

United Nations Watch Written Statement, 30th Special Session

Hamas Rocket Fire is a Double War Crime

On May 10, 2021, Hamas launched an unprovoked military attack on Israel, firing seven rockets at Jerusalem. During the next 11 days the terrorist organization fired over 4,000 rockets targeting Israeli civilians, killing 13, injuring 300, terrorizing millions and causing millions of dollars in damage. It did so from deep within the densely populated urban areas of Gaza, using its own civilians as human shields. From beginning to end, Hamas is solely responsible for civilian death and injury on both sides.

Hamas aggression triggered Israel's right to self-defense

Article 51 of the UN Charter entitles Israel, as a UN member state, to exercise its “inherent right of...self-defense.” As the party attacked, Israel had the right to do what was necessary to restore its safety, including using force “reasonably necessary to discourage future armed attacks.”¹ In the words of military law experts Geoffrey Corn and Rachel Vanlandingham:

International law does not restrict Israel to a mere tit-for-tat response; rather, it is the *nature* of the threat that dictates what self-defense actions are necessary and proportional in any given scenario...²

Western governments overwhelmingly supported Israel's right to self-defense.³

Hamas commits double war crimes

By targeting Israeli civilians and using its own civilians as human shields, Hamas rocket fire constitutes a double war crime. “Hamas, not only *deliberately* attacks Israeli civilians, but intentionally exposes its own civilians to the deadly consequences of the hostilities it provokes itself. In truth, it is Hamas—and only Hamas—that is illegally attacking civilians.”⁴ Human rights groups have condemned Hamas rockets as double war crimes.⁵

Hamas' indiscriminate rocket-fire killed 13 Israelis, injured hundreds, terrorized millions and caused millions of dollars in property damage.⁶ Hamas rockets that fell short in Gaza also killed at least 16 Gaza civilians, including eight children.⁷ In addition to targeting residences, Hamas

¹ *Law of War Manual*, US DEPARTMENT OF DEFENSE (2015), P. 41 (discussing *jus ad bellum* proportionality), <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190>.

² Geoffrey S. Corn and Rachel E. Vanlandingham, *The Illegitimate Instinct to Delegitimize Israel*, NEWSWEEK (May 19, 2021), <https://www.newsweek.com/illegitimate-instinct-delegitimize-israel-opinion-1592640>.

³ Benjamin Haddad, *How Europe Became Pro-Israel*, FOREIGN POLICY (May 20, 2021), <https://foreignpolicy.com/2021/05/20/how-europe-became-pro-israel/>.

⁴ *The Illegitimate Instinct to Delegitimize Israel*, *supra* note 2.

⁵ See, e.g., *Gaza: Palestinian Rockets Unlawfully Targeted Israeli Civilians*, HRW (Dec. 24, 2012), <https://www.hrw.org/news/2012/12/24/gaza-palestinian-rockets-unlawfully-targeted-israeli-civilians>.

⁶ *Property damage from rockets – double Protective Edge*, WALLA MONEY (May 23, 2021), https://finance.walla.co.il/item/3437214?utm_campaign=socialbutton&utm_content=s&utm_medium=sharebutton&utm_source=s&utm_term=social.

⁷ *Nine children killed in Gaza Strip as violence escalates*, DCI-PALESTINE (May 11, 2021), https://www.dci-palestine.org/nine_children_killed_in_gaza_strip_as_violence_escalates; *Serious Escalation in Gaza Strip*, PCHR

rockets targeted a hospital, meters from its emergency room,⁸ schools,⁹ and aid convoys. On May 18 and 19, Hamas mortars attacked two separate humanitarian aid convoys entering Gaza through the Kerem Shalom crossing, injuring an Israeli soldier and disrupting delivery.¹⁰ Hamas also turned its own civilians into human shields, operating from densely populated urban areas—within or near residences, schools, hospitals and mosques, putting lives at risk.¹¹

Thus, Hamas violated numerous International Humanitarian Law (IHL) rules, as codified in Additional Protocol I to the Geneva Conventions,¹² including:

1. Article 48: Parties must “distinguish between the civilian population and combatants...”
2. Article 51(4): Prohibiting indiscriminate attacks such as where the “method or means of combat cannot be directed at a specific military objective.”
3. Article 51(7): Civilians should not be used “to render certain points or areas immune from military operations, in particular attempts to shield military objectives...”¹³
4. Article 52: “Attacks shall be limited strictly to military objectives.”
5. Article 58: Parties should “avoid locating military objectives within or near densely populated areas.”

Israel complies with IHL

In contrast to Hamas’s cynical exploitation of civilians, the Israel Defense Forces (IDF) takes great care—even beyond what is required by law—to avoid civilian casualties. IDF air operations are controlled by “a cadre of very senior decision-makers with extensive experience, training, and robust support from intelligence analysts, weaponeering experts and legal

(May 11, 2021), <https://www.pchrgaza.org/en/serious-escalation-in-gaza-strip-26-palestinians-killed-including-9-children-and-woman-and-her-child-with-disability-and-75-others-injured-including-22-children-and-7-women/>.

⁸ Rossella Tercatin, ‘We are in a war zone,’ says head of Israeli hospital targeted by rockets, JERUSALEM POST (May 20, 2021), <https://www.jpost.com/arab-israeli-conflict/we-are-in-a-war-zone-says-head-of-israeli-hospital-targeted-by-rockets-668673>.

⁹ Ilan Ben Zion and Laurie Kellman, *Rockets from Gaza rain havoc on Israeli cities in latest war*, AP (May 18, 2021), <https://apnews.com/article/israel-middle-east-israel-palestinian-conflict-e57afb90dbc60ceda6c6cfa6888a4c5b>.

¹⁰ *Gaza strikes shipments of humanitarian aid, Kerem Shalom crossing Closed*, JERUSALEM POST (May 19, 2021), <https://www.jpost.com/israel-news/gaza-strikes-shipments-of-humanitarian-aid-kerem-shalom-crossing-closed-668540>.

¹¹ Shani Rozanes, *Israeli official: Hamas ‘stealing the future of Palestinian children,’* DEUTSCHE WELLE (May 20, 2021), <https://www.dw.com/en/israeli-official-hamas-stealing-the-future-of-palestinian-children/a-57601186>;

Hamas Turned a Civilian Structure in Gaza Into a Rocket Launch Site Ready to Fire Rockets at Israel, IDF (May 19, 2021), <https://www.idf.il/en/minisites/operation-guardian-of-the-walls/hamas-turned-a-civilian-structure-in-gaza-into-a-rocket-launch-site/>;

Michael N. Schmitt and John J. Merriam, *The Tyranny of Context: Israeli Targeting Practices in Legal Perspective*, U. PA. J. INT’L L. (2015), pp. 119-123 (discussing Hamas tactics of embedding military assets among civilians), <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1905&context=jil>.

¹² Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), <https://ihl-databases.icrc.org/ihl/INTRO/470>.

¹³ For a detailed discussion on prohibition against human shields, see Geoffrey S. Corn, *Beyond Human Shielding: Civilian Risk Exploitation and Indirect Civilian Targeting*, 96 INT’L L. STUD. 118, (Stockton Center for Int’l Law 2020).

advisors.”¹⁴ The IDF’s International Law Department directly supervises all aerial attacks, from choice of target to closely advising planners and commanders as the strike is executed.¹⁵

The IDF launched hundreds of precision strikes against 1,500 Hamas military targets, including rocket stores, rocket launchers, underground terror tunnels, militants, and operational facilities.¹⁶ In many of these strikes there were no Palestinian casualties. While final casualty numbers are not available and Hamas does not release specific data on militant deaths, the Hamas Health Ministry said 248 Gazans were killed. Israel said it killed 200 militants.¹⁷ According to Col. Richard Kemp, these numbers indicate that the IDF was “even more successful in minimizing civilian casualties during this campaign than in previous engagements in Gaza.”¹⁸

Many have criticized Israel’s bombing of certain civilian structures, most prominently the Al Jalaa media tower, which housed Associated Press and Al Jazeera offices. However, civilian objects lose their protected status if used for military purposes.¹⁹ Israel defended its strikes on these grounds and, in the case of the Al Jalaa building, shared data on Hamas operations in that building with the US.²⁰ Furthermore, as noted above, all targets chosen by the IDF must be authorized in advance as lawful military targets by IDF lawyers.

While the knee-jerk response of many is to accuse Israel of “disproportionate” attacks, this mischaracterizes the IHL proportionality rule. An attack is disproportionate only if the “expected civilian casualties will be excessive in relation to the anticipated military advantage gained.”²¹ As IHL expert Prof. Laurie Blank has explained, this is a prospective analysis of what a reasonable commander would have decided based on the information available at the time. It is not an “effects-based” test that looks at casualty numbers after the fact.²² Moreover, IHL accepts the lawfulness of some incidental civilian casualties.²³

¹⁴ Michael N. Schmitt and John J. Merriam, *The Tyranny of Context: Israeli Targeting Practices in Legal Perspective*, U. PA. J. INT’L L. (2015), p. 81,

<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1905&context=jil>.

¹⁵ *Id.* at 75-81.

¹⁶ @IDF, TWITTER (May 22, 2021, 9:27 PM), <https://twitter.com/IDF/status/1396170789305659402>.

¹⁷ Joseph Krauss, *EXPLAINER: What was the outcome of the latest Gaza war?* AP (May 21, 2021), <https://apnews.com/article/what-was-the-outcome-of-israel-gaza-war-4f94e80a9d6f53ecd5353db83ed27526>.

¹⁸ Richard Kemp, *Trumpets and Tank Engines: A Turning Point in Gaza?* GATESTONE INSTITUTE (May 16, 2021), <https://richard-kemp.com/trumpets-and-tank-engines-a-turning-point-in-gaza/>.

¹⁹ Protocol I Article 52, <https://ihl-databases.icrc.org/ihl/WebART/470-750067>; Michael N. Schmitt, *Legal Protection of the Media in Armed Conflict: Gaza*, LIEBER INSTITUTE (May 18, 2021),

<https://lieber.westpoint.edu/legal-protection-media-armed-conflict-gaza/>; @DavidAFrench, TWITTER (May 15, 2021, 7:06 PM), <https://twitter.com/DavidAFrench/status/1393598767199367168>.

²⁰ Lahav Harkov, *Israel showed US ‘smoking gun’ on Hamas in AP office tower, officials say*, JERUSALEM POST (May 17, 2021), <https://www.jpost.com/israel-news/israel-showed-us-smoking-gun-on-hamas-in-ap-office-tower-officials-say-668303>.

²¹ Laurie R. Blank, *Asymmetries and proportionalities*, THE HILL (July 29, 2014), <https://thehill.com/blogs/pundits-blog/international/213546-asymmetries-and-proportionalities>.

²² *Id.*

²³ Protocol I, Article 57, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=50FB5579FB098FAAC12563CD0051DD7C>. See also *Id.*

During this conflict, Israel took many concrete steps to minimize civilian harm, including (1) choosing an aerial campaign rather than a ground invasion, and using extremely precise missiles capable of taking out a military target in the middle of a civilian area with minimal collateral damage; (2) providing advanced warnings (phone calls, text messages, roof-knocking,²⁴ etc.) to civilians in or near the target giving them sufficient time to evacuate—a tactic documented by, among others, UNRWA Gaza head Mathias Schmale²⁵ and the Al Jalaa media building owner;²⁶ and (3) aborting strikes when civilians were detected in the vicinity, as reflected in a voice recording of IDF command control calling off a strikes at the last minute when children were detected nearby.²⁷

United Nations Watch urges the Council to unequivocally condemn Hamas's unprovoked aggression and its indiscriminate rocket-fire as a double war crime and to affirm Israel's right to self-defense under international law.

²⁴ Yaakov Katz, *How the IDF invented 'Roof Knocking', the tactic that saves lives*, JERUSALEM POST (March 25, 2021), <https://www.jpost.com/arab-israeli-conflict/the-story-of-idfs-innovative-tactic-to-avoid-civilian-casualties-in-gaza-663170>.

²⁵ @matzschmale, TWITTER (May 11, 2021, 8:02 PM), <https://twitter.com/matzschmale/status/1392163323295240192>.

²⁶ *Frantic phone call with Israeli army moments before media tower bombed*, YOUTUBE (May 15, 2021), <https://www.youtube.com/watch?v=QgtextTT0-I>.

²⁷ Tobias Siegal, *IDF pilot suspects children in vicinity, calls off airstrike – watch*, JERUSALEM POST (May 17, 2021), <https://www.jpost.com/israel-news/idf-pilot-suspects-children-in-vicinity-calls-off-airstrike-watch-668343>.