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Israel Is Committing War Crimes

Hamas's violations are no justification for Israel's actions.

By [GEORGE E. BISHARAT](#)

Israel's current assault on the Gaza Strip cannot be justified by self-defense. Rather, it involves serious violations of international law, including war crimes. Senior Israeli political and military leaders may bear personal liability for their offenses, and they could be prosecuted by an international tribunal, or by nations practicing universal jurisdiction over grave international crimes. Hamas fighters have also violated the laws of warfare, but their misdeeds do not justify Israel's acts.

The United Nations charter preserved the customary right of a state to retaliate against an "armed attack" from another state. The right has evolved to cover nonstate actors operating beyond the borders of the state claiming self-defense, and arguably would apply to Hamas. However, an armed attack involves serious violations of the peace. Minor border skirmishes are common, and if all were considered armed attacks, states could easily exploit them -- as surrounding facts are often murky and unverifiable -- to launch wars of aggression. That is exactly what Israel seems to be currently attempting.

Israel had not suffered an "armed attack" immediately prior to its bombardment of the Gaza Strip. Since firing the first Kassam rocket into Israel in 2002, Hamas and other Palestinian groups have loosed thousands of rockets and mortar shells into Israel, causing about two dozen Israeli deaths and widespread fear. As indiscriminate attacks on civilians, these were war crimes. During roughly the same period, Israeli forces killed about 2,700 Palestinians in Gaza by targeted killings, aerial bombings, in raids, etc., according to the Israeli human rights group B'Tselem.

But on June 19, 2008, Hamas and Israel commenced a six-month truce. Neither side complied perfectly. Israel refused to substantially ease the suffocating siege of Gaza imposed in June 2007. Hamas permitted sporadic rocket fire -- typically after Israel killed or seized Hamas members in the West Bank, where the truce did not apply. Either one or no Israelis were killed (reports differ) by rockets in the half year leading up to the current attack.

Israel then broke the truce on Nov. 4, raiding the Gaza Strip and killing a Palestinian. Hamas retaliated with rocket fire; Israel then killed five more

Palestinians. In the following days, Hamas continued rocket fire -- yet still no Israelis died. Israel cannot claim self-defense against this escalation, because it was provoked by Israel's own violation.

An armed attack that is not justified by self-defense is a war of aggression. Under the Nuremberg Principles affirmed by U.N. Resolution 95, aggression is a crime against peace.

Israel has also failed to adequately discriminate between military and nonmilitary targets. Israel's American-made F-16s and Apache helicopters have destroyed mosques, the education and justice ministries, a university, prisons, courts and police stations. These institutions were part of Gaza's civilian infrastructure. And when nonmilitary institutions are targeted, civilians die. Many killed in the last week were young police recruits with no military roles. Civilian employees in the Hamas-led government deserve the protections of international law like all others. Hamas's ideology -- which employees may or may not share -- is abhorrent, but civilized nations do not kill people merely for what they think.

Deliberate attacks on civilians that lack strict military necessity are war crimes. Israel's current violations of international law extend a long pattern of abuse of the rights of Gaza Palestinians. Eighty percent of Gaza's 1.5 million residents are Palestinian refugees who were forced from their homes or fled in fear of Jewish terrorist attacks in 1948. For 60 years, Israel has denied the internationally recognized rights of Palestinian refugees to return to their homes -- because they are not Jews.

Although Israel withdrew its settlers and soldiers from Gaza in 2005, it continues to tightly regulate Gaza's coast, airspace and borders. Thus, Israel remains an occupying power with a legal duty to protect Gaza's civilian population. But Israel's 18-month siege of the Gaza Strip preceding the current crisis violated this obligation egregiously. It brought economic activity to a near standstill, left children hungry and malnourished, and denied Palestinian students opportunities to study abroad.

Israel should be held accountable for its crimes, and the U.S. should stop abetting it with unconditional military and diplomatic support.

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