 113–14; I. Primoratz (ed.), *Civilian Immunity in War* (Oxford: Oxford University Press, 2007); H. Slim, *Killing Civilians. Method, Madness and Morality in War* (London: Hurst, 2007).

<sup>42</sup> M. Sassoli, ‘*Jus ad Bellum and Jus in Bello*’, pp. 50, 59; M. N. Hayashi, ‘The Martens Clause and Military Necessity’, in H. M. Hensel (ed.), *The Legitimate Use of Military Force* (Aldershot: Ashgate, 2008), pp. 135–59. See also N. Berman, ‘Privileging’, pp. 4–8; T. Pfanner, ‘Asymmetrical warfare from the perspective of humanitarian law and humanitarian action’, *International Review of the Red Cross*, 87:859 (2005), pp. 161, 164; M. N. Schmitt, ‘Precision attack and international humanitarian law’, *International Review of the Red Cross*, 87:859 (2005), pp. 455–66; Th A. van Baarda, ‘Moral Ambiguities Underlying the Laws of Armed Conflict: A Perspective From Military Ethics’, *Yearbook of International Humanitarian Law*, 11 (2008), pp. 3–49. For critical views, see R. Normand, C. af Jochnick, ‘The Legitimation of Violence: A Critical History of the Laws of War’, *Harvard International Law Journal*, 35:1 (1994), pp. 49–95; T. W. Smith, ‘The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence’, *International Studies Quarterly*, 46 (2002), pp. 355–74; M. L. Gross, *Moral Dilemmas of Modern War* (Cambridge: Cambridge University Press, 2010), pp. 153–77, 253–63.

<sup>43</sup> J. Gardam, *Necessity, Proportionality and the Use of Force by States* (Cambridge: Cambridge University Press, 2004); M. N. Hayashi, ‘The Martens Clause’, pp. 55–82; M. Sassoli, ‘Targeting: The Scope and Utility of the Concept of “Military Objectives” for the Protection of Civilians in Contemporary Armed Conflicts’, in D. Wippman and M. Evangelista (eds), *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts* (Ardley, NY: Transnational Publishers, 2005), pp. 181–210.

property during the conduct of military operation is ‘excessive in relation to the concrete and direct military advantage anticipated’.<sup>44</sup> Given the coexistence of the normative and instrumentalist logics at the core of the international humanitarian law frame, arguments from legal principles are likely to be countered with arguments from legal counter-principles in a frame implication contest.

In sum, international humanitarian law as a frame is characterised by three layers of ambiguity: technical ambiguities caused by conflicting legal interpretations and informational uncertainty, contested ambiguities caused by political gains and losses, inequalities in power, and disputes about the credibility of the framers, and normative ambiguities caused by the simultaneous existence of both ethical and instrumental consideration in international humanitarian law. In the struggle between HRW and the IDF during the Lebanon and Gaza wars, these three layers of ambiguity were on display. They provided powerful assets for naming and shaming as well as distinct challenges. This ambiguity of international humanitarian law as a frame, I argue, was the primary engine of the process and outcome of naming and shaming, especially during the Gaza war. To show how and why, I now turn to the rhetorical struggle between HRW and the IDF during the Lebanon and Gaza wars, which ended up as a frame implication contest.

### **Constrained, not entrapped: ambiguity and framing implication contest in the Lebanon and Gaza wars**

In this section, I discuss the HRW-IDF contest during and after the Lebanon and Gaza wars in order to assess the characteristics and results of HRW’s naming and shaming using international humanitarian law as its frame.<sup>45</sup> The rhetorical analysis of the naming and shaming that brought about a frame implication contest is based on speech acts.<sup>46</sup> It draws on the numerous publicly available press releases, speeches, declarations, statements, and reports issued by HRW and Israeli government institutions, as well as other non-governmental groups, during and after each conflict.

*‘Naming and shaming’ in the 2006 Lebanon war.*

*Shaming and blaming the IDF: violations of international humanitarian law and war crimes*

The 2006 Lebanon war, Hezbollah paramilitary forces and the Israeli military were opposed for 34 days, from 12 July until 14 August 2006, in Lebanon and northern Israel. Israel’s incursion into Southern Lebanon followed the ambush of an IDF patrol and the kidnapping of two Israeli soldiers by militants of the Hezbollah movement. The incursion was met with an immediate warning from HRW: on 12 July, it announced that the IDF had ‘launched air and artillery attacks against targets in

<sup>44</sup> 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 57(2)(a)(iii) and Art. 51(5)(b). See also Art 8(2)(b)(iv) Rome Statute of the International Criminal Court 1998.

<sup>45</sup> This section builds upon and extends. P. Vennesson and N. Rajkovic, ‘The Transnational Politics of Warfare Accountability: Human Rights Watch versus the Israel Defense Forces’, *International Relations*, 26:4 (2012), pp. 414–22.

<sup>46</sup> For a similar treatment of comparable primary sources: Schimmelfennig, ‘The Community Trap’, pp. 65–6.

Lebanon, including Beirut's international airport and bridges and highways south of the capital, and instituted an air, sea, and land blockade'.<sup>47</sup> HRW stated that 55 civilians had been killed and 100 wounded. Mobilising the international humanitarian law frame, HRW cautioned that both 'Hezbollah and Israel must not under any circumstances attack civilians in Israel and Lebanon' and that 'attacks on civilians, or acts to intimidate civilians, clearly violate international humanitarian law, and may constitute war crimes'.<sup>48</sup> This general warning was soon followed by specific accusations, grounded in international humanitarian law, and directed at the IDF. On 16 July, HRW researchers reported that a convoy of 16 people attempting to flee a Lebanese village near Israel's border had been the target of an IDF air strike. The organisation demanded that 'the IDF ... investigate this attack on a civilian convoy and provide more details about the circumstances'.<sup>49</sup> Further, it instructed, 'having warned civilians to evacuate their village, Israeli forces should have been aware that civilians would be using this road and should have taken great care to avoid harming them'.<sup>50</sup> This rebuke was followed by further demands on 19 July and 20 July, in which the IDF was admonished to 'allow relief convoys safe entry into and passage inside Lebanon, and take all feasible precautions to avoid attacking them', as well as to 'allow civilians safe passage out of Lebanon's embattled south ... [and] ... avoid attacks likely to cause indiscriminate or disproportionate loss of civilian life'.<sup>51</sup>

The HRW statements accused the IDF of targeting 'clearly marked' relief convoys and continued air strikes that killed and injured fleeing civilians. The assessments made by HRW were soon picked up and amplified by UN officials and Western media reports. On 24 July, the UN emergency relief coordinator, Jan Egeland, issued a public appeal that the IDF reopen Lebanese land, air and sea routes to aid. This was followed by media coverage on mounting civilian casualties caused by IDF aerial attacks.<sup>52</sup>

On 30 July, the Israeli air force struck a civilian household in the Southern Lebanese village of Qana.<sup>53</sup> Using the international humanitarian law frame, HRW quickly condemned the bombing, announcing at first that 54 civilians had been killed in the attack (a number reduced to 28 after much criticism from pro-Israel advocates).<sup>54</sup> HRW attributed the deaths to an indiscriminate bombing campaign.<sup>55</sup> HRW used the same international humanitarian law-based rationale to denounce Hezbollah for

<sup>47</sup> HRW, 'Lebanon/Israel: Do Not Attack Civilians' (12 July 2006).

<sup>48</sup> 'Lebanon/Israel' (12 July 2006).

<sup>49</sup> HRW, 'Israel: Investigate Attack on Civilians in Lebanon' (16 July 2006).

<sup>50</sup> 'Israel: Investigate' (16 July 2006).

<sup>51</sup> HRW, 'Lebanon/Israel: Israel must provide Safe Passage to Relief Convoys' (19 July 2006); HRW, 'Lebanon/Israel: Israel Must Allow Civilians Safe Passage' (20 July 2006).

<sup>52</sup> N. Blanford, 'Fleeing Lebanese dodge aerial fire', *Christian Science Monitor* (24 July 2006), p. 10; S. Tavernise, 'Night of Death and Terror for Lebanese Villagers', *New York Times* (31 July 2006), p. 1; J. Bone, 'War Crimes warning as civilian deaths increase', *The Times* (25 July 2006), p. 29.

<sup>53</sup> S. Tavernise, S. Erlanger, and M. Noveck, 'Civilians Lose as Fighters Slip into Fog of War', *New York Times* (3 August 2006), p. 1; L. Doyle, 'Civilian deaths "should be seen as war crime"', *The Independent* (4 August 2006), p. 4; J. Pearlman and E. O'Loughlin, 'We thought building was empty before strike: Israel', *The Age* (4 August 2006), p. 1.

<sup>54</sup> HRW, 'Questions and Answers on Hostilities Between Israel and Hezbollah' (1 August 2006).

<sup>55</sup> HRW, 'Israel/Lebanon: Israel Responsible for Qana Attack' (29 July 2006).

rocket attacks that killed 18 civilians in Northern Israel.<sup>56</sup> However, HRW staff persisted in its criticism of the IDF, on the basis that war crimes by one party to a conflict never justify war crimes by another. Moreover, the conflict between HRW and the IDF addressed international humanitarian law issues explicitly. The Israeli insistence that the IDF was acting in conformance to international humanitarian law was met with public outrage by HRW, which decried as ‘fantasy’ the IDF’s claim of legality.<sup>57</sup>

On 4 August 2006, HRW presented an investigation that detailed what it described as IDF wrongdoings during the Lebanon war. The report, ‘Fatal Strikes: Israel’s Indiscriminate Attacks Against Civilians in Lebanon’, accused the IDF of ‘serious violations of international humanitarian law’ through a ‘systematic failure to distinguish between combatants and civilians’.<sup>58</sup> HRW documented what it described as ‘war crimes’ committed by the IDF, with an analysis of Israeli air and artillery attacks that had claimed 153 civilian lives. HRW’s allegations helped to involve the United Nations. On 11 August, the UN Human Rights Council established a special ‘high-level commission of inquiry’, which criticised the IDF in its 23 November report.<sup>59</sup> Moreover, advocacy by HRW extended well past the formation and conclusions of the UN inquiry: in the months and years following the conflict, HRW produced additional statements and reports which disclosed the findings of its own post-war investigations into the Lebanon war.<sup>60</sup>

HRW also issued, in August 2007, a report condemning Hezbollah for indiscriminate attacks against Israeli civilians.<sup>61</sup> In September 2007, HRW published a report which reviewed infractions of international humanitarian law by both IDF and Hezbollah. This report blamed the high civilian death toll in Lebanon mainly on the IDF’s failure to abide by the laws of war.<sup>62</sup>

In sum, during and after the Lebanon war, HRW grounded its naming and shaming campaign on the need to respect international humanitarian law. Its allegations made during the Lebanon war exposed the IDF to negative public opinion in Israel itself, and also in the United States and in Europe. Charges expressed by HRW and other human rights groups that the IDF had committed war crimes in

<sup>56</sup> D. Izenberg, ‘Mother 2 daughters die as rocket lands in their garden: Human Rights Watch tells Hizbullah to stop firing’, *Jerusalem Post* (6 August 2006), p. 3; *BBC Monitoring Middle East-Political*, ‘Human Rights Watch cancels Beirut conference in response to anger – Hezbollah TV’ (30 August 2007); A. Ibrahim, ‘Report Accuses Hezbollah of Indiscriminate Attacks on Civilians in ‘06 War’, *Washington Post* (30 August 2007), p. A15; H. M. Fattah, ‘Rights Group Accuses Hezbollah of Indiscriminate Attacks on Civilians in Israel War’, *New York Times* (31 August 2007), p. 10.

<sup>57</sup> HRW, ‘White flags, not a legitimate target’ (30 July 2006); HRW, ‘Israel/Lebanon: Qana Death Toll at 28’ (1 August 2006).

<sup>58</sup> HRW, ‘Fatal Strikes: Israel’s Indiscriminate Attacks Against Civilians in Lebanon’, 18:3 (3 August 2006), p. 3.

<sup>59</sup> UNHRC-United Nations Human Rights Council, ‘Report of the Commission of Inquiry on Lebanon Pursuant to Human Rights Council Resolution S-2/1, A/HRC/3/2 (23 November 2006), {<http://www2.ohchr.org/english/bodies/hrcouncil/docs/specialsession/A.HRC.3.2.pdf>} accessed 29 January 2009.

<sup>60</sup> H. L. Krieger, ‘Rights group slams UN Body for anti-Israel bias’, *Jerusalem Post* (19 September 2006), p. 2; T. Butcher, ‘UN urged to act on Lebanon “war crimes”’, *The Daily Telegraph* (13 July 2008), p. 18.

<sup>61</sup> HRW, ‘Civilians under Assault: Hezbollah’s Rocket Attacks on Israel in the 2006 War’, 19:3 (August 2007), p. 9.

<sup>62</sup> HRW, ‘Why they Died: Civilian Casualties on Lebanon during the 2006 War’, 19:5 (September 2007), p. 5.

Lebanon were taken seriously; both Israeli officials and pro-government Israeli NGOs vigorously responded to the rhetorical coercion.

*Publicly accepting the legal frame, questioning its relevance: the IDF and the political leadership*

This subsection and the following present and analyse the reactions of different Israeli actors, first officials (political leaders, the MFA, and the IDF) and then pro-Israel NGOs. Since these different actors do not stand together as a single unity, their rhetoric and actions are neither conflated nor fused in the narrative below. At the opening of the Lebanon war, the Israeli authorities did not reject the international humanitarian frame outright and publicly, but they questioned its relevance from both a policy and a moral point of view, thereby indirectly questioning its legitimacy.<sup>63</sup> The HRW-IDF struggle was thus initially closer to a contest over the frame itself rather than over its implications. First, Israeli officials repeatedly emphasised the ‘uniqueness’ of the war on terror and the fact that international humanitarian law was fundamentally ill-adapted to, and even counterproductive in, such conflicts. The initial public response of Israeli officials to ‘naming and shaming’ was to frame the IDF’s military operations as ‘counter-terrorism’. Prime Minister Ehud Olmert, for example, presented Israel as a victim of Hezbollah terror attacks and argued that, by going after Hezbollah in Lebanon the IDF was acting legitimately in self-defence.<sup>64</sup> Second, Israeli officials raised the argument that Hezbollah was the aggressor and targeted civilians in the first place, so the blame for any civilian suffering following Israel’s military response should be put squarely on the shoulders of Hezbollah. For example, the Israeli ambassador to the United States, Dan Gillerman, said, ‘Hezbollah [has] used Lebanese civilians as human shields and [has] deliberately exposed them to danger in the hopes of stirring expressions of outrage against Israel. . . . Lebanese civilians may have been killed by Israeli fire but they are the victims of Hezbollah, victims of terror.’<sup>65</sup>

After two weeks of conflict, Israeli officials began to address more specifically the mounting criticisms directed at the IDF based on the international humanitarian law frame.<sup>66</sup> Israel’s Ministry of Foreign Affairs (MFA), in particular, provided regular public statements of support to the IDF in the face of the accusations made by Human Rights Watch. For instance, on 28 July, the MFA issued a *communiqué* regarding an attack on a civilian convoy that had been organised by the Australian embassy. It disclosed IDF warnings and denied IDF responsibility for a mortar attack that had inflicted casualties upon the convoy.<sup>67</sup> On 30 July, the MFA justified

<sup>63</sup> For a similar logic in the case of the occupied territories, see David Kretzmer, *The Occupation of Justice. The Supreme Court of Israel and the Occupied Territories* (Albany: State University of New York Press, 2002).

<sup>64</sup> MFA, ‘Special Cabinet Communique-Hizbullah’ (12 July 2006).

<sup>65</sup> W. Hoge, ‘U.N. Deplores Civilian Deaths, But Cease-Fire Call is Blocked’, *New York Times* (31 July 2006).

<sup>66</sup> MFA, ‘PM Olmert meets with US Secy of State Rice’ (25 July 2006). See also A. Kober, ‘The Israel Defense Forces in the Second Lebanon War: Why the Poor Performance?’, *Journal of Strategic Studies* 31:1 (2008), pp. 3–40.

<sup>67</sup> MFA, ‘IDF response regarding convoy in southern Lebanon’ (28 July 2006).

the IDF's attack upon the village of Qana as a strike against 'missile launch sites', and noted that Hezbollah had used the village to propel 'hundreds of missiles' into Israel. Although the IDF expressed regret for 'any harm to uninvolved civilians', it emphasised Hezbollah's 'contemptible use of Lebanese civilians as human shields'.<sup>68</sup> Further, MFA officials announced that the IDF had given advance evacuation warnings to all Lebanese villagers south of the Litani River. Notwithstanding, after the Qana bombing, the IDF announced temporary 'self-imposed restrictions with regard to the targeting of structures in Lebanon'.<sup>69</sup> Such responses by Israeli authorities came comparatively slowly and were rarely addressed directly to HRW, or to transnational human rights activists. The HRW allegations were challenged indirectly, through the use of counter-facts and counter-explanations delivered by senior Israeli officials. Israeli officials did not publicly contest the humanitarian international law frame as such, but emphasised the need to take into account what they saw as the exigencies of the war against terrorism.

*Naming and shaming Human Rights Watch: the pro-IDF Advocates*

Government officials and the MFA were not alone in responding to the rhetorical coercion; other non-governmental groups publicly intervened on behalf of the IDF. Notable pro-IDF advocates were The International Association of Jewish Lawyers and Jurists, UN Watch and NGO-Monitor, the latter created specifically to target the 'accountability of Human Rights NGOs in the Arab Israeli Conflict'.<sup>70</sup> Direct confrontation with HRW, and other human rights NGOs, was thus developed by third-party advocacy groups sympathetic to Israel's government. Playing an immediate role during the conflict was Jerusalem-based NGO-Monitor, which issued opinion articles critical of HRW. For example, NGO-Monitor director Gerald Steinberg questioned the unregulated conduct of human rights NGOs and alleged an anti-Israeli bias on the part of HRW.<sup>71</sup> These pro-IDF groups sought to 'shame' HRW and other NGOs through rhetorical action. It was an instance of rhetorical coercion because these groups used rhetoric to change the behaviour of NGOs by putting their normative commitment to normative values and standards of conduct in conflict with their actual practices and to expose the contradiction publicly. HRW and human rights activists justify their political and legal goals and actions on the basis of a normative standard of conduct that emphasises legal expertise, in-depth investigation and impartiality. This standard of legitimacy supports the credibility of their arguments. The pro-IDF NGOs sought to shame HRW and other groups by publicising what they saw as inconsistencies between the organisation's purported legal expertise

<sup>68</sup> MFA, 'Incident at Kafr Qana' (30 July 2006); MFA, 'Completion of Inquiry into July 30th incident in Qana' (2 August 2006).

<sup>69</sup> MFA, 'Incident at Kafr Qana' (30 July 2006); MFA, 'Completion of Inquiry into July 30th incident in Qana' (2 August 2006). See also G. Myre, 'Offering Video, Israel Answers Critics on War', *New York Times* (December 2006), p. 1.

<sup>70</sup> NGO-Monitor, 'About NGO Monitor', available at: {[www.ngo-monitor.org/articles.php?type=about](http://www.ngo-monitor.org/articles.php?type=about)} accessed 26 January 2009.

<sup>71</sup> G. M. Steinberg, 'NGOs that take sides', *The Jerusalem Post* (30 July 2006), p. 13. See also G. M. Steinberg, 'Soft Powers Play Hardball: NGOs Wage War against Israel', *Israel Affairs*, 12:4 (October 2006), pp. 748–68.



and impartiality and its actual behaviour.<sup>72</sup> These efforts to put into question the credibility of the coercer were grounded in one layer of the ambiguity of the legal frame outlined above, the political disputes about the framing and shaming actors, or ‘contested ambiguity’.

Responding to HRW’s report, released on 4 August 2006, NGO-Monitor issued a rebuttal on 27 August, not only challenging the substance of HRW’s allegations but also launching a personal attack against HRW Executive Director, Kenneth Roth.<sup>73</sup> The force of this pro-IDF backlash was such that a Jewish member of the HRW board, Kathleen Peratis, issued a public response in defence of HRW and Kenneth Roth.<sup>74</sup> Such responses to rhetorical coercion by pro-Israel advocates and reactions by HRW and other human rights groups, became widespread.<sup>75</sup> Pro-Israel groups contested the claim of international NGOs to speak in the name of international humanitarian law. They sought to expose biases in the assessment of the situation and to uncover hidden agenda behind the apparently objective *façade* of detached legal assessments.<sup>76</sup>

In sum, pro-Israel advocates used rhetorical coercion against the rhetorical coercers: they put under scrutiny and sought to ‘name and shame’ human rights international NGOs. In so doing, they attempted to degrade the reputation as neutral and impartial observer which human rights INGOs relied, by challenging the notion that such international humanitarian law monitors were beyond error, criticism, or ideological commitments. This rhetorical coercion, aimed at the self-identity and moral authority claimed by HRW, emphasised the ideological values and obscure agendas that such legal activism could, intentionally or not, support. This type of response to ‘naming and shaming’ did not put into question international humanitarian law as a legal frame. The rhetorical counter-coercion, rooted in the contested ambiguity of the frame, was conceived as a declaration of the fact that international humanitarian law activists were not true to the fundamental values associated with the legal frame.

<sup>72</sup> NGO-Monitor, ‘NGO Monitor’s 2007 Report on HRW: Bias and Double Standards Continue’ (29 April 2008), available at: {[www.ngo-monitor.org/article.php?operation=print&id=1910](http://www.ngo-monitor.org/article.php?operation=print&id=1910)} accessed 30 January 2009; NGO-Monitor ‘Watching the Watchers: The Politics and Credibility of Non-Governmental Organizations in the Arab-Israeli Conflict’, available at: {<http://www.ngo-monitor.org/data/images/File/watchingthewatchers-small.pdf>} accessed 28 January 2009. See also A. Dershowitz, ‘Amnesty International redefines “war crimes”’, *Jerusalem Post* (31 August 2006), p. 15; D. Izenberg, ‘Human Rights Watch, Foreign Ministry clash over Lebanon civilian deaths’, *Jerusalem Post* (7 September 2006), p. 3.

<sup>73</sup> G. M. Steinberg, ‘Ken Roth’s blood libel’, *The Jerusalem Post* (27 August 2006), p. 14.

<sup>74</sup> K. Peratis, ‘Diversions Strike On a Rights Group’, *Washington Post* (30 August 2006), p. A19; G. M. Steinberg, ‘Double Standard on Israel’, *Washington Post* (20 September 2006), p. A24.

<sup>75</sup> A. Dershowitz, ‘What is “Human Rights Watch” watching?’, *Jerusalem Post* (25 August 2006), p. 4; C. B. Glick, ‘Terrorist theatre tricks’, *Jerusalem Post* (29 August 2006), p. 15; G. M. Steinberg, ‘Human-rights falsehood: Israel tries to defend itself’, *Washington Times* (23 October 2006), p. A19; G. M. Steinberg, ‘Watching the watchdog’, *The Courier Mail* (29 May 2007), p. 18; S. Sockol, ‘Israel Faulted in Deaths of Civilians in Lebanon: Rights Groups Cites Failure to Distinguish Targets’, *Washington Post* (7 September 2007), p. A15; O. Ross, ‘Lebanon war rebuke “nonsense”, Israelis say’, *The Toronto Star* (7 September 2007), p. AA01.; D. Izenberg, ‘Hizbollah “did not use civilians as cover”’, *The Independent* (7 September 2007), p. 32; C. Wheeler, ‘Israeli air strikes killed civilians indiscriminately, rights group says: Hezbollah presence in villages exaggerated, Human Rights Watch report concludes’, *The Globe and Mail* (7 September 2007), p. A18; E. O’Loughlin, ‘Israel “broke laws of war” in Lebanon’, *The Age* (7 September 2007), p. 11; D. Frum, ‘Misinformation warfare’, *National Post* (2 February 2008), p. A23.

<sup>76</sup> G. M. Steinberg, ‘HRW’s damage can’t be undone’, *Jerusalem Post* (6 September 2007), p. 15; UN Watch, ‘The Ever-Predictable UN Human Rights Council’ (29 November 2006), available at: {[www.unwatch.org/site/apps/nl/content2.asp?c+bdKKISNqEM](http://www.unwatch.org/site/apps/nl/content2.asp?c+bdKKISNqEM)} 29 January 2009.

They were accused of not behaving like an impartial judge, of not conducting trustworthy and balanced fact-finding investigations, and ultimately of not generating the kind of truth-seeking process that could lead to effective judicial processes.

During the Lebanon war, HRW's 'naming and shaming' efforts did not result in significant policy and behavioural changes of the IDF. Instead, the rhetorical coercion became an ongoing heated public contest which took two main forms rooted in the ambiguity of international humanitarian law as a frame. First, there was a 'frame implication contest' mostly led by Israeli officials. Their main response to 'naming and shaming' was not to reject outright and publicly the legitimacy of international humanitarian law as such, but to argue that in the context of counter-terrorism, its implementation would almost inevitably have to be somewhat adjusted. They claimed that it was Hezbollah's military course of action that compelled Israel to exercise its right to self-defence the way it did, resulting in unwanted civilian deaths. There was also another contest, not about legal interpretations, but about those who presented themselves as speaking in the name of international humanitarian law.

*'Naming and shaming' in the 2008–9 Gaza war  
HRW, framing, and the power of war crimes allegations*

The 2008–9 Gaza war opposed Hamas paramilitary forces and the Israeli military for three weeks, from 27 December 2008 until 18 January 2009, in the Gaza strip and Southern Israel. From the beginning of the war, HRW started a 'naming and shaming' campaign, announcing that war crimes investigation would be needed. On 30 December HRW issued a general warning to both the IDF and Hamas to avoid civilian casualties.<sup>77</sup> It focused its investigations particularly on three IDF air strikes. HRW declared that these attacks 'raised particular concern about Israel's targeting decisions and require independent and impartial inquiries to determine whether the attacks violated the law of war'. It also condemned Hamas for firing more than 100 rockets into Israel between 27 and 28 December, warning that the deliberate firing of 'indiscriminate weapons into civilian populated areas, as a matter of policy, constitutes a war crime'.<sup>78</sup> On 4 January, in response to the IDF's announced ground offensive in Gaza, HRW warned 'both sides' to take 'all feasible precautions' to protect civilians.<sup>79</sup> Human Rights Watch was most critical of the IDF, pointing out that its previous studies of IDF incursions into the West Bank and Gaza had found evidence of 'unlawful killings by Israeli forces'. Further, HRW emphasised that the IDF had '[failed] to punish soldiers for serious abuses' committed during those earlier raids.<sup>80</sup>

The substance of HRW's criticism shifted on 10 January, when the rights-group issued a release condemning the IDF's use of white phosphorus artillery shells.<sup>81</sup>

<sup>77</sup> HRW, 'Israel/Hamas: Civilians Must Not be Targets' (30 December 2008), available at: {<http://www.hrw.org/en/news/2008/12/30/israelhamas-civilians-must-not-be-targets>} accessed 24 January 2009.

<sup>78</sup> HRW, 'Israel/Hamas'.

<sup>79</sup> HRW, 'Israel: Gaza Ground Offensive Raises Laws of War Concerns' (4 January 2009), available at: {<http://www.hrw.org/en/news/2009/01/04/israel-gaza-ground-offensive-raises-laws-war-concerns>} accessed 24 January 2009.

<sup>80</sup> HRW, 'Israel: Gaza Ground Offensive'.

<sup>81</sup> HRW, 'Israel: Stop Unlawful Use of White Phosphorus in Gaza' (10 January 2009), available at: {<http://www.hrw.org/en/news/2009/01/10/israel-stop-unlawful-use-white-phosphorus-gaza>} accessed 24 January 2009.

HRW charged that the IDF was ‘using white phosphorus in military operations in densely populated areas of Gaza’; while white phosphorus was not a prohibited weapon, it was known to have an incendiary effect that inflicted severe burns and set civilian objects on fire. Thus, HRW alleged, the use of white phosphorus artillery shells in dense urban areas such as Gaza violated ‘the requirement under international humanitarian law to take all feasible precautions to avoid civilian injury and loss of life’.<sup>82</sup>

The accusations regarding white phosphorus became a focal point for public scrutiny. Western media outlets reported on the allegations made by HRW, and a public exchange developed between HRW, the IDF, the International Red Cross and third-party experts over whether use of white phosphorus had been used in accordance with international law.<sup>83</sup> In further allegations, HRW also accused the IDF of needlessly endangering the life of civilians by firing heavy artillery shells into Gaza’s crowded residential areas. On 16 January, HRW charged that the IDF of firing 155-mm artillery shells into residential areas of Gaza city, in violation of the ‘prohibition under the laws of war against indiscriminate attacks’.<sup>84</sup> Condemnation by HRW escalated after Israel declared a ceasefire on 18 January. Directly invoking international humanitarian law as a frame, HRW executive director Kenneth Roth asserted that ‘hundreds of Palestinian civilians’ were ‘not the only casualty’ of the IDF assault: so too ‘was the credibility of the IDF’.<sup>85</sup> Roth listed issues which, he said, discredited Israeli assertions that the IDF had taken ‘extraordinary care to spare civilians’.<sup>86</sup>

The IDF announced that it would launch an internal inquiry into allegations surrounding use of white phosphorus and the allegations of wrongful deaths of civilians, for example at the UN compound in Jebaliya.<sup>87</sup> In response, HRW demanded ‘an impartial international investigation into allegations of serious violations of the laws of war by Israel and Hamas’.<sup>88</sup> This call was somewhat echoed by the UN Secretary-General, the UN High Commissioner for Human Rights, Amnesty International, and the Arab League Secretary-General (the latter calling for investigation only for Israel).<sup>89</sup> On 4 April 2009, Judge Richard Goldstone was appointed to head a special

<sup>82</sup> HRW, ‘Israel: Stop Unlawful Use’.

<sup>83</sup> Associated Press, ‘IDF: We’re not using illegal weapons. Rights group: Israeli shells contain white phosphorus, which can cause serious burns’, *Jerusalem Post* (12 January 2009), p. 4; R. Marquand and N. Blandford, ‘Gaza: Israel under fire for alleged white phosphorus use’, *Christian Science Monitor* (14 January 2009), pp. 7, 19; I. Black, ‘International: Weaponry: Israel accused of war crimes over phosphorus use’, *The Guardian* (20 January 2009); J. Mitnick, ‘Gaza images raise cries of “war crimes”’: Israeli assault toll tops 1,000’, *Washington Times* (15 Jan 2009), p. A01.

<sup>84</sup> HRW, ‘Israel: Stop Shelling Crowded Gaza City’ (16 January 2009), available at: {<http://www.hrw.org/en/news/2009/01/16/israel-stop-shelling-crowded-gaza-city>} accessed 29 January 2009.

<sup>85</sup> HRW, ‘The Incendiary IDF by Kenneth Roth’ (22 January 2009), available at: {<http://www.hrw.org/en/news/2009/01/22/incendiary-idf-kenneth-roth>} accessed 25 January 2009.

<sup>86</sup> HRW, ‘The Incendiary IDF’.

<sup>87</sup> P. Beaumont, ‘Israeli military says it will investigate claims of use of white phosphorus’, *The Irish Times* (22 January 2009), p. 13; *Irish Times*, ‘Ban calls for full investigation into shelling of three UN sites’ (21 January 2009), p. 11; Y. Katz, ‘IDF smoking out the truth about alleged use of phosphorus shells. Amnesty Int’l claim “indisputable evidence” of use of ordinance in residential areas’, *Jerusalem Post* (20 January 2009), p. 2.

<sup>88</sup> HRW, ‘Israel/Gaza: International Investigation Essential’ (27 January 2009), available at: {<http://www.hrw.org/en/news/2009/01/27/israelgaza-international-investigation-essential>} accessed 28 January 2009.

<sup>89</sup> ‘A thousand tragedies. But is it a crime? Gaza and the laws of war’, *The Economist* (17 January 2009); R. Nordland, C. Dickey, and S. Grove, ‘Israel has fewer friends than ever, even in America’, *Newsweek International* (2 February 2009); R. McCarthy, ‘Gaza: Fatal burns never seen before Israel’s

UN Human Rights Council mission to investigate allegations of war crimes committed by Israel in Gaza.<sup>90</sup> The West Bank-based Palestinian Authority sent a formal written request to the Chief Prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo, asking that the ICC assume jurisdiction over prosecution of war crimes alleged to have been committed during the Gaza war.<sup>91</sup> However, the IDF, in anticipation of this escalation of the ‘name and shame’ campaign, released its own internal investigation, asserting that the army had ‘operated in accordance with international law’, notwithstanding a number of civilian deaths that it acknowledged as ‘mistakes in intelligence and targeting’.<sup>92</sup> These claims were countered by reports from both HRW (25 March and 30 June) and Amnesty International (2 July) that emphasised the “‘unprecedented” scale and intensity of the Israeli onslaught and the “unlawful” Palestinian use of rockets against Israeli civilians’.<sup>93</sup>

In sum, both during and after the Gaza war, HRW based again its naming and shaming campaign on the need to respect international humanitarian law. Compared to the Lebanon war, it acted earlier in the Gaza conflict to raise the issue of war crimes, and it particularly emphasised the inappropriate use of some weapon-systems in a densely populated area. However, this escalation of ‘naming and shaming’ did not stop the IDF from conducting military operations in Gaza. Instead, it led to more systematic rebuttals by the IDF and the Ministry of Foreign Affairs, on the basis of the legal frame used by HRW.

*Publicly accepting the legal frame, contesting its policy and behavioural implications*

A notable feature of the Gaza war was the extent to which the IDF had prepared the operation in advance and launched the attack at the time of its choosing. By comparison with the Lebanon war, Israeli authorities were also more prepared to address

war; Injuries consistent with use of phosphorus: Evidence suggests breach of international law’, *The Guardian* (21 January 2009), p. 24; A. Khalil, ‘U.N. chief tours Gaza, Israeli town; Ban calls destruction in Palestinian territory “shocking”’. In Sderot, he called rocket attacks on civilians “appalling”’, *Los Angeles Times* (21 January 2009), p. 3.

<sup>90</sup> The UN fact-finding mission issued its report in September 2009 concluding that both Israel and Hamas appeared guilty of war crimes and crimes against humanity. It specifically accused Israel of deliberately injuring civilians during the operation. However, in April 2011, Judge Goldstone publicly retracted this controversial assertion, while the three other members of the panel stood by the report’s findings. Ethan Bronner and Isabel Kershner, ‘Inquiry chief retracts key finding of Gaza report’, *International Herald Tribune* (4 April 2011), p. 6.

<sup>91</sup> M. Simons, ‘Palestinians Press International Court for Inquiry on Possible Gaza War Crimes’, *New York Times* (11 February 2009), p. 13; J. Dugard, ‘Make a case of it’, *International Herald Tribune* (23 July 2009), p. 6.

<sup>92</sup> B. Sobelman, ‘Israeli Army clears itself in Gaza War’, *Los Angeles Times* (23 April 2009), p. 25; R. McCarthy, ‘International: Israel military inquiries dismiss claims of Gaza war crimes’, *The Guardian* (23 April 2009), p. 22; J. Mitnick, ‘Army admits to errors in Gaza Offensive’, *Washington Times* (23 April 2009), p. A10; I. Kershner, ‘Israeli Military Says Its Actions in Gaza War Did Not Violate International Law’, *New York Times* (23 April 2009), p. 10.

<sup>93</sup> HRW, ‘Rain of Fire’ (25 March 2009), available at: {<http://www.hrw.org/sites/default/files/reports/ipt0309web.pdf>} accessed 16 July 2009; HRW, ‘Israel: Misuse of Drones killed civilians in Gaza’ (30 June 2009), available at: {<http://www.hrw.org/en/news/2009/06/30/israel-misuse-drones-killed-civilians-gaza>} accessed 18 July 2009; Amnesty International, ‘Israel/Gaza: 22 Days of Death and Destruction’ (2 July 2009), available at: {<http://www.amnesty.org/en/library/asset/MDE15/015/2009/en/8f299083-9a74-4853-860f-0563725e633a/mde150152009en.pdf>} accessed 31 July 2009; A. Cowell and I. Kershner, ‘Report Accuses Israel and Hamas of War Crimes in Gaza’, *New York Times* (3 July 2009), p. 6.

rhetorical coercion and they did so more successfully, on the basis of the international humanitarian law as a frame.<sup>94</sup> This was manifest in the volume and quality of the responses that Israeli officials issued during the Gaza conflict. The IDF's counter rhetoric was so pervasive and comprehensive that Israel's third-party advocates were less active than during the Lebanon war.

First, at the outset of the war, the Ministry of Foreign Affairs issued a five-page legal brief on 'Issues of Proportionality' with respect to IDF warfare in Gaza.<sup>95</sup> Second, during the first 24-hours of air strikes, individual press briefings on the operation were given by Israeli Prime Minister Olmert (27 December), President Shimon Peres (28 December), and Foreign Minister Tzipi Livni (28 December). Livni's address to foreign diplomats in the border town of Sderot had as its backdrop the firing of Hamas rockets into Israel. She made express mention of how the IDF was concerned to avoid civilian casualties, while by contrast, she said, Hamas exploited civilians as human shields.<sup>96</sup> There were other indications of the extent to which the IDF and Israeli officials were prepared to discuss human rights concerns publicly, using international humanitarian law as a frame. For instance, during the three-week conflict, the MFA issued over 40 *communiqués*, far greater than the number of MFA *communiqués* it had issued during the Lebanon war.

Both the IDF and the Ministry of Foreign Affairs outlined Israel's position regarding the Gaza war with explicit references to respect for international humanitarian law as their main frame. For example, they presented extensive information on the number of rockets fired by Hamas into Israel, alleged that Hamas used civilians as human shields in Gaza, and described IDF efforts to supply tons of humanitarian relief to Gaza during the war.<sup>97</sup> The MFA publicised a study performed by the 'Israeli Intelligence and Terrorism Information Center' which alleged that Hamas was systematically exploiting Gaza civilians as human shields.<sup>98</sup> Israeli officials set

<sup>94</sup> S. Catignani, 'Israel's operation cast lead and the Gaza strip missile conundrum', *RUSI Journal*, 154:4 (2009), p. 71. For a more critical assessment, see A. H. Cordesman, *The 'Gaza War': A Strategic Analysis* (Washington, DC: CSIS, 2009), pp. 31–3.

<sup>95</sup> MFA, 'Responding to Hamas Attacks from Gaza – Issues of Proportionality Background Paper' (December 2008), available at: {<http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Responding+to+Hamas+attacks+from+Gaza+-+Issues+of+Proportionality+-+March+2008.htm>} accessed 26 January 2009.

<sup>96</sup> MFA, 'FM Livni briefing in Sderot-Opening' (28 Dec 2008), available at: {[http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/FM\\_Livni\\_briefing\\_Sderot\\_Opening\\_remarks\\_28-Dec-2008.htm](http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/FM_Livni_briefing_Sderot_Opening_remarks_28-Dec-2008.htm)} accessed 28 January 2009.

<sup>97</sup> IDF Spokesperson Unit, 'Operation Cast Lead Newsletter' (2009), available at: {<http://dover.idf.il/NR/rdonlyres/BBAD9702-A783-43A7-97C2-1FCD95EF9813/0/newsletter104.pdf>} accessed 27 January 2009; MFA, 'Hamas Exploitation of Civilians as Human Shields' (6 January 2009). It is important to emphasise that I only claim here that the IDF and Israeli authorities *publicly* claimed to accept the legal frame in the context of rhetorical coercion. This public acceptance is key for the unfolding of the rhetorical coercion process since transnational activist can then take state officials at their own word and identify potential discrepancies between what they claim and what they do. Whether or not the legal arguments made publicly showed a full acceptance of the legal frame within the IDF is a different question that cannot be fully address at this point due to lack of empirical evidence. There is some anecdotal evidence of conflicts and disagreements within the Israeli state and within the IDF on whether and to what extent the IDF should actually fully comply with IHL. I thank an anonymous reviewer for drawing my attention to this point.

<sup>98</sup> MFA, 'Hamas Exploitation of Civilians as Human Shields' (6 January 2009); Intelligence and Terrorism Information Center at the Israel Intelligence Heritage and Commemoration Center, 'Hamas Exploitation of Civilians as Human Shields' (January 2009).

out on a public diplomacy campaign, visiting Western capitals and leaders, speaking with foreign media outlets and holding press conferences on a frequent basis.<sup>99</sup>

The adjustments made by Israeli officials were not just a superficial change of wording and public relations. The IDF also adjusted some characteristics of its field operations in anticipation of human rights monitoring and potential charges based on international humanitarian law.<sup>100</sup> The operational order for the Gaza operation, for example, stated that ‘all IDF activities are subject to the principles and rules of international law’ and mentioned the need to observe the principles of distinction between soldiers and civilians and proportionality.<sup>101</sup> The IDF and Israeli officials sought to expose as much as possible the fact that Hamas was not respecting international humanitarian law. For example, during the campaign, IDF Combat Camera teams were deployed to provide footage for intelligence purpose but also for the media.<sup>102</sup> They sought to provide images showing that Hamas had booby-trapped schools and other civilian buildings, had used civilians as human shields, and stored weapons in mosques.

Second, in keeping with the Geneva Convention’s dispositions on precautionary measures, the IDF took steps to warn the civilian population of Gaza of impending strikes. It made pre-recorded and specific telephone and cell phone calls (20,000 on 27 December and 10,000 on 29 December), repeatedly dropping warning notes and leaflet from planes, and made radio broadcast.<sup>103</sup> In addition, in certain situations in which civilians had remained in their house or were being used as human shields, the IDF aimed missiles with little or no explosives at empty areas of the roofs, a tactic called ‘a knock on the roof’, meant to frighten residents into leaving the building.<sup>104</sup> The IDF also used sound bomb as a warning to civilians. Third, in response to the ‘naming and shaming’ campaign and the international outcry, the IDF implemented a daily ceasefire to allow humanitarian convoy delivery to enter Gaza.<sup>105</sup>

Lastly, the IDF and the MFA had augmented their capacities to respond rapidly to HRW’s allegations and to unforeseen events. This was most visible regarding the much publicised Jebaliya school bombing and the accusations of illegal white phosphorus use, heated condemnations that generated calls for IDF officers to be charged

<sup>99</sup> MFA, ‘FM Livni press conference on IDF operation in Gaza’ (31 December 2008), available at: {[http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/FM\\_Livni\\_press\\_conference\\_IDF\\_operation\\_Gaza\\_31-Dec-2008.htm](http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/FM_Livni_press_conference_IDF_operation_Gaza_31-Dec-2008.htm)} accessed 30 January 2009; MFA, ‘Israel strikes back against Hamas terror infrastructure in Gaza’ (21 January 2009).

<sup>100</sup> Asa Kasher and Amos Yadlin, ‘Military Ethics of Fighting Terror: An Israeli Perspective’, *Journal of Military Ethics*, 4:1 (2005), pp. 3–32. See also Avishai Margalit and Michael Walzer, ‘Israel: Civilians and Combatants’, *The New York Review of Books* (14 May 2009), pp. 21–2; ‘Israel and the Rules of War: An Exchange’, *The New York Review of Books* (11 June 2009), p. 77.

<sup>101</sup> MFA, ‘Behind the Headlines: The tragedy at the school in Jebaliya’ (6 January 2009), available at: {[http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Ttragedy\\_school\\_Jebaliya\\_6-Jan-2009.htm](http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Ttragedy_school_Jebaliya_6-Jan-2009.htm)} accessed 29 January 2009.

<sup>102</sup> S. Catignani, ‘Israel’s operation cast lead and the Gaza strip missile conundrum’, *RUSI Journal*, 154:4 (2009), p. 71.

<sup>103</sup> United Nations General Assembly, Human Rights Council, *Human Rights in Palestine and Other Occupied Arab Territories – Report of the United Nations Fact-Finding Mission on the Gaza Conflict*. A/HRC/12/48 (25 September 2009), p. 130.

<sup>104</sup> S. Erlanger, ‘Both sides in Gaza use lethal new tricks: Traps and ruses mark bitter urban battle’, *International Herald Tribune* (12 January 2009), p. 6.

<sup>105</sup> S. Catignani, ‘Israel’s operation cast lead and the Gaza strip missile conundrum’, *RUSI Journal*, 154:4 (2009), p. 71.

with war crimes.<sup>106</sup> Responding to these allegations, Israeli authorities displayed their ability to issue rapid public responses that directly challenged allegations of wrongdoing.<sup>107</sup> In addition, pro-Israel NGOs were also involved. NGO-Monitor, for instance, published a 21 January memorandum entitled ‘The NGO Front in the Gaza War: Exploitation of International Law’.<sup>108</sup> Public opinion articles were also released that directly challenged allegations made by HRW, Amnesty International, and Oxfam.<sup>109</sup>

While HRW’s ‘naming and shaming’ might have contributed to shorten the military campaign, it did not prevent the IDF from achieving significant tactical successes, although the IDF failed to meet its declared goals of stopping rocket attacks on Israel and the influx of weapons for resupplying Hamas. In response to rhetorical coercion, the IDF and the MFA adjusted their policies and behaviour but the legal frame mobilised by HRW provided them with a variety of options to continue to conduct the military operation while claiming to respect international humanitarian law. Two layers of framing ambiguity outlined above were particularly influential here, the complexity of interpretation and the difficulty to base assessment on systematic information, or ‘technical ambiguity’, and the normative tensions at the heart of international humanitarian law, or ‘normative ambiguity’.

### Conclusions, alternative explanations, and directions for future research

During the Lebanon and Gaza wars, HRW subjected the IDF’s military operations to vigorous public criticism using international humanitarian law as its frame. This ‘naming and shaming’ did affect the policy and behaviour of the IDF; more generally, such delegitimation campaigns, including ‘lawfare’, are taken seriously in Israel.<sup>110</sup>

<sup>106</sup> S. Erlanger, ‘Both sides in Gaza use lethal new tricks’; T. El-Khodary and S. Tavernise, ‘U.N. Warns of Refugee Crisis in Gaza Strip’, *New York Times* (13 January 2009), p. 5.

<sup>107</sup> MFA, ‘Behind the Headlines: The truth about Hamas crimes in Gaza’ (29 January 2009), available at: {[http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Hamas\\_crimes\\_in\\_Gaza\\_29-Jan-2009.htm](http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Hamas_crimes_in_Gaza_29-Jan-2009.htm)} accessed 25 January 2009. See also MFA, ‘Israel’s Operation against Hamas: Defeating Terror, Promoting Peace’ (2009), available at: {<http://www.mfa.gov.il/NR/rdonlyres/100C3EB5-B451-452F-900F-221DB96D803A/0/MFAHamasOpPresentation.pdf>} accessed 29 January 2009; MFA, ‘The Operation in Gaza: Factual and Legal Aspects, V. The Use of Force: IDF’s Conduct of the Operation and Procedures to Ensure Compliance with International Law’ (29 July 2009), available at: {[http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Hamas+war+against+Israel/Operation\\_Gaza\\_factual\\_and\\_legal\\_aspects\\_use\\_of\\_force\\_IDF\\_conduct\\_5\\_Aug\\_2009.htm](http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Hamas+war+against+Israel/Operation_Gaza_factual_and_legal_aspects_use_of_force_IDF_conduct_5_Aug_2009.htm)} accessed 19 March 2010.

<sup>108</sup> NGO-Monitor, ‘The NGO Front in the Gaza War: Exploitation of International Law’ (21 January 2009), available at: {[www.ngo-monitor.org/article.php?operation=print&id=2251](http://www.ngo-monitor.org/article.php?operation=print&id=2251)} accessed 24 January 2009.

<sup>109</sup> G. M. Steinberg, ‘Can Israel win the “soft power” war in Gaza’, *Jerusalem Post* (29 December 2008), p. 13; G. M. Steinberg, ‘Human Rights Watch: White (phosphorous) lies’, *Jerusalem Post* (18 January 2009), p. 14; G. M. Steinberg, ‘For HRW, Israel is always guilty’, *Jerusalem Post* (26 January 2009), p. 15; R. A. Stoil, ‘Gaza war heads to the courts: Many overseas lawsuits simply aim for “attention”’, *Jerusalem Post* (19 January 2009), p. 6; A. Herzberg, ‘NGOs aid Hamas PR campaign’, *Jerusalem Post* (12 January 2009), p. 15; L. J. Davis, ‘Israel, Gaza and the double standard’, *Washington Times* (26 January 2009), p. A04.

<sup>110</sup> Reut Institute, *Building a Political Firewall Against Israel’s Delegitimization. Conceptual Framework-Version A*, The Reut Institute (March 2010); G. Steinberg, ‘From Durban to the Goldstone Report: The Centrality of Human Rights NGOs in the Political Dimension of the Arab-Israeli Conflict’, *Israel Affairs*, 18:3 (2012). On ‘lawfare’, see C. J. Dunlap, Jr., ‘Lawfare Today: A Perspective’, *Yale Journal of International Affairs*, 3:1 (Winter 2008), p. 146; M. P. Scharf and S. Pagano (eds), ‘Lawfare!: Are America’s Enemies Using the Law Against Us As a Weapon of War?’, *Case Western Reserve Journal of International Law*, 43:1–2 (2011).

However, naming and shaming did not prevent the contested action. The ambiguity of the international humanitarian law frame provided the IDF with assets to legitimate its action and, through law, to reassert its right to the moral and political, high ground. The ambiguity of the frame allowed the IDF and the MFA to repeatedly explain that the IDF respected the realistic and commonly accepted conventions and to argue that HRW, the rhetorical coercer, was excessive in its claims and biased.<sup>111</sup> International humanitarian law-based naming and shaming imposed additional costs, making some military action more challenging (mandated warnings to civilians meant forgoing surprise, for example) but not impossible. The outcome of the rhetorical coercion was an ongoing frame implication contest: both sides agreed on the abstract principles of international humanitarian law, but not on how they applied to the acts or facts at hand.

The actions of the protagonists analysed here partially fit the ‘tactical concession’ and the ‘prescriptive status’ phases of Risse and Sikkink’s ‘spiral model’ but the outcome that I uncover differs sharply.<sup>112</sup> During the ‘tactical concession’ phase, the transnational pressures escalate, notably through ‘shaming’ and a public argument about alleged IHL violations. The targeted state does not deny the validity of the IHL norm and seeks limited changes to pacify international criticism. However, Risse and Sikkink’s model presumes that due to the naming and shaming the targeted leaders ‘slowly but surely ... become entrapped in their own rhetoric’.<sup>113</sup> Their tactical concessions unleash forces of opposition, the more they argue, the more they make argumentative concessions and ultimately they lose control of the situation and concede.<sup>114</sup> By contrast, I argue that, even when naming and shaming does ‘work’, targets are neither silenced nor paralysed. I show how strategic actors make use of the resources they are presented, including rhetorical resources, to further their actions. I also emphasise that the same rhetorical resources that close off one avenue of rebuttal, via naming and shaming, may well open another avenue of resistance. While the targeted state is affected, even constrained, it is not ‘entrapped’. The public controversy and the diplomatic rift which followed the Israeli commando raid on an aid flotilla headed to the Gaza Strip in May 2010 shows that international legal framing remains a relevant and significant dimension of the conduct of military operations and of ‘naming and shaming’.

I now turn to a number of alternative explanations, scope conditions, and ideas for further research. First, what if HRW had used a different and less ambiguous, frame?<sup>115</sup> Frames (including legal frames) are diverse and have different degrees and types of ambiguity. A number of scholars have emphasised that in order to have their maximum effects, standards of legitimacy, conventions and frames should be clearly defined, internally consistent, and avoid ambiguity.<sup>116</sup> To some degree, my findings

<sup>111</sup> D. Taub, ‘Terror v. law’, *International Herald Tribune* (8 May 2009), p. 6.

<sup>112</sup> T. Risse and K. Sikkink, ‘The socialization of international human rights norms’, pp. 25–8, 29–31.

<sup>113</sup> *Ibid.*, p. 27.

<sup>114</sup> *Ibid.*, pp. 26–7.

<sup>115</sup> On the strategies used by human rights groups in their appeals, S. Cohen, *States of Denial: Knowing about atrocities and suffering* (Cambridge: Polity Press, 2001).

<sup>116</sup> T. C. Schelling, *The Strategy of Conflict* (Cambridge, Mass.: Harvard University Press, 1960), pp. 257–66; T. C. Schelling, *Arms and Influence* (New Haven: Yale University Press, 1966), pp. 131–41; E. Kier and J. Mercer, ‘Setting Precedents in Anarchy: Military Intervention and Weapons of Mass Destruction’, *International Security*, 20:4 (1996), pp. 93–6; F. Schimmelfennig, ‘The Community Trap’, p. 65; F. Schimmelfennig, ‘Entrapped again: The way to EU membership negotiations with Turkey’, *International Politics*, 46:4 (2009), p. 429. On this debate see also F. Polletta, M. K. Ho, ‘Frames and their Consequences’, in R. E. Goodin and C. Tilly (eds), *The Oxford Handbook of Contextual Political Analysis* (Oxford: Oxford University Press, 2006), pp. 199–201.



confirm this insight: a more clearly defined frame could have imposed greater cost on the IDF and prove more constraining. In this case, framing ambiguity weakened the coercive effects on the behaviour of the target. However, the coercer faces trade-offs in its choice of frames for rhetorical coercion and at times there might be no attractive framing alternative. It could have been possible to HRW to choose, for example, a humanitarian moral frame, not as grounded in international law, and make the case that while the IDF's force employment might not be illegal, it is wrong. This alternative framing might have been less ambiguous but more easily discarded as 'subjective' and potentially 'political' and 'partisan'. One could also note that ambiguity is not unique to international humanitarian law and belong to legal reasoning in general. However, lawyers generally recognise that not all law is ambiguous to the same degree and in the same way, and that these ambiguities evolve over time with the domain covered and the law itself. While it is a debated issue among lawyers, international law, and especially international humanitarian law, used as a frame, tend to be more ambiguous than other legal frames, in the domestic realm for example. As International Lawyer and Judge Sir Hersch Lauterpacht famously noted: 'if international law is at the vanishing point of law, the laws of war are at the vanishing point of international law'.<sup>117</sup>

Moreover, even if HRW's claims are legally contested (and in some cases proven wrong), the public legal framing is sufficient to produce broader political and symbolic effects. For example, the ambiguity of IHL as a frame helps to transform 'civilian victims' into claimants of rights and this new identity could form the basis for further contestation.<sup>118</sup> Use of international humanitarian law as a frame, although subject to interpretation and political contestation, also contributes to shift the focus from private grievance, such as the loss of a family member, or the destruction of one's house, to a violation of international humanitarian law, a more universal concern. The ambiguity of the frame also helps to spread the idea of public accountability in international politics.

Finally, the ambiguity is not only a property of the frame itself but an element of the framing process. By using the notion of *framing* (not just *frame*) ambiguity, I emphasise the process through which interpretations of international humanitarian law develop and clash during the rhetorical coercion process. In sum, framing ambiguity does not conclude the contest, but structures and channels it, which contributes to stabilising and perhaps to institutionalising 'naming and shaming'.<sup>119</sup>

Besides framing ambiguity, what else might explain why these two cases produced the outcomes they did ('discursive quagmire')? A straightforward neorealist argument for Israel's behaviour – distinct from my constructivist realism grounded in classical realism – would emphasise the importance of three material capability elements used as a mean to the end of state survival: the sheer resources endowment of the Israeli state (notably here its administrative and legal capacity), the support of the United States, the world's most powerful country at the time, and the wartime context which brings to the fore a higher level of armed threat. From this neorealist

<sup>117</sup> H. Lauterpacht, 'The Problem of Revision of the Law of War', *British Yearbook of International Law*, 29 (1952), p. 382. See also Louis Henkin, *How Nations Behave. Law and Foreign Policy* (New York: Columbia University Press), 1979.

<sup>118</sup> M. Koskeniemi, 'What Is International Law For?', in M. D. Evans (ed.), *International Law* (Oxford: Oxford University Press, 2006 [orig. pub. 2003]).

<sup>119</sup> I thank an anonymous reviewer for suggesting this formulation.

standpoint, these material factors, rather than the ambiguities of international humanitarian law, blocked naming and shaming's full effects. Neorealist approaches generally see naming and shaming as easy for governments to ignore, especially when they are relatively powerful and find themselves in a wartime context facing direct threats.<sup>120</sup> In the absence of clear-cut economic or security benefits, powerful actors with materially determined preferences have the capacity to reject the frame altogether or to reformulate it in such a way that its substance is profoundly altered. Moreover, since they have a range of instruments and policy options at their disposal, they can shift from one to the other in pursuit of what they see as their interest in ways that are not directly related to naming and shaming.

Yet, for the neorealist account outlined above, it is unclear why a powerful targeted actor would accept the frame used by the comparatively weaker coercer in the first place, least of all in a time of crisis or war. By doing so, the shamed state would risk getting caught in an ongoing claim-counterclaim exchange in which it addresses claims that it finds so unjustified that merely to discuss them is to elevate the status of their interlocutor and even submit to injustice. Moreover, the neorealist account outlined above finds difficult to account for situations in which the targeted state, while rejecting the full-blown policy shift demanded by transnational advocates, does adjust its behaviour to some extent in explicit and public reference to that frame. Not only accepting the frame would seem unnecessary given the alleged prevalence of material interests and preferences but it could prove risky and counter-productive as even modest adjustment would give leverage to the coercer for further pressures. For neorealists what precisely the Israeli government feared is unclear since, in the account above, the shame attempt would have almost no consequence.

My constructivist-realism argument also acknowledges the role of power and threats. However, pointing to broad power- and threat-related preconditions is insufficient to analyse cause-and-effect relationships which are an emergent property of a set of specific interacting conditions. To do so, one has to examine the particular processes of the strategic interaction between actors that has its own logic, twists and turns, and momentum. Power and threats may be a necessary antecedent but analytically unimportant, or at least incomplete, to understand why and how Israeli authorities reacted to naming and shaming the way they did. Hence the need for a constructivist-realist approach that combines a focus on power politics and war with recognition that power and its exercise are social and contingent.<sup>121</sup>

How might these cases involving HRW and the IDF, and the process of rhetorical coercion and 'discursive quagmire', apply to other cases of 'naming and shaming' in situations of alleged rights violations? I do not claim that all situations of rhetorical coercion would necessarily resemble what happened in the case of the HRW-IDF struggle. It is important to specify some scope conditions to the process and outcome ('discursive quagmire') highlighted above.

First, for this type of rhetorical coercion to occur in the first place, the coercer and the target need to share, at least publicly, the same legal and/or moral code.

<sup>120</sup> The argument that countries facing high levels of armed threats will typically resist international human rights pressures also finds support in the political repression literature. See S. Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure* (Philadelphia: University of Pennsylvania Press, 2007).

<sup>121</sup> J. S. Barkin, *Realist Constructivism. Rethinking International Relations Theory* (Cambridge: Cambridge University Press, 2010), pp. 85–8.

When they do not, the contest is likely to take different forms and lead to different outcomes. Instead of accepting a common normative frame, a target might underline the radical difference between their normative understandings; for example, rejecting the imposition of what it calls Western imperialist, values. Second, the alleged perpetrators may also lack the legal and bureaucratic expertise to engage in a systematic public contest with their critics. As a consequence, some targeted states might limit themselves to a factual contest and claim that the coercer simply got its facts wrong and that no violation was actually committed. This suggests that research on the evolving dynamics of ‘naming and shaming’ over time could be promising. As the knowledge and competence for vigilance and oversight become more widespread, it might be the case that knowledge and competence for ‘counter-normative coercion’ such as that practiced by the IDF, especially in the Gaza war (after learning in the Lebanon War), become more available as well. Third, my approach to rhetorical coercion does not imply that ‘naming and shaming’ is only an intellectual exercise limited to framing. Analysts should not underestimate the range of behaviour that may be part of the contestation, like trying to hide the dead bodies (Srebrenica), blaming bad behaviour on irresponsible subordinates (Abu Ghraib) or on the victims, rather than the leaders of the organisation or the procedures. When organisations are involved in reacting to ‘naming and shaming’ pressures, a range of organisational biases can come into play and become part of the process, such as organisations trying to protect their internal structures and procedures in their assessments of what happened and why, faulty reporting from field operators, secrecy, and the normalisation of deviance.<sup>122</sup>

My argument here is not that targeted actors who respond to ‘naming and shaming’ by accepting the frame but contesting its implications do not also use other techniques already identified by scholars working on ‘naming and shaming’. In fact, we might see different combinations of responses to coercive attempts, for example, contesting the frame’s policy implications while also compensating through other forms of repression under less scrutiny. These combinations also constitute a promising research agenda. By better identifying the range and types of responses, alone and in combination, including the combination of frames, scholars can better assess their consequences for the process and for the outcomes. Some frames might easily be combined but not others; for example a targeted actor might find it difficult to sustain publicly that it did not commit the contested action at all and simultaneously that, in fact, it did so in self-defence.

Finally, while I focus specifically on naming and shaming during the Lebanon and Gaza wars, it is important to recognise that these events are embedded in the broader context of the Arab-Israeli conflict. In that context, which includes the question of the occupied territories and the creation of a Palestinian state, a number of Israeli policymakers and public commentators are concerned that the international legitimacy of Israel has eroded over time, which could limit its policymakers’ ability to respond to naming and shaming in wartime. For example, they could find that it is less and less effective to fall back on a mostly technical and legal response which uses the ambiguity of the international humanitarian law frame strategically: their counter-claims may be legally correct, but prove politically ineffective and even costly in the longer term.

<sup>122</sup> S. D. Sagan, *The Limits of Safety. Organizations, Accidents, and Nuclear Weapons* (Princeton: Princeton University Press, 1993), pp. 207–10; D. Vaughan, *The Challenger Launch Decision: Risky Technology, Culture and Deviance at NASA* (Chicago: The University of Chicago Press, 1996), pp. 62–8.