

Disregarding Military Necessity To Accuse Israel of War Crimes



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Peter Berkowitz

When challenged to teach the whole Torah on one foot, the Jewish sage Hillel replied, “What is hateful to you, do not do to others. The rest is interpretation, go and study.” Similarly, one could teach the whole of the international laws of war standing on one foot: “Balance military necessity and humanitarian responsibility. The rest is interpretation, go and study.”

Particularly concerning Israel, prominent journalists, professors, diplomats, jurists, and international organizations – to say nothing of numerous ignorant students on America’s elite campuses – disregard the balancing test central to the international laws of war. Typically, they exhibit a reflexive hostility to Israel’s exercise of its right of self-defense and an unflinching faith in international administrative and judicial intervention to solve the Israeli-Palestinian conflict. As a rights-protecting democracy whose military operates around the world, the United States has a vital interest in countering this weaponization of international law to impair sovereign nation-states’ right of self-defense.

While perhaps well versed in human-rights law, many – including the most vocal and influential – who are quick to condemn Israel’s use of force as criminal tend to care much less about military necessity and know little about military history and strategy. In the extreme, they treat humanitarian responsibility as the sole consideration in determining the lawfulness of military action. Routinely, they issue judgments concerning Israel’s armed conflicts that demonstrate unfamiliarity with basic matters – threats, battlefield configurations, combatants’ rules of engagement, tactics, weapons, and logistics – on which turn a reasonable determination of military necessity.

In fighting the jihadists who seek its destruction, Israel faces a gross asymmetry. On the one hand, the Israel Defense Forces (IDF) embrace the laws of war, teach them throughout the ranks, and seek to honor them in battle. In addition, Israel possesses an energetic judiciary that can adjudicate war-crimes allegations. On the other hand, Israel’s jihadist adversaries make a mockery of the laws of war. They attack Israel’s civilians and use their own civilians as human shields while lacking judicial systems that address war-crimes allegations. Rare is the accuser of Israel who takes these scandalous asymmetries into account.

Despite international efforts to criminalize Israel’s exercise of its right of self-defense, the Jewish state has racked up remarkable battlefield achievements in the 14 months since Iran-backed Hamas perpetrated a massacre in southern Israel. Many experts solemnly warned that Hamas’ extensive tunnel system in Gaza and decades of intertwining its military facilities

and operations with civilian infrastructure would prove insurmountable obstacles to an effective Israeli counterattack. Nevertheless, by July 2024, Israel accomplished its legitimate goal of destroying Hamas' capacity to wage war from and govern in Gaza. The collateral damage to Palestinian noncombatants and civilian infrastructure was tragic, and around 100 Israeli hostages remain captive in nightmare conditions there.

Since July, Israel has turned the tide of the larger seven-front war – of which Gaza is one theater – waged by Iran and its proxies against the Jewish state. Israel eliminated leaders of Hamas and Lebanon's Iran-backed Hezbollah. It took out of commission thousands of Hezbollah jihadists and decimated Hezbollah's rocket and missile arsenals. It destroyed much of Iran's air defenses and severely damaged Tehran's ballistic-missile production capabilities. By greatly diminishing Hezbollah, Iran's most powerful and prized proxy, Israel contributed to the stunning recent downfall of the Assad family's 54-year dictatorship over Syria. After Bashar al-Assad fled, Israel substantially destroyed Syria's air force, air defenses, navy, weapons arsenals and factories, and more. And with Sunni Islamists now in control, Syria has ceased to serve as a conduit of arms from Shiite Iran to Shiite Hezbollah.

Notwithstanding those game-changing accomplishments, Israel still faces daunting challenges. Jerusalem has greatly weakened but has not extinguished Iran's "ring of fire," which Tehran built over several decades to encircle Israel with jihadist proxies and exhaust it. Iran remains very close to producing nuclear weapons. And in the arena of international organizations and international public opinion, Israel's adversaries continue to abuse law as a weapon of war against it.

In the weeks and months following Hamas' Oct. 7 massacre, Israel faced vile charges of war crimes and genocide. For example, in late October 2023, Sylvia Yakoub, a foreign service officer in the State Department's Bureau of Near Eastern Affairs, asserted on X that President Biden was "complicit in genocide" – the most heinous of crimes, which, according to the UN Convention on Genocide Prevention, involves actions "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" – for supporting Israel. The Jewish state, she asserted without evidence, "is indiscriminately attacking innocent Gazans." In early January 2024, the International Court of Justice conducted hearings on South Africa's charge that Israel was committing genocide against Palestinians in Gaza. At the end of January, the court declined to hold that Israel was guilty of genocide but asserted that "at least some of the acts and omissions alleged by South Africa to have been committed by Israel in Gaza appear to be capable of falling within the provisions of the (Genocide) Convention." In November, the International Criminal Court issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant for war crimes and crimes against humanity.

In none of these cases did Israel's accusers obtain access to the IDF's rules of engagement, which are crucial to a valid assessment of the lawfulness of Israel's military operations. In none of these cases did Israel's accusers take seriously the tremendous challenges that the

IDF confronted in defending itself against enemies that hide behind civilians; build military positions in, under, and around homes, schools, hospitals, mosques, and UN facilities; and intentionally make their own civilians victims of war to win sympathy abroad and sully Israel's reputation. In none of these cases did Israel's accusers consider that by converting civilian areas into battlefields, Hamas and Hezbollah acquired presumptive moral and legal responsibility for the ensuing bloodshed among noncombatants and damage to private property and public structures and facilities.

Consequently, it was dismaying in late September 2024 to see Michael Walzer take to the New York Times to join those who disregard military necessity to find Israel guilty of war crimes. An eminent scholar of political theory and a frequent contributor to public debate, Walzer is the author of the classic "Just and Unjust Wars." He has acquired renown as a man of the left who combines principled argument with a pragmatic temperament and who grasps the complexities of human affairs and the harsh realities of war.

Yet in "[Israel's Pager Bombs Have No Place in a Just War](#)," Walzer contended that Israel's detonation from a distance in mid-September of thousands of Hezbollah operatives' pagers and, the next day, its activating of hundreds of exploding walkie-talkies were "very likely war crimes – terrorist attacks by a state that has consistently condemned terrorist attacks on its own citizens." Israel's attacks on Hezbollah operatives, Walzer maintained, did not respect "the distinction between combatants and civilians." That's because Israel detonated the communications devices "when the operatives were not operating," but rather "were at home with their families, sitting in cafes, shopping in food markets – among civilians who were randomly killed and injured."

Respectfully but firmly in "[Reply to Michael Walzer on Israel's Pager Attack and Just War Theory](#)" my friends Alexander Jakobson and Azar Gat exposed Walzer's failure to take into account the distinctive circumstances in which Hezbollah compelled Israel to act. Those circumstances are crucial to a proper assessment of the military necessities Israel faced in achieving its legitimate military goals while respecting its humanitarian responsibilities.

Jakobson and Gat – the former is a Hebrew University of Jerusalem professor of classics, and the latter is a Tel Aviv University professor of political science – emphasized that Israel's pager attack "was, as a matter of fact, one of the most 'targeted' that a state can possibly launch against a terrorist or guerilla force operating amongst a civilian population." Moreover, it "was clearly aimed at actual enemy combatants, with far less risk of 'collateral damage' and indeed inflicting much less actual damage than most such operations." The only people in Lebanon using the outdated pagers, observed Jakobson and Gat, were Hezbollah operatives, of whom thousands were wounded and approximately a dozen killed by the operation. Only a few civilian casualties were reported and no appreciable damage to civilian infrastructure was inflicted.

Contrary to Walzer's condemnation, Israel deserves admiration. Since the law of armed conflict aims to minimize civilian casualties within the boundaries of military necessity, Israel should be lauded both for the planning, technological wizardry, and execution of the pager attacks and for the civilian lives it saved and the civilian infrastructure it spared.

Journalists, professors, diplomats, jurists, and international organizations who charge Israel with war crimes routinely neglect the study of military affairs. They lack knowledge of strategy, tactics, weapons, battlefields, logistics, and intelligence gathering in general, and in particular of Israel's rules of engagement and of Israel's adversaries' monstrous conduct. Therefore, Israel's accusers are frequently unqualified to answer the key question posed by the international laws of war: Does the action in question reasonably balance military necessity and humanitarian responsibility?

Until those who charge Israel with war crimes study war, their judgments about the lawfulness of Israel's military operations will continue to reflect reckless moralizing at best and rank antisemitism at worst.

Peter Berkowitz is the Tad and Dianne Taube senior fellow at the Hoover Institution, Stanford University. From 2019 to 2021, he served as director of the Policy Planning Staff at the U.S. State Department. His writings are posted at [PeterBerkowitz.com](https://peterberkowitz.com) and he can be followed on X [@BerkowitzPeter](https://twitter.com/BerkowitzPeter).