

Shlomo Brody

A Proportionate Response

Informed by Jewish law, Israel has sought to minimize civilian casualties in Gaza.

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In the summer of 1982, Israel was strategically bombarding a besieged Beirut to uproot the Palestinian Liberation Organization (PLO), which had long terrorized the Jewish state from its northern border. During the siege, Shlomo Goren, Israel's chief rabbi and a supporter of the war, dropped an ethical bombshell: Jewish law, he declared, required Israel to allow combatants and noncombatants to flee Beirut. The great medieval scholar Maimonides had codified a Talmudic opinion that the "fourth side" of a besieged city must remain open as an evacuation corridor. On this view, doing so gives combatants an incentive to flee; otherwise, they might fight to the finish, at great cost to both sides. Further, it is important to show mercy during war, even to the enemy nation, since all humans are created in the image of God.

Goren's public ruling created a controversy. Who lets terrorists escape from the claws of the siege? Yet the Israeli army agreed with Goren's declaration and left open two major escape routes from Beirut. The Israel Defense Forces (IDF) had no interest in the PLO terrorists fighting to the last man. They certainly did not desire to harm noncombatants. An estimated 100,000 people fled the city. Goren would deem this gesture a prime example of how Judaism can teach the world how to fight wars ethically. Indeed, the philosopher Michael Walzer cited adherence to the

Maimonidean principle as a key element in removing an attacker's culpability for noncombatant casualties in urban warfare.

I've been thinking about Goren's position since Hamas's brutal October 7 attack. Israelis are united in believing that the country must remove the threat of Hamas from its border. Yet they have not opposed their government's attempts to forewarn Gazan civilians of impending attacks, or to create evacuation corridors from neighborhoods in which Hamas embeds its fighters (itself a war crime). Israelis want to minimize noncombatant casualties. The Jewish state's enemies target its citizens, but Israel will not respond in kind.

These humanitarian gestures have not won Israel any fans. According to a recent survey by the Palestinian Center for Policy and Survey Research, 72 percent of Palestinians supported Hamas's actions on October 7. Ninety-five percent think Israel has committed war crimes, while only 10 percent believe that Hamas has committed such crimes. **Millions** of Europeans and Americans recently have marched against Israeli "brutality," following the lead of many NGOs and some progressive Jewish groups who have accused Israel of disproportionate civilian casualties.

Most egregiously, the International Court of Justice began legal proceedings against Israel for attempted genocide. The Hague characterized Israel's forewarning civilians as a method of "herding" Gazans into concentrated areas to be slaughtered. Many of Israel's allies have rebuked the charge; the U.S. deemed it meritless, Britain called it "completely unjustified and wrong," and Germany correctly warned of "political instrumentalization." Indeed, misusing a court meant to punish the most heinous of war crimes undermines the court's ability to carry out that vital mission.

Many noncombatants have died in Gaza to date. Hamas, not Israel, bears responsibility for this tragedy. Its fighters hide in underground tunnels below human shields. Israel's actions inevitably will cause extensive civilian casualties, but under the circumstances, those casualties are not excessive to the legitimate military advantage Israel stands to gain, which is the real meaning of the often-misunderstood principle of proportionality.

To put Israel's actions in context, the aggregate numbers are useful. Gazan health officials, who report to Hamas, estimated in mid-January that 25,000 Gazan civilians have died from war-related causes since October 7. The IDF asserted at about the same time that it had killed 9,000 Hamas fighters. Taking these numbers at face value, Israel's response to Hamas has yielded roughly a 1.8:1 noncombatant-to-combatant fatality ratio. This rate is significantly **lower** than that of other asymmetric battles, such as the 2016 Battle of Mosul, in which Iraq and allied forces defeated the forces of the Islamic State. In fact, according to the UN, the average rate for wars is usually nine noncombatants killed for every one combatant. These facts speak to an ethical accomplishment: the fourth-side-open principle has saved many lives. They also highlight Israel's relative caution in its response to Hamas, which its critics refuse to acknowledge.

The abuse of the ICJ demonstrates why proponents of international law were misguided in considering it a cure-all for the world's woes. One advocate for international humanitarian law, Hirsch Lauterpacht, visited Jerusalem in 1950, urging Israel to support such global laws: "I have thought it fit that this call should come, at this time, from Jerusalem, the city in which Isaiah proclaimed the message of eternal peace." But behind the law's **Genocide Convention**, which would later be turned against Israel, was a fellow Jew, Raphael Lemkin. Like Lauterpacht, Lemkin had lost much of his family in the Holocaust and subsequently served on the prosecuting

team of the Nuremberg trials. When the Genocide Convention became international law 1951, Lemkin told a group from the American Jewish Congress: “This law means no more extermination, no more mass killings, no more concentration camps, no more sterilizations, no more breaking up of families.” As one of his biographers noted, Lemkin held a “liberal faith” in universal, international law. The convention, backed by world opinion, would, he felt, provide effective sanctions to prevent another genocide.

In subsequent decades, the convention accomplished nothing to prevent the killing of millions of Soviet dissidents, Cambodians, Kurds, Tutsis, Darfuris, and many others. Today, it is being manipulated to launch a new type of blood libel against the Jewish state. International law, it turns out, was a false messiah.

Despite the continued vitriol against Israel, both in 1982 and 2024, I do not regret the IDF’s forewarning of Gazans to minimize civilian casualties while defeating a vicious enemy. This is an ethical imperative, even if our enemies won’t acknowledge our own humanity. The Torah provides justification for warfare, while imposing restraints. As Goren taught, being created in the divine image imposes moral responsibilities.

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