

The Surge Against Hamas

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Israeli population centers in southern Israel have been the target of over 4,000 rockets, as well as thousands of mortar shells, fired by Hamas and other organizations since 2001. Rocket attacks increased by 500 percent after Israel withdrew completely from the Gaza Strip in August 2005. During an informal six-month lull, some 215 rockets were launched at Israel.

The charge that Israel uses disproportionate force keeps resurfacing whenever it has to defend its citizens from non-state terrorist organizations and the rocket attacks they perpetrate. From a purely legal perspective, Israel's current military actions in Gaza are on solid ground. According to international law, Israel is not required to calibrate its use of force precisely according to the size and range of the weaponry used against it. ()

Luis Moreno-Ocampo, the Chief Prosecutor of the International Criminal Court, explained that international humanitarian law and the Rome Statute of the International Criminal Court "permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur." The attack becomes a war crime when it is directed against civilians (which is precisely what Hamas does). ()

Israeli Population Centers Under Rocket Attack

There are good reasons why initial criticism of Israel has been muted. After all, Israeli population centers in southern Israel have been the target of over 4,000 rockets, as well as thousands of mortar shells, fired by Hamas and other organizations since 2001. The majority of those attacks were launched after Israel withdrew completely from the Gaza Strip in August 2005. ()

Moreover, lately Hamas has been extending the range of its striking capability even further with new rockets supplied by Iran. () There had been no formal cease-fire between Israel and Hamas, but only an informal six-month tahadiya (lull), during which 215 rockets were launched at Israel. On December 21, Hamas unilaterally announced that the tahadiya had ended.

Critical Voices

On December 27, 2008, UN Secretary General Ban Ki-moon's spokesmen issued a statement saying that while the Secretary-General recognized "Israel's security concerns regarding the continued firing of rockets from Gaza," he reiterated "Israel's obligation to uphold international humanitarian and human rights law." The statement specifically noted that he "condemns excessive use of force leading to the killing and injuring of civilians."

A day later, Navi Pillay, the UN High Commissioner for Human Rights "strongly condemned Israel's disproportionate use of force." French President Nicolas Sarkozy, who holds the rotating presidency of the European Union, also condemned Israel's "disproportionate use of force," while demanding an end to rocket attacks on Israel. Brazil also joined this chorus, criticizing Israel's "disproportionate response." ()

Proportionality and International Law: The Protection of Innocent Civilians

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According to international law, Israel is not required to calibrate its use of force precisely according to the size and range of the weaponry used against it (Israel is not expected to make Kassam rockets and lob them back into Gaza).

When international legal experts use the term "disproportionate use of force," they have a very precise meaning in mind. As the President of the International Court of Justice (ICJ) in The Hague, Rosalyn Higgins, has noted, proportionality "cannot be in relation to any specific prior injury; it has to be in relation to the overall legitimate objective of ending the aggression." In other words, if a state like Israel is facing aggression, then proportionality addresses whether force was specifically used by Israel to bring an end to the armed attack against it. By implication, force becomes excessive if it is employed for another purpose, like causing unnecessary harm to civilians. ()

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