



FOREIGN AFFAIRS

Israel's Laws of War

How IDF Doctrine Shapes the Campaign Against Hamas in Gaza

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As Israel begins the first stages of Operation Swords of Iron in response to Hamas's October 7 terrorist attacks, many questions have been raised about the moral and legal aspects of the war. In Gaza, units of the Israel Defense Forces will confront tens of thousands of heavily armed Hamas fighters deeply embedded in a large noncombatant population. Given this highly challenging setting, a core concern is how the IDF can effectively protect Israel, its citizens, and Israel's own soldiers while adhering to moral principles, military ethical norms, and international law.

Some have argued that Israel is not adhering to international laws of war. They assert that, in seeking to destroy Hamas's military and political infrastructure, Israeli forces have disregarded the civilian populations in Gaza and are causing excessive collateral damage. In such a difficult war environment, some collateral damage is, unfortunately, unavoidable. But it is

crucial to understand that Israel has a legal, moral, and ethical framework for approaching questions about conduct in war. This approach derives from basic principles of Israeli law, namely the obligation to respect and protect human dignity, international laws of war, and the IDF Code of Ethics, which has guided the conduct of Israeli commanders over the past three decades.

By setting down distinct parameters within which Israeli forces must operate—after the war as well as during it—Israeli war doctrine has significant implications for the operation against Hamas. Indeed, contrary to what some international commentators have claimed, Israel's military response to the attacks so far has followed these standards, and the IDF has taken multiple steps to minimize collateral damage. Although the following should not be taken as the formal position of the Israeli government in the current crisis, it is an attempt to shed light on the major issues and the general way that Israel views them.

A DIFFERENT KIND OF CONFLICT

On October 7, 2023, the last day of the annual Jewish high holidays, hundreds of Hamas fighters, along with members of Palestinian Islamic Jihad, a smaller terrorist organization, invaded Israel, attacked more than 20 villages and towns, as well as IDF military bases, and committed horrendous atrocities. More than 1,500 noncombatants were brutally massacred, and some 220 Israelis—even babies and sick and elderly people—were abducted and taken hostage in Gaza. In addition, Hamas launched thousands of rockets at Israel, including at densely populated civilian areas in Tel Aviv and Jerusalem. There is not a shred of doubt that these blatant acts of aggression fit the legal criteria of war crimes. Given the stated goal of destroying Israel, set forth in Hamas's charter, it should come as no surprise that some observers have described the attacks as having genocidal intent.

In view of demonstrations in some Western cities and statements in the Western media calling for an immediate cease-fire, the nature of Hamas needs to be made clear. Hamas is a Palestinian militia that governs the Gaza Strip, between Israel and Egypt. Much of the West, including Australia, Canada, Japan, the United Kingdom, the United States, and the European Union, have designated Hamas as a terrorist organization. This designation is based on the methods Hamas employs in pursuit of its goals. Some may regard those goals as justified, and others as immoral and unjustifiable, but those assessments are not relevant to the terrorist designation. Only the group's methods count.

In the days since the attacks, many have searched for historical parallels to try to make sense of the fathomless violence. Because Israel has witnessed no comparable act of terrorism in its 75-year history, some have looked back further in time or have tried to set aside the terrorist or anti-Semitic aspects of the attacks, viewing them instead as an extreme case of military aggression. Hence, commentators have variously invoked the anti-Jewish pogroms of eastern Europe more than a century ago, the Holocaust, and the surprise attack that began the 1973 Yom Kippur War.

Such parallels, however, do not adequately fit the present situation. The pogroms and the Holocaust took place at a time when Jews did not have their own nation-state, and the Yom Kippur War was launched by a state military rather than by a terrorist militia. The distinction between combatants and noncombatants, which can be easily maintained when a national military such as Egypt fights against Israel, is not maintained when a terrorist militia tries to use urban populations as a human shield. To understand the specific values and ethical norms that apply in Israeli actions against Hamas, then, these historical comparisons must be discarded.

The opening phase of Operation Swords of Iron is now unfolding. Israel's war cabinet, which now consists of some government ministers and several opposition leaders, including some with significant military experience, has set and made public the broad goals of the war. The government has not offered many details about the kinds of force to be used, except for the high number of reservists—well over 350,000—who have been ordered to serve in a variety of military units. Nonetheless, it is possible to assess Israel's overall approach by examining the general principles that will govern its conduct.

A DUTY TO FIGHT

The state of Israel, including its courts and military commanders, has, over the course of its history, based military conduct on several kinds of values and ensuing norms. Some values stem from Israel's status as a democratic country and as the nation-state of the Jewish people. The values of the IDF are expressed in its code of ethics. And some values come from international law, as interpreted by the Israeli legal system, led by the Supreme Court of Israel. Although these values derive from different moral, ethical, and legal sources, they combine to form two important general principles in the Israeli approach to combat operations.

The first principle is that any action taken on behalf of the Israeli state, including by its military and security forces, must be compatible with the universal obligation to respect and protect human dignity. A simple example is the requirement to treat captured enemy combatants humanely in accordance with the Geneva Conventions. This principle thus provides a moral, ethical, and legal constraint on military conduct.

The second principle, which can be called the self-defense principle, has two parts. First, it encompasses the right to self-defense if the state or any of its

inhabitants is subject to armed attack; second, it provides that the state has a duty to defend its citizens when they are under direct attack.

Indeed, Israel and other countries have interpreted the duty to defend citizens enshrined in the second part of this principle to hold not only for current or imminent attacks, but also for potential future attacks, even if they are not expected soon. The time for a state to create means of defense is not when its citizens already face danger, but much earlier—an imperative generally recognized by governments everywhere. In turn, how this defense is carried out when the danger is neither present nor imminent depends on the nature of the future danger.

The Hamas attacks have triggered both parts of the self-defense principle. Israel's military operation in Gaza stems from what it views as the state's right to take necessary action to defend itself and its inhabitants, and its duty to protect the latter against not only the present attack but also continuing threats from Hamas and Palestinian Islamic Jihad. U.S. Secretary of State Antony Blinken underscored this point during his visit to Tel Aviv on October 16, when he said, "Israel has the right and indeed the duty to defend its people from Hamas and other terrorists and to prevent future attacks."

Thus, the answer to the "why" question of Israel's military response is now clear: to satisfy the self-defense principle, Israel needs to go beyond the reestablishment of security on its border with Gaza and eliminate the possibility of any future such attacks. But the "how" question—how Israeli forces will carry out this task—is more difficult. Israel's war cabinet has instructed the IDF to destroy the military and governmental abilities of Hamas in Gaza. But what does that mean in practice?

PREVENTIVE ACTION

To understand the major goal the IDF has set for Operation Swords of Iron according to Israeli principles of war, it is necessary to distinguish between two kinds of self-defense. Examples of the first kind are familiar since we encounter them in ordinary, everyday circumstances. Say, for example, you are crossing a park, and someone approaches you and tries to snatch your wallet. You forcefully resist the person, who then runs away. In this case, the structure of the encounter is clear: the would-be thief created a problem, you used some force, and the problem was solved.

A military attack, however, often takes on a different cast. The use of defensive force may stop the attack, thus ending the immediate danger, but the problem has not been fully solved. The unit that launched the attack may have pulled back, but it can regroup and launch another one later. Under such a continuing threat, self-defense must have a wider scope. In the event of a terrorist attack sponsored by a de facto governing authority, as was the case with Hamas's murderous rampage, the attacked state may need to broaden that scope further.

The Israeli war cabinet has instructed the IDF to dismantle both the military and the governmental capabilities of Hamas. In taking on such a goal, Israel is performing self-defense in a broader sense. The problem Israel faces now is continued exposure to a terrorist threat. Hamas's attack on Israel and its citizens clearly shows the gravity of this danger: it will persist as long as Hamas's organization in Gaza, run by Yahya Sinwar, is extant. Thus, Israel has concluded that the only viable solution to the problem is the complete elimination of Hamas's political and military wings.

The spokesperson for the IDF has explained the general goals of this eradication operation. In its attack on Israel, Hamas killed more than 1,500 Israeli citizens, injured more than 5,400, and abducted some 220 of them,

including numerous foreign nationals; every building or site that Hamas used in those attacks, or in support of those attacks, must be destroyed. In other words, Hamas facilities that ostensibly serve other governmental functions in Gaza may be assumed to provide infrastructure for planning and launching future attacks. Effectively solving the Hamas problem therefore includes the eradication of its political offices as well.

The IDF spokesperson has also stated that every member of Hamas who was involved in planning or carrying out the October 7 attack must be killed. Israel's Supreme Court assessed the legality of targeted killing operations in a 2006 decision, which in turn was based on international law considerations, as well as the ethical doctrine developed within the framework of the IDF. (I am one of the doctrine's co-authors.) The court found targeted killing to be lawful under certain strict conditions, including considerations of proportionality. In the case of the October 7 attacks, however, more than 1,000 perpetrators managed to escape back into Gaza, and an Israeli operation aimed at eliminating all of them, or even many of them, in targeted killing missions is impractical, given the strict requirement to avoid or minimize collateral damage set by the Israeli Supreme Court, the IDF Code of Ethics, and the basic Israeli principle to protect human dignity.

Given this reality, the IDF's declared intent to kill all perpetrators means in practice that it will pursue the leading figures, because they continue to pose grave danger to Israel and its citizens. All other perpetrators will be designated as threats, as well, based on their affiliation with Hamas or Palestinian Islamic Jihad and their participation in the attacks. They will not enjoy a life of tranquility. But Israel may need to address the danger they pose to its citizens later, not necessarily during the present war. Strictly speaking, the goal of the present operation is to destroy Hamas's ability to

launch military attacks against Israel and its ability to control Gaza; the goal is not to kill every member of Hamas.

SELF DEFENSE, NOT REVENGE

Israel's operation in Gaza should not be depicted as, or justified on the grounds of, revenge. No principle of "an eye for an eye" should guide Israel's pursuit of Hamas and its members. The major principle at issue, according to Israel's own conception of war conduct, is self-defense. In particular, the civilian population of Gaza should not be subject to acts of revenge, which are clearly immoral and, as a form of collective punishment, also illegal.

Nonetheless, a large-scale operation to dismantle the terrorist organization that controls Gaza is bound to involve numerous interactions with inhabitants who are not involved in the hostilities. Such interactions must be guided by three principles, the first of which also underlies the second and third. The first is that the IDF must continually try to minimize collateral damage. Obviously, this imperative applies to the Israeli population as well, but in the present operation, its primary application concerns the issue of collateral damage in the Gaza Strip, and the obligation to protect the life, health, and property of noncombatants who live there under Hamas control. Here, two further principles come into play: the principle of distinction and the principle of proportionality. Both are well established as components of historical "just war" doctrine (*jus ad bellum*) and, since the twentieth century, have been inscribed in international law, as well.

One way the IDF has long sought to minimize collateral harm is by warning civilians of imminent military attacks. In previous operations in Gaza, for example, the IDF alerted inhabitants to evacuate areas by employing "knocking on the roof" warnings shortly before it attacked: with

this method and others, including phone calls, inhabitants would be given multiple warnings of an attack, the more the better. But under the present circumstances, this approach is no longer possible, given the scale of the operation and the number of Hamas targets involved.

Instead, on October 13, the IDF issued a general order to noncombatant inhabitants who live in the northern part of Gaza to move to the southern part, since the next stage of hostilities will take place in the north. Such a large-scale evacuation is required because Hamas has embedded itself and its operations in residential areas, and it would be impossible for the IDF to act effectively, systematically, and forcefully against Hamas without harming noncombatants there.

In this situation, the general evacuation order can serve the purpose of the roof-knocking warnings. Given the magnitude of Hamas's October 7 attacks and Israel's clear announcement that it is compelled to make a devastating military response, it is reasonable to assume that all inhabitants of Gaza are aware of the situation. In addition to Israeli and international media, Palestinian radio and TV stations have extensively covered these events. Often the IDF breaks into their programs to warn the population. Residents thus understand the need to evacuate. Nonetheless, the IDF has followed the evacuation order with other forms of warning.

Moreover, the IDF's guidelines require that its forces must distinguish between terrorist combatants and noncombatants who have not yet evacuated. Israeli units must continue to try to prevent harm to the latter. By and large, the presence of such noncombatants should be known to the IDF and, to the extent possible, should be taken into account when it plans and carries out military activity.

THE DAMAGE THRESHOLD

Which brings us to the principle of proportionality. Since it is Hamas policy to blur all distinctions between its members and the general population of Gaza, an Israeli attack on a Hamas military target often risks causing collateral damage, even when extensive precautions are taken. The international press and Western commentators often assume that if any noncombatants are killed in such operations, then excessive force has been used. That assumption is flawed.

Of course, all noncombatant casualties are regrettable, and every effort should be made to minimize them. According to the principle of proportionality as elaborated in just war doctrine, however, the crucial issue is whether the value of the military advantage gained is greater than the cost of the expected collateral damage. If it is, then the act in question can be justified. This holds important implications for the present war against Hamas. Israel must seek to minimize collateral damage as much as is reasonably possible. But according to Israel's own self-defense principle, given the kind of threat that Hamas poses—and given Israel's resulting need to eliminate the political and military infrastructure of Hamas and Palestinian Islamic Jihad—it is necessary to establish a clear limit for collateral damage. How should this determination be made?

Such proportionality considerations can be complicated, but the IDF has used a specific process for making them for the past three decades. Finding the correct balance involves deep and intricate moral, ethical, and legal analysis. To grasp the underlying principles that determine what level of collateral damage is acceptable, it is useful to first consider extreme cases. Take, for example, an enemy site that is being used to prepare an imminent attack that would kill hundreds of people. Destroying the site would likely cause the death of a few noncombatants who are not involved in terror activities, but any reasonable analysis would conclude that the destruction of

the site is warranted. For an example on the other extreme, consider a situation in which defense forces are targeting a facility containing enemy rockets that are not being used in a current attack but could be used in the future. Let's say a pilot approaches the site to destroy it but sees a bus, full of children, in the vicinity. Since there is no urgent need to destroy the magazine and the mission can be carried out later, it is clear that the strike should be called off.

To acquire a fuller understanding of how proportionality is calculated, however, it is necessary to move from these clear-cut cases at each extreme toward the center, where enlarging the military advantage of a given action may also require greater collateral damage. There is no quantitative formula for making such determinations. But qualitative considerations are critical, including the extent and immediacy of the threat that is being acted against and the orders of magnitude of potential casualties if that threat is carried out, as well as the expected collateral damage if the threat is neutralized.

It is also important to stress that the IDF does not base its determination of the legitimacy of a given action solely on proportionality considerations. According to Israeli principles of conduct, the IDF is obliged to minimize collateral damage, even if causing such damage is permissible under the principle of proportionality. Hence, the IDF aborts a large percentage of its sorties because it determines that it can cause less collateral damage by carrying out the mission under different circumstances.

Finally, bringing troops back home is an advantage that should never be disregarded or undervalued in proportionality considerations. The principle of upholding human dignity must also apply to people in military uniform. According to Israeli doctrine, part of the military advantage of a given

action must include the extent to which that action minimizes IDF casualties.

RULES AFTER ENGAGEMENT

Much discussion has centered on how Israel should treat the population of Gaza in relation to the major goal of eradicating Hamas. Immediately following the attack, the Israeli government announced that it was cutting off electricity, water, food, and fuel to Gaza. It is true that the enemy can use fuel and electricity for both civil and military purposes, but cutting off food and water is wrong, because it is incompatible with established ethical principles.

Adding to the complexity of the operation is the issue of the more than 200 people that Hamas and Palestinian Islamic Jihad abducted and took to Gaza. This problem demands further analysis of its own, but it is worth underscoring the prime importance of securing the release of these hostages, both on ethical and political-military grounds.

Another key aspect of the conduct of Israel's war against Hamas has been largely neglected. When Hamas is destroyed and Palestinian Islamic Jihad is eliminated, what then?

In its advanced versions, just war doctrine includes norms and principles governing conduct not only during war but also once the fighting ends, under what is known as *jus post bellum*. According to the latter principles, reoccupation or annexation of Gaza by Israel is utterly unacceptable. Instead, what needs to take place is restoring security in the areas of Israel adjacent to Gaza; and then establishing peaceful coexistence between Israelis and Palestinians based on some agreement with respect to temporary borders. Any policies that involve population transfer, long-term occupation, or

bringing the territory directly under Israeli rule would be incompatible with either of these goals.

To build a new peace in Gaza, creative alternatives must be sought, perhaps even some first steps toward a solution of the wider Israeli-Palestinian conflict. In the near term, the only plausible option would be the introduction of some multinational military and governmental authority, international or regional, which could be created by a UN Security Council resolution and that would act in cooperation with the Palestinian Authority and in coordination with Israel.

Whatever arrangements are made, they should not be taken as an ultimate solution to the Israeli-Palestinian conflict. The spirit of the two-state solution will need to be revived and allowed to prevail, through the introduction and implementation of confidence-building measures over a longer timeline. But the full elimination of the terrorist threat from Hamas and affiliated groups could do much to set this process in motion. Policies of pursuing lasting peace, all the more so policies in the spirit of the two-state solution, must rest on the practical assumption that the dangers to Israel and its citizens, as nurtured and practiced by terrorist organizations, have been permanently eliminated.

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