

INTERNATIONAL LAW AND OPERATION 'GUARDIAN OF THE WALLS'

FAQs ABOUT
ISRAEL'S
OPERATION
AGAINST HAMAS
IN GAZA

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THE INTERNATIONAL
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image courtesy of Adiel Levy

FAQs INTERNATIONAL LAW AND OPERATION 'GUARDIAN OF THE WALLS'

Between the 10th and 21st May 2021, Hamas and Palestinian Islamic Jihad (PIJ) terrorists in Gaza launched a devastating wave of terror, firing over 4,000 rockets at civilians in Israel. 13 people were killed, hundreds injured and at least 6 million Israelis, two-thirds of the population, were within firing range of rockets, forced to run to bomb shelter.

Despite Hamas' and PIJ's flagrant violation of international law and Israel's inalienable right to self-defense, Israel faced harsh criticism in the public sphere. Importantly, in the diplomatic realm, Israel also enjoyed widespread support from the international community, including the United States, Canada, many European nations, Australia and other allies.

This brief document is intended to respond to several of the most common criticisms and questions of international law, as they relate to Israel's actions during Operation "Guardian of the Walls".

1. HOW AND WHEN DID THIS OPERATION COMMENCE?

Operation 'Guardian of the Walls' commenced by the Israel Defense Forces (IDF) in response to a sustained period of Palestinian terror, violence, firing of incendiary balloons and mass riots, culminating in Hamas launching 6 rockets at Jerusalem from the Gaza Strip, on 10th May, 2021.

Although the Palestinian leadership and some in the international community have sought to deflect attention from the cause of this conflict by blaming a number of Israeli political actions, such as the situation in Sheikh Jarrah, these were all a pretext for the orchestrated Palestinian wave of terror and incitement, including diverting attention from the Palestinian Authority decision to postpone elections and the internal PA-Hamas tension.

2. WHO IS HAMAS?

Hamas is an Iranian-backed internationally recognized terrorist organization, whose ultimate goal is to annihilate the State of Israel and to establish an Islamic state in its place.

The Hamas Charter – the organization's manifesto – is an antisemitic document that traffics in anti-Jewish conspiracy theories and explicitly calls for the genocide of world Jewry.

Hamas has been internationally recognized as a terrorist organization by the United States, Canada, European Union and a number of other nations.

Israel left Gaza entirely during the 'Disengagement' in 2005. Hamas ultimately seized control of the Gaza Strip from the Palestinian Authority in a violent military coup in 2007 and has brutally controlled the strip ever since, which it continues to use as a platform for launching deadly terror attacks against Israeli civilians, including shootings, suicide bombings, stabbings, rockets attacks, firing of incendiary balloons, use of attack tunnels and seeking to infiltrate the border.

Israel currently maintains a naval blockade of the Gaza Strip in order to prevent weapons smuggling into the territory, which even the United Nations (Palmer Report, 2011) has confirmed is a "legitimate security measure" to prevent weapons from entering Gaza by sea and its implementation complies with the requirements of international law.

Israel allows for regular free entry of humanitarian and civilian goods into Gaza, restricting only those goods that have 'dual use', meaning those that have both civilian and military purposes. It is important to bear in mind that Egypt also controls the border with Gaza, through the Rafah Crossing.

During the course of the current campaign, Hamas was effectively committing a double war crime, by using Palestinian civilians as human shields, while indiscriminately firing rockets at civilians in Israel. This was even confirmed by Hamas co-founder Mahmoud Zahar, in an interview to Sky News (UK) on 24th May, 2021, while also reiterating Hamas policy that Israel 'has no right to exist.'

(Sky News interview: <https://youtu.be/4UFuohi-zDo?t=77>)

3. ISRAEL'S RIGHT TO SELF-DEFENSE UNDER INTERNATIONAL LAW

International law recognizes the inalienable right of states to use force in self-defense, both in conventional and customary international law. Article 51 of the UN Charter also clearly states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations."

Israel discharged this right in a manner fully compliant with international law, including the principles of necessity and proportionality (discussed further below).



4. BREACHES OF INTERNATIONAL LAW BY HAMAS, INCLUDING HARM TO CIVILIANS AND THE USE OF HUMAN SHIELDS

By using Palestinian civilians in Gaza as human shields, while indiscriminately firing at civilians in Israel, Hamas was guilty of a double war crime.

The indiscriminate and deliberate firing of rockets and missiles by Hamas at civilians in Israel, is a flagrant violation of the customary norms of the Law of Armed Conflict, specifically Article 51 of the First Additional Protocol to the Geneva Convention (1949 and 1977). Violations of this prohibition constitute a war crime under customary international law, including the First Additional Protocol to the Geneva Convention (as noted above), as well as the Rome Statute of the International Criminal Court, Articles 8(2)(b)(i) and 8(2)(e)(i).

“By using Palestinian civilians in Gaza as human shields, while indiscriminately firing at civilians in Israel, Hamas was guilty of a double war crime.”

Pursuant to Arts. 48 and 51(7) of the First Additional Protocol to the Geneva Convention, Hamas is also guilty of the following war crimes:

- Using civilians, including women and children, as human shields;
- Using civilian structures, including residential areas, homes, places of worship or business, to store weapons and for the purposes of carrying out terror operations; and
- Failing to distinguish themselves from the civilian population.

By using human shields, Hamas does not automatically gain immunity from an Israeli response, even if that means civilian casualties. Article 51(7) of the 1977 Protocols to the Geneva Convention states:

“The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favor or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.”

Nonetheless, IDF went to great lengths to avoid civilian casualties, including use of precision weapons, aborting legitimate military strikes when there were civilians in proximity and providing numerous warnings in advance of strikes.

5. WERE ISRAEL'S ACTIONS 'PROPORTIONATE'?

In every conflict between Israel and Hamas, including the present operation, there is a recurring charge that, because of the unequal number of casualties, Israel's actions were 'disproportionate'. However, that is a gross misinterpretation of the law, as it relates to 'proportionality.'

The mere fact of a difference in civilian casualties in the course of a military operation, does not necessarily imply that such action was disproportionate. Under the Law of Armed Conflict, the relevant question is whether the amount of military force taken in self-defense was proportionate (or necessary) to achieve the intended goal of the operation.

Israel's explicit goal during this campaign was to stop and deter Hamas and PIJ terror groups from firing rockets at Israeli civilians and population centers, which represented a grave national security threat.

The question must be posed, what would any sovereign nation do, if a rocket was fired on their civilian population by a terrorist enemy sworn to its destruction, let alone over 4,000 rockets in the space of ten days? In responding to these unprovoked attacks, as any nation would, Israel used the absolute amount of force necessary to accomplish its intended military objective.

This principle is also considered part of customary international law, including the First Additional Protocol to the Geneva Conventions of 1977. Article 51(5b) states: "[A]n attack which

may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited."

Luis Moreno-Ocampo, the former Chief Prosecutor at the International Criminal Court, has previously said the following on the law of proportionality (during the course of investigating the 2003 invasion of Iraq):

"Under international humanitarian law and the Rome Statute, the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime. International humanitarian law and the Rome Statute permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur."

The proportionality of operations are also examined by the IDF's Military Advocate General's Office before being carried out, while the IDF seeks to use precision guided weapons and frequently provides warning to civilians ahead of an intended strike.

Civilian deaths are an inevitable and tragic consequence of armed conflict, however it must be borne in mind that whereas Israel employs the use of Iron Dome shield and



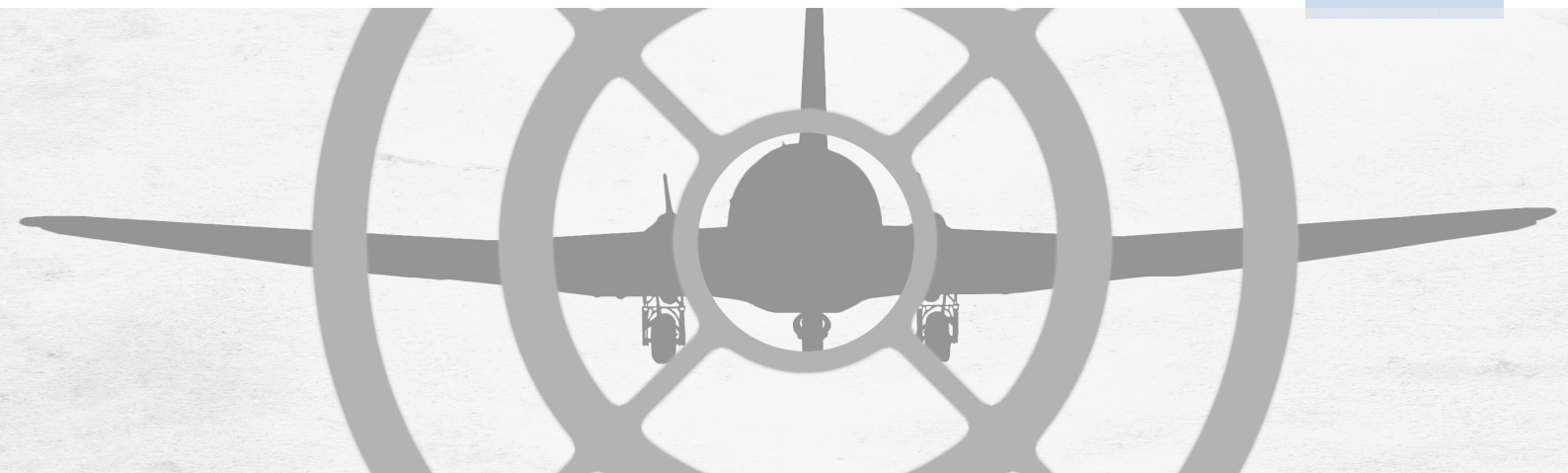
bomb shelters to protect its civilians, Hamas places their weapons in densely populated civilian areas and uses women and children as human shields, which is a flagrant violation of the Laws of Armed Conflict and directly contributes to the vast difference in casualty numbers.

6. WHAT IS A MILITARY TARGET?

Under international law, a target is considered to be a military one if it is used for military purposes. Article 52(2) of the First Protocol to the Geneva Convention refers to – “objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the time, offers a definite military advantage.”

For example, if residential buildings, schools or Mosques are used by Hamas for military purposes, then they are considered legitimate military targets.

This applies also to the Al-Jalaa media building in Gaza that was alleged to have housed Hamas targets, in addition to al-Jazeera and AP media outlets. According to IDF, Hamas used the building to store intelligence material, including electronic warfare capabilities and from which it used to plan and carry out terror operations against Israel.



Former White House national security official Tommy Vietor confirmed it was known that Hamas operated from the building and purposely co-located operations with civilians. While former Associated Press editor Matti Friedman, who has spoken out previously about how the foreign press has been compromised by Hamas in Gaza, likewise confirmed that Hamas did indeed have offices on the premises in question.

[<https://www.businessinsider.com/former-associated-press-editor-suggests-hamas-in-gaza-city-building-2021-5>]

Therefore, this made the Al-Jalaa building a legitimate military target under international law.

According to Michael N. Schmitt, the G. Norman Lieber Distinguished Scholar at the United States Military Academy and Professor of Public International Law at the University of Reading, based on the information available, "the strike complied with the law of armed conflict rules governing attacks, including those affecting the media" and that "the entire building constituted a single military objective, damage to which did not have to factor into the IDF's proportionality calculation."

(<https://lieber.westpoint.edu/legal-protection-media-armed-conflict-gaza/>)

Notwithstanding, the IDF still warned occupants of the building in advance to vacate, as a result of which, there were no casualties.

For more information, please contact our office:

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About the International Legal Forum (ILF):

The ILF is an Israel-based legal network of over 3,000 lawyers and activists in 30 countries, committed to fighting antisemitism, terror and delegitimization of Israel in the international legal arena.