

“PROPORTIONALITY” IN INTERNATIONAL LAW OF ARMED CONFLICT

1. Some people think that the principle of “*proportionality*” during armed conflict refers to the number of people which each side kills. So if Hamas murdered 20 Israeli civilians, Israel would be acting “disproportionately” if, in response, it killed more than 20 Palestinians. **This is nonsense.**
2. No state or combatant may militarily **target any innocent civilians** to achieve *any* objective, no matter how worthy and no matter how few or many it killed. This is precisely **what Hamas does**, not Israel.
3. On the other hand, international law **does permit** States to use force **in self-defence**, provided (a) it is **directed at a military target**, (b) any incidental **harm to civilians and civilian property is minimised** as far as possible in the course of achieving the military aim, and (c) any **harm to civilians and civilian property is not excessive** in relation to the military advantage expected to be gained. *This* is what is meant by **proportionality** in military conflict.
4. Whether these criteria are satisfied must be assessed by reference to the judgment of a **reasonable military commander** in the circumstances at the time, with the information then known to him. It is not a hind-sight exercise.
5. The first obligation of any government is to **protect its citizens**. After the mass and indiscriminate slaughter on 7 October 2023 launched by a terrorist organisation from an adjacent territory, Israel is entitled, in **self-defence**, to enter that territory to dismantle that organisation to prevent it from ever repeating its murderous aims. This includes killing or capturing its members and destroying its capacity to manufacture, acquire or deploy weapons of war or destruction, its facilities, structures and buildings, wherever they may be found. That is Israel’s legitimate military objective. Such objective would have the additional advantage of reducing the suffering Gaza’s residents who have had to endure rule by a terrorist organisation which seized power in 2004 and has never since held an election.
6. US President Biden¹ and former US President Obama² have both stated unequivocally that it is not just the Israel’s right but its *duty* to eliminate and dismantle Hamas. In the words of US Secretary of State Blinken: “*Israel has the right – indeed it has the obligation – to defend itself against these attacks from Hamas, and to try to do what it can to make sure that this never happens again.*”³
7. The problem Israel faces, is that Hamas embeds itself and its armaments amongst the civilians in Gaza, using them as intended human shields. Given this strategy (a war crime in itself) any lawful operation to eliminate Hamas will inevitably cause death and injuries to Gaza civilians and damage to civilian property. No-one has suggested any alternative other than that Israel’s people must just continue to suffer such attacks and submit to never-ending terror.
8. One way of reducing civilian casualties would be to warn and encourage civilians to move away from areas of intended military action. Israel has rightly advised Gaza civilians to move out of areas of intended ground operations in the Gaza Strip. If it hadn’t done so, then it would be blamed for failing to minimise civilian casualties.

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- ¹ Hamas must be “eliminated entirely”: <https://www.reuters.com/world/middle-east/conflict-middle-east-could-escalate-us-national-security-adviser-warns-2023-10-15/>
- ² Tweet on X, 9 Oct 2023: “All Americans should be horrified and outraged by the brazen terrorist attacks on Israel and the slaughter of innocent civilians. We grieve for those who died, pray for the safe return of those who’ve been held hostage, and stand squarely alongside our ally, Israel, *as it dismantles Hamas.....*”
- ³ <https://www.state.gov/secretary-antony-j-blinken-remarks-to-the-press-12/#:~:text=Israel%20has%20the%20right%20%E2%80%93%20indeed,that%20this%20never%20happens%20again.>