



Israel-Hamas and the Law of Armed Conflict

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As in previous conflicts with Hamas and Hezbollah, Israel's military operations in Gaza face prevalent accusations that they often result in war crimes and that Israel's actions to defend itself against armed attacks are unjustified or unlawful. As a result, it is crucially important to clarify the key principles of the Law of Armed Conflict (LOAC) and the systematic efforts by the Israel Defense Forces (IDF) to comply with the requirements of these laws – even as its adversaries like Hamas systemically violate this law and exploit widespread misunderstandings of LOAC to delegitimize Israel's self-defense measures and generate pressure on Israel to limit or terminate legally justified military action.

Principles of the Law of Armed Conflict (LOAC)

- International law comprises two legal frameworks applicable to use of military force:
 - » *Jus ad bellum* determines when a nation may lawfully resort to the use of military force: the law that dictates when military action is lawful.
 - » *Jus in bello*, commonly referred to as the law of armed conflict (LOAC) or international humanitarian law (IHL), regulates the execution of all military operations during any armed conflict, to include the conduct of hostilities. This law is defined by a number of foundational principles:
 - *Equality of Application*: this means the law applies equally to all parties involved in the armed conflict, even if the party is a non-state organized armed group like Hamas. It also means that *why* each side fights has no impact on the applicability or content of the rules for *how* they fight.
 - *Military necessity*: justifies all measures not otherwise prohibited by international law to bring about the prompt submission of the enemy in the most efficient manner.
 - *Humanity*: prohibits the infliction of suffering that cannot be justified by military necessity.
 - *Distinction*: requires military forces to always distinguish between lawful military objectives (members of the enemy armed group who have not been rendered incapable of fighting, civilians directly participating in hostilities, and any place or object that meets the military objective definition) and all other persons, places, and things. Distinction categorically prohibits *deliberately* directing attacks on any person, place, or thing that does not qualify as a military objective, *even if the effort to inflict death, injury, or destruction fails*. In other words, distinction is an obligation of conduct, not a result.
 - *Proportionality*: Permits launching an attack on a military objective when the attack is anticipated to result in *incidental* (as opposed to deliberate) foreseeable harm to civilians or civilian property, so long as the harm to civilians and civilian property is not assessed as *excessive* in relation to the anticipated concrete and direct military advantage. Notably, while known as the proportionality rule, the rule does not prohibit

attack when there is a close balance, but instead only when the anticipated civilian harm is assessed as excessive.

- *Constant care and precautions*: Whenever military operations have a potentially adverse impact on civilians, forces must take “constant care” to implement all operationally feasible measures to mitigate that risk and reduce civilian suffering. In relation to launching attacks, this requires the implementation of all feasible precautionary measures to mitigate civilian risk. Importantly, this obligation applies at every level of military operations (strategic, operational, and tactical) and to every type of attack decision (whether deliberate or time-sensitive).
- These principles point to several key components of LOAC compliance:
 - » There is no justification to ignore or violate the rules of war based on the asserted justification for fighting the war.
 - » Legal compliance focuses on attack judgments, *not* attack effects. As a result, attack legality must be judged based on the situation that informed the decision to launch the attack, not simply on the result or effects of the attack.
 - An attack may inflict civilian casualties and be lawful, and another attack may inflict no casualties and be unlawful.
 - » Deliberately attacking civilians is the most obvious example of an illegal attack, even if the desired effect of the attack to cause harm to civilians is not achieved.
 - » Indiscriminate attacks are prohibited. This includes attacks employing a weapon that is not directed at a specific military objective, or cannot be directed at a specific military objective, or whose effects cannot be reasonably limited to the intended target or that treats a number of clearly distinct military objectives in a civilian population center as one overall target. An attack anticipated to cause harm to civilians and/or civilian property that is assessed as excessive in comparison to the concrete and direct military advantage is considered indiscriminate.
 - » LOAC requires an attacking commander to take all operationally feasible precautions to mitigate risk to civilians and civilian property inherent in the attack. A precaution is not feasible if it cannot be implemented, or if it will degrade the anticipated military advantage of the attack.
 - » While LOAC clearly prohibits deliberately attacking civilians and civilian property that do not qualify as a military objective, harming civilians or civilian property is not forbidden – it is just forbidden to do so on purpose, or as the result of an indiscriminate attack.
 - » Belligerents must take “constant care” to mitigate the risk to civilians even in the conduct of defensive military operations, which brings with it an accordant obligation to refrain whenever feasible from locating military assets in proximity to civilians or using civilian property to shield military objectives from enemy attack.

Israel’s LOAC Compliance

- There is widespread state practice that recognizes the right of a state to act in self-defense in response to an armed attack by a non-state organized armed group. This is the basis for the widespread international recognition of Israel’s right to take necessary and proportional measures in response to Hamas’ October 7 attack.
 - » When acting in self-defense, a state may use all necessary and proportional measures to restore its national security.

- » Proportionality in this context is "threat dictated": the state must make a good-faith assessment of the extent of military action necessary to reduce the threat and restore national security.
- » Proportionality is not properly assessed with a "tit for tat" analysis, or by simply comparing casualty numbers.
- » Given the gravity of that attack and the ongoing threat to Israel it demonstrates, military action to completely neutralize Hamas' military capabilities is within the permissible scope of national self-defense.
- » That Israel implemented more limited defensive measures in previous self-defense actions against Hamas, such as during the [Gaza conflict](#) in 2014 and 2021, does not dictate the scope of necessary actions in this current conflict. If anything, it indicates the legitimacy of Israel's carefully calibrated invocation of self-defense necessity in response to this ongoing threat.
- The IDF implements a systematic process for adhering to LOAC, beginning with training at all levels of command. The process continues through target assessment and decision-making processes at all levels of command to ensure targeting legality, especially in the employment of air attacks and the use of indirect fires such as artillery.
 - » Moreover, legal review is built into this process at several points, and is similar to that of the United States and other professional militaries. This includes conducting ongoing and conscientious investigations as part of its process to scrutinize any reasonable indication that an attack may have violated LOAC. This process enhances the overall respect for LOAC and indicates a commitment to establish appropriate accountability for LOAC violations.
- In conducting attacks, the IDF systematically implements innovative precautionary measures to attempt to mitigate risk to the civilian population, often at significant operational and tactical cost to itself and therefore beyond those measures that are legally required. Such methods in the current and past Gaza operations have included:
 - » Dropping numerous leaflets, and placing telephone calls and text messages, to warn civilians to leave a defined area of operations in advance of airstrikes.
 - » Using small munitions to deliver a "knock on the roof" to provide further warning of an impending attack.
 - » Dedicating multiple surveillance platforms to a target, often for hours, to ensure civilians evacuated areas of attack, and at times calling off attacks if civilians are still present.
 - » Maximizing use of precision guided munitions (PGM) to mitigate the risk of collateral damage and incidental injury.
 - » Developing and employing munitions to enable target destruction in urban areas with minimal collateral damage.
 - » Emphasizing LOAC obligations to all IDF members at every level of military action.
 - » Integrating military legal advisors into the targeting process and ensuring all commanders have rapid access to military legal advice.

Hamas Violates and Abuses LOAC

- On October 7, Hamas launched an unlawful armed attack against Israel with its multi-pronged air, land, and sea assault against Israel.

- In its operations beginning on October 7, and as with past Gaza conflicts, Hamas also systemically violates the *jus in bello* component of LOAC by:
 - » Murdering individuals it has taken under its control.
 - » Deliberately directing attacks against Israeli civilians and civilian property, and launching indiscriminate attacks against Israel. Notably, the inaccuracy of Hamas' weapons does not mitigate against the unlawfulness of such attacks.
 - » Intentionally and consistently exposing Gazan civilians to avoidable risk – either to intentionally complicate Israeli military operations or to exploit civilian casualties in order to advance false claims of Israeli war crimes. This includes demands that civilians reject IDF calls for their evacuation.
 - » Violating its obligation to take feasible measures to mitigate risk to Gazan civilians by locating rocket launchers, other weapons, command and control facilities, and munitions at sensitive sites and in residential areas. This was often done with no apparent military necessity – in clear violation of LOAC.
 - This violation is constantly demonstrated by Hamas placing its military assets in proximity to civilians. This indicates a deliberate effort to abuse LOAC by exploiting IDF respect for the law, which will result in IDF attack hesitation or cancelation, or in an IDF decision to conduct the attack based on the assessment that the civilian risk is not excessive. Thus, this illicit tactic is a win/win for Hamas: either the target is protected, or the target is attacked, resulting in visceral images of civilian suffering that Hamas leverages in its strategic information campaign.
 - This illegal tactic also exploits widespread public misunderstanding of LOAC, including the assumption that violations are indicated by the effects of an attack and that therefore the side that "dropped the bomb" must be legally responsible for all civilian harm. This assumption erroneously conflates the *cause* of civilian harm with *responsibility* for that harm, and incentivizes the illicit tactics used by Hamas that seek to create and exploit harm to its own civilians.

Enhancing Credible LOAC Assessments

- Armed forces engaged in hostilities against capable and adaptive enemies face enormous challenges, but the legitimacy of those operations should be based on credible assessments of commitment to and compliance with LOAC.
- This challenge is exacerbated when confronting an enemy that systemically violates the law and seeks to exploit the opponent's respect for the law for tactical and strategic advantage.
- Enhancing compliance with the law requires that such tactics are not incentivized by perpetuating widespread misunderstanding of the law and by carefully and credibly assessing not only the cause of civilian harm, but also which side of the conflict bears true responsibility for that harm.
- “Effects-based condemnations” – the assumption that the harm to civilians resulting from an attack demonstrates indifference for civilians and violation of the law by the attacking force – are inconsistent with the LOAC attack legality framework and have the perverse effect of incentivizing enemy tactics that deliberately seek to exacerbate, as opposed to mitigate, civilian risk.
- The ultimate legal compliance question is clear: which side of the conflict is making good-faith efforts to mitigate civilian risk, and which side is making efforts to exacerbate that risk?

Additional JINSA Resources on LOAC

- Reports:
 - » *Gaza Conflict 2021 Assessment: Observations and Lessons*, [October 28, 2021](#).
 - » *Defending the Fence: Legal and Operational Challenges in Hamas-Israel Clashes, 2018-19*, [March 15, 2019](#).
 - » *Israel's Next Northern War: Operational and Legal Challenges*, [October 29, 2018](#).
 - » *2014 Gaza War Assessment: Observations, Implications, and Recommendations*, [March 1, 2015](#).
- Webinars/Events:
 - » "Lessons from Past Gaza Conflicts," [October 12, 2023](#).
 - » "Gaza Lessons Learned," [May 24, 2021](#).
 - » "C-SPAN: 2014 Conflict in Gaza," [March 9, 2015](#).
- Op-eds:
 - » "LOAC and Legitimacy: When Combat Becomes a Support Effort to Information," [January 18, 2022](#).
 - » "America's Lesson from Gaza: Prepare for Disinformation War," [November 15, 2021](#).
 - » "Learn from Gaza, Prepare for Hezbollah," [May 24, 2021](#).
 - » "The Illegitimate Instinct to Delegitimize Israel," [May 19, 2021](#).
 - » "The Flawed Human Rights Watch Report on Gaza," [June 26, 2019](#).
 - » "Israel's Next Northern War: Operational and Legal Challenges," [November 3, 2018](#).
 - » "It's Not Just Israel's Challenge," [September 6, 2016](#).