Proportionality and Disproportionality: A Guide to Arguments about Gaza

A ceasefire between Israel and Hamas seems imminent, although how long it will last is anyone’s guess. One thing is fairly certain: even as the guns fall silent the charges and counter-charges of violations of international law will continue. Already the airwaves are full of talk that Israel’s "disproportionate" response is a flagrant violation of international law. The Palestinian Authority has claimed, in addition, that Israel’s actions constitute "aggression against the Palestinian people," and a "crime against humanity." [See CNN’s Jim Clancy's interview with the Palestinian Authority’s Ambassador to the United Nations, Ryan Mansour, January 3, 2009.] In this climate, it might be wise to take a deep breath and consider international law not as a propaganda tool but as a guide to reasoned behavior. Here is what such an approach reveals:

1. In international law, the concepts of proportionality and necessity are intertwined. If the action is not necessary for a legitimate military objective (security against armed attack), then it is inherently disproportionate. Was Israel’s response to more than a thousand rocket attacks by Hamas, which were bound to continue upon Hamas’ refusal to renew the ceasefire with Israel, a legitimate military objective?

2. The fundamental aim of international humanitarian law is to draw a distinction between combatants and non-combatants. In its authoritative ruling, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996), the International Court of Justice held that: "states must never make civilians the object of attack and must consequently, never use weapons that are incapable of distinguishing between civilian and military targets." Moreover, it prohibited employment of weapons for "uselessly aggravating their [civilian] suffering."

Applying these principles, did Hamas needlessly cause large scale civilian suffering? Did Israel needlessly cause such suffering?

Clearly, Hamas’ attacks intentionally drew no distinction between combatants and non-combatants. Indeed, Hamas deliberately targeted Israeli civilians. By various accounts, Hamas also deliberately placed and fired those weapons from schools and public areas, thus endangering Palestinian lives.
Accordingly, the use of such weapons by Hamas was a war crime. It is immaterial whether Hamas is a state or non-state: either can be guilty of war crimes. Nor, of course, is it any defense to the firing of those weapons to contend that they were undertaken in response to Israel's economic "boycott" of Gaza. First, there is no international law requiring one state to open up its borders for commerce with another state or entity. Secondly, by Hamas' own admission, it is in a state of war with Israel and economic boycotts are the least offensive measure one can take in a state of war.

With regard to Israel, were it demonstrated that particular Israeli air strikes "uselessly" aggravated Palestinian civilian suffering, and that the commanding officers knew or should have known this, they would be subject to prosecution for war crimes. But the particular Israeli should not be confused with the general. It is irresponsible to speak of "aggression" in the context of self defense against rocket attacks, or to contend that such a response is a "crime against humanity."

3. International law requires that peaceful means must be exhausted before resort to force. Assuming, although highly questionable, that Hamas merely sought an end to Israel's occupation of the West Bank rather than Israel's destruction; might Israel not have avoided Hamas' termination of the ceasefire if Israel had eased up on its territorial demands in order to resolve Israeli-Palestinian differences? But neither Israel, nor the Palestinian Authority, was willing to make important concessions. Moreover, all serious observers knew that a massive Israeli strike would inevitably follow the continuation of rocket attacks. Thus, even looking at Hamas' actions in the most charitable light, peace is not achieved through the barrel of a gun or the plume of a fired missile.

4. Finally, international law does not require the least destructive military response, only the response least destructive to civilians. As the war came, Israel was left with the daunting responsibility of protecting its own citizens while avoiding useless Palestinian suffering. Could this have been accomplished by a less destructive alternative to Israel's bombing in the middle of Gaza - i.e. by cutting of Gaza's access to weapons in the south of Gaza by making that border impenetrable? This is a question of tactics and means and until the smoke of fire clears we will never know the answer as to whether the building of large underground barriers (in Egypt with Egypt's permission) was a viable alternative. Regardless, it would be incumbent upon anyone arguing that Israeli military and political commanders knew of viable alternatives (short of surrender) to stopping the rocket attacks to demonstrate that, in fact, such alternatives existed.

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General. It is irresponsible to speak of “aggression” in the context of self-defense against rocket attacks, weapons to contend that they were undertaken in response to Israel’s economic “boycott” of Gaza. First, vacuum. It is supported ideologically and militarily, if not directed, by the mullahs who rule Iran. They have aim as not worthy of being taken seriously. But those who would dismiss Hamas’ stated objectives do take care, and do unto others...

Avoid the embarrassment of Ex-presidents, Secretarys of State and Defense Secretaries being sent to the Hague. I do not know what Allan Gerson’s credentials are (his Excellent article. Geneva convention to take care of the welfare of the civilian population.

My curiosity is tweaked by the nature of the censorship which is taking place from this post. Is it the author who is jealously guarding his specious verbage?
Gaza: Lessons We Should Have Learned
The horrors that are unfolding in Gaza are but a tragic replay of past confrontations.

Arab-Israeli Rage
More than anything, it seems that the Arab world needs to produce it's version of Martin Luther King or Mahatma Gandhi that can smartly and gracefully lead their people to a dignified future.

Hamas and the Death of a Better Future
To me, Gaza is personal. As an Israeli infantry officer, I served in Gaza before, during, and after the 2005 Disengagement.

In Gaza, A Doctor's Voice Tells of Shaking Houses, Breaking Windows
Four days after Israeli air attacks against the Gaza Strip began, hospitals are already overwhelmed by the influx of wounded patients.

Al Jazeera English Beats Israel's Ban on Reporters in Gaza with Exclusive Coverage
Some may call it propaganda but I call it hardcore reporting. If you are not watching Al Jazeera English's coverage of the War on Gaza, you are missing much, if not, most of the story.

Why Aren't More Americans Dancing To Israel's Tune?
The surprising trend in American opinion on Gaza may be because the same pundits who are cheering Israel's assault once sold the occupation of Iraq, and with a nearly identical set of arguments.

A Minnesota College Newspaper Editor on Israel-Hamas Conflict, from Tel Aviv
There are 6 sets of parents in America right now who might be wishing that their kids weren't college newspaper editors.

Israel as Mini-Me
We are both settler states -- the Puriitans, who escaped oppression in the Old World only to mete out oppression in the New, unfolded their Zionist project in the 17th century with their "city built upon a hill" as the New Jerusalem.

Maybe Hamas is Not so Stupid
Judged as a piece of political theater, Hamas has succeeded in presenting Israel as the golem on the block.

Israel: Attacks on Gaza will Likely Backfire
If you're a civilian living in Gaza and an Israeli missile strikes your home killing your loved ones what are you to do? . Chances are you're going to take up arms and attack anyone and everyone you feel is responsible for the death of your family.

Gaza: The War On Children
Israel has accused Hamas of intentionally attacking from civilian-populated areas, driving up casualties among non-combatants to provoke anger against Israel. But do children have to pay the price?

The Future of Civilization
No war, no military action, no act of self-defense or revenge has a legitimacy that exempts the perpetrators from responsibility for the consequences they create.

What Was Israel Supposed to Do?
Every day now, I hear someone saying, "What was Israel supposed to do? Hamas keeps firing rockets into their country." So, here is a quick list of the things they were supposed to do.

Jews are Soul-Searching About Madoff – What About Gaza?
The future of Judaism and the moral standing of the US Jewish community are being threatened. It is happening in Gaza. And unfortunately there is far too little handwringing about it in the Jewish leadership.

Did Israel Use Disproportionate Force?
The tide of public opinion seems to invariably side with the underdog, regardless of who's to blame. Hence, Israel now finds itself in the awkward yet familiar position of defending its actions.

More Birth Pangs in the Middle East?
Israel finds itself in a similar position the United States found itself in Vietnam: The more it flexes its military muscle the politically weaker it becomes vis-à-vis a determined, largely civilian enemy.

Israel's Extensive PR Campaign
Last Friday, at the height of the attacks, Israeli Defense Minister Ehud Barak announced without a hint of irony: "We are peace seekers."

What Was Hamas Thinking? Understanding the Events in Gaza
So what are Hamas's strategic imperatives? Hamas still behaves like a traditional guerrilla or terrorist group – such groups are interested in relative, not absolute, victory.
general. It is irresponsible to speak of "aggression" in the context of self defense against rocket attacks, Threat or Use of Nuclear Weapons (1996), the International Court of Justice held that: "states must never the rush to shelters. In this context, an Israeli military response to Hamas' decision to let the rockets rain They deserve to live in peace

I ask anyone one here one question, what country in this world would put up with a band of thugs launching over 3,000 rockets into it's country with out some kind of

So people under an illegal occupation don't have any rights? As far as I'm concerned, once a country embarks on an ILLEGAL occupation the people being occupied

My curiosity is tweeked by the nature of the censorship which is taking place from this post. Is it the author who is jealously guarding his specious verbage?

What's Next on Gaza/Israel and Why Americans Should Care
In international law, the concepts of proportionality and necessity are intertwined.

What Was Hamas Thinking? Understanding the Events in Gaza

From the civilian deaths in Gaza will spring more hatred and terrorism. Yet no

governments do more to support Palestinians trapped in Gaza.

Mitchell Bard is Wrong On Israel

From the civilian deaths in Gaza will spring more hatred and terrorism. Yet no

governments do more to support Palestinians trapped in Gaza.

Is it in the interest of humanity that we Americans engage in the charade that

the Israeli government is an autonomous actor in this matter?

Fanaticism and Contempt
Once the master of revolutionary war, Israel cannot seem to grasp the
essential nature of asymmetrical warfare.

IDF Photos of Hamas Targets in Gaza Before Strike
Israel Defense Forces released aerial photos of the Hamas facilities targeted by fighter pilots on Saturday's Operation Cast Lead. The red outline indicates the Hamas facilities targeted.

America is Primarily at Fault for the Conflict in Gaza

The Bush administration demanded – against the advice of nearly every expert in the field and the Israeli government – that the Palestinians hold elections. They did. Hamas won.

Bomb A Ghetto, Raise A Cheer – The Video
On January 11, an estimated 10,000 people rallied in front of the Israeli consulate in New York in support of Israel's attack on Gaza. The event was a festive affair that began and ended with singing and joyous dancing.

Gaza on YouTube: Film at 11!
In lieu of actual reporting, all you have to do is log on to the Israel Defense Forces' YouTube Channel and you can see images of Israel pummeling Gaza, and sit in on "the first ever" Twitter press conference.

NY Times Responds Weakly Today to Israel's 'Incursion' – As Shells Kill Dozens at U.N. School
It takes until paragraph #8 for the Times, to mention that, by the way, Israel "must" allow foreign journalists access to Gaza, especially since its highest court so ordered.

Gazans in Peril
The human tragedy that has befallen Gaza's Palestinians -- Hamas supporters or not -- warrants every American to take cognizance because of its consequences for a durable Middle East peace.

Hold Your Fire: Children and Civilians In Gaza
If the killing of unarmed civilians by terrorist groups is wrong, Israel's killing of unarmed Palestinian civilians and our defense of Israel's conduct cannot be right.

War Diary from Sderot
Not in my name and not for me did you go into this war. The bloodbath in Gaza is not in my name nor for my security. Behind this accursed leadership of Hamas live human beings.

Overwhelming Force Is the Only Way to Fight Terrorists
The destruction of Hamas benefits the Palestinians far more than the Israelis. It is they that must live under the cruelty of an organization that terrorizes its citizens even more than its enemies.

Israel's Invasion Inspires One-Sided Commentary in U.S. Media
The invasion, to no one's surprise, did begin today -- so any further criticism will now come too late. But as in the past, U.S. media coverage and commentary has overwhelmingly backed Israeli actions.

After Years in Exile, My Grandfather Returns to Gaza
My family had been trying to speak with my grandfather since Saturday, after Israel began its onslaught on Gaza. But we haven't managed to reach him.

Gaza and the Obama Effect -- Ending the War
It might be pushing the envelope to call Obama the peacemaker here, but it's hard to deny that his impending entrance to the world stage has an effect.

Killing the Messenger: Targeting the Press in Gaza
As is with the current situation with Gaza, when Israel is performing air strikes, everyone is vulnerable -- militants, civilians, and journalists alike.

Obama's Silence
As January 20 approaches, Obama will have to make a lonely decision - to remember his 2007 words about Palestinian suffering and his campaign pledge to talk unconditionally with adversaries.

How Propaganda Hijacked Israeli Strategy in Gaza
While Israel's explicit goal is to cease all attacks on southern Israel, senior IDF and intelligence officials have privately signaled that this is unrealistic, even with a ground invasion.

Jordanian MPs Burn Israeli Flag
Nationalist MPs shared together in a clear act of national consensus as they torched the Israeli flag at the outset of the parliament's session Sunday.

Video Reveals that a Lack of Moral Center Is Central to Hamas's War Strategy
The whole world is quick to condemn Israel for civilian deaths in Gaza, but there is utter silence over Hamas's blatant disregard for the lives of its own citizens.

Israel/Palestine Debate Is Shifting
With each fresh round of bombing, Israel's reputation gets worse, allowing growing numbers of people who might never have said a critical word about that country to finally speak up.

Goodnight My Love, See You in Heaven -- Diary From an Aid Worker in Gaza
The situation has now reached such a critical point that doctors frequently confront dilemmas such as these -- to treat the child who is bleeding to death or the baby who has severe head injuries?

The U.N.'s Richard Falk: Gaza a Victim of Geopolitics
The people of Gaza are victims of geopolitics at its inhumane worst: producing what Israel itself calls a "total war" against an essentially defenseless society that lacks any defensive military capability whatsoever.

Israel in Gaza: Three Wrong Arguments
The Reid/McConnell resolution is a perfect articulation of one voice in the American debate over Israel's actions in Gaza. Here are a few objections that should be raised.

Dead Children In School Uniforms In Gaza City: A Namine Thought
Israel, Gaza and Iran: Trapping Obama in Imagined Fault Lines
While there certainly is an underlying rivalry between Israel and Iran that has come to fuel many other otherwise unrelated conflicts in the region, not every war Israeli fights is related to Iran.

The True Story Behind This War is Not the One Israel is Telling
The Israeli government wants peace, but only one imposed on its own terms, based on the acceptance of defeat by the Palestinians.

Weighing Proportionality in Gaza
The losses on both sides will be all in vain if the final outcome of the war does not substantially improve both the prospects for an eventual Israeli-Palestinian peace.

I've Seen This One Before
The only thing more predictable than a Jets football season is the ongoing saga that is the Israeli-Palestinian conflict.

Reportage from Israel/Gaza
We can't ignore this fact: Gaza is becoming not the embryo of the so-desired Palestinian State, but the advance base of a total war against the Jewish State.

Obama – Please Say Something!
In just over two weeks Obama will be unable to avoid saying something and the world will be looking to him and demanding to hear his opinion on the crisis in Gaza.

Reading The Pictures: Is That A Snuff Film The Israeli Air Force Has Posted On YouTube?
What troubles me most is how the IDF, in the name of transparency and smart public relations, has not only posted quite a few videos of bombing runs, but continues to show one in question.

How Israel is Wrong and the Palestinians are Misguided
Israel is occupying the West Bank (and effectively Gaza because they control the borders, the airspace, etc.). What are they going to do with it – hold on to it forever?

Lessons Learned from the 2006 War Being Implemented in Gaza
While many have spoken about the lessons Hamas has learned from Hezbollah over the years, it appears the Israeli political and military establishment has learned one or two of its own.

It's Overtime for Hamas’ Leaders and Time for Them to Go
As long as Hamas rules its Gaza roost with its iron fist, any hope for a two state solution is just not in the cards. Hamas plays with a crooked deck.

Kuwait’s Political Machinations Lower U.S. Stocks as War on Gaza Raises Oil Prices
As the American dollar declines and bombs drop on Gaza, the likeliness of regional countries becoming drawn into the conflict are mounting.

Has Israel Revived Hamas?
It is abundantly clear that Hamas movement has been brought back from near political defeat while moderate Arab leaders have been forced to back away from their support for any reconciliation with Israel.

American Jewish Responses to Gaza: Old & New
In the past several years, the emergence of pro-peace American Jewish organizations has provided an alternative voice on critical Middle East issues.

Hamas Is Largely to Blame for Israel’s Gaza Offensive
How is it that Hamas, a terrorist organization that refused to extend the truce and fired rockets at civilians on a daily basis, gets so much sympathy, with Israel condemned for defending itself?

Israel's Risk
What we're watching in Gaza is not so much low-intensity warfare as the continued fracture of the post-Soviet international order.

Why Do So Few Speak Up for Gaza?
Why is it that there is such widespread acceptance, beginning with the apologetic arguments of George Bush, that whatever Israel does is always justified as necessary to the survival of the Jewish state?

Why Israel Was Right to Invade Gaza
How should Israel attempt to protect its people, long-term, if it merely acts defensively in a tit-for-tat manner? That would be a horribly naïve response given its history.

Brzezinski: Obama Must Press Agreement on Israelis and Palestinians
There is no international law requiring one state to open up its borders for commerce with another state as not worthy of being taken seriously. But those who would dismiss Hamas' stated objectives do.

In this climate, it might be wise to take a deep breath and consider international law not violation of international law. The Palestinian Authority has claimed, in addition, that Israel's actions were a scorpion asks the frog if it can ride on top of the frog to the other side of the water. The frog responds, "Only if you promise not to sting me." The scorpion agrees and

Is there hope? It is certainly difficult to see past the horror of Gaza at this time. There is a grim joke about a frog and a scorpion who meet at the edge of a river. The

I can't seem to recall any wars that were fought under the rules that you seem to think apply to Israel.

I wish I didn't believe that the events now unfolding in the Middle East are too complicated for unalloyed outrage. I wish the arguments of only one side rang wholly true to me.

The first reason for a ceasefire now is to stop the killing. The second is to ensure that a year or two from now we are not all wishing that Hamas was still in charge.

If hundreds of innocent deaths helps secure a real security mandate for the moderate-to-dovish Kadima/Labor and Israeli-Palestinian peace, that's political calculus Livni and Barak were willing to take.

I spoke on the phone with Iraqi Parliamentarian Mithal al-Alusi, head of the Iraqi Nation Party in Baghdad -- he says, interestingly, a significant number of Iraqis are not reflexively anti-Israel and pro-Palestinian.

So here we are, in a dangerous escalatory cycle that is already sweeping the region, with scores of Palestinian dead, horrific images, a highly-charged blame-game and no obvious exit-strategy. What needs to happen next?

Was Israel Punked by Hamas? Are Progressives Attacking Israel Being
The only way the Israeli and Palestinian people have a shot at peace is for outsiders to put pressure on both sides to make it happen and to stop the violence. It can be done.

Israel and Hamas: Two to Tango
What is going on in Gaza is that it is not the result of a sudden decision or an immediate and intolerable provocation by one side or the other — this thing has been in the planning by both sides for months.

Even in Sderot, Israelis Say No to Endless War
The people I met in Sderot were not calling for war, they were calling for negotiation. They knew that they would be the ones to catch the brunt of an attack on Gaza, not Tel Aviv, not Jerusalem.

Hamas Is Responsible for the Civilian Casualties in Gaza
By choosing tactical advantages over the safety of its citizens, the terrorist organization chose its military goals over the safety of its fellow Palestinians in Gaza.

Indifference to the Dead and Dying
Collectively punishing the mothers and children of Gaza does not just violate international law, it does not just kill the people of Gaza, it kills any chance of a future peace.

The Israeli-Palestinian Conflict Is An Ancient Story
I've been living in Israel now for almost a decade, and have survived biological warfare threats from Saddam, Intifada #2, terror attacks targeting Israeli civilians, and the war with Lebanon. But today, I feel pissed off.

Self-Deception and the Assault on Gaza
From the civilian deaths in Gaza will spring more hatred and terrorism. Yet no people are so prone as Americans and Israelis to think admiringly of our own good intentions.

Letter From Beersheva
I am here in Beersheva — on the "almost" frontlines of the conflict with Hamas — to tell you the first thing to go when missiles start to fall nearby, is your diet.

How to Defeat Hamas — Face Up to the Truth
Making Hamas into a unique demon is pure propaganda. But no form of Islamic extremism will end until moderate Muslims stand up for their religion.

Two Paths Ahead for the Palestinians: Nonviolence vs. Violence
There are only two paths ahead, one for Hamas and one for the Israelis, that each must take in order to solve this conflict once and for all.

In the Shadow of Airstrikes in Jerusalem
With the coming war and intifada on my mind, I realize that thousands of rockets have been fired into Israel in recent years, yet because we in Jerusalem don't get hit by them, it has always seemed removed.

It's Time for a Sustained Focus on a Lasting Middle East Peace
What we continue to lack is the kind of real political solution to the Israeli/Palestinian conflict that could finally make a "ceasefire" endure.

Gaza: Fight at the End of the Tunnel?
Any ceasefire must include an ironclad commitment by Egypt to cooperate fully with Israel to shut Hamas' tunnel network once and for all whatever Hamas' political or military wings decide tomorrow in Cairo.

The Lesson Israel Should Have Never Learned
Israel, torn in anger and exaggerated feelings of vulnerability, is unlikely to stop bombing until it realizes that is has once again shot itself in the foot.

More in World...

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