

Self-Defense is Legal and Legitimate

January 14, 2009

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Special to the *Jewish Times*

Posted on KavitaChhibber.com

In a January 10 *Walls Street Journal* op-ed George Bisharat charged that "Israel is committing war crimes." While recognizing Hamas's "violations" he argued that they "are no justification for Israel's actions." Interestingly, he wants Israel to "be held accountable for its crimes" but suggests nothing of the sort for Hamas. His op-ed is typical of those who mask ideological fervor under a (faulty) legal argument. [Article 51 of the United Nations Charter](#) recognizes every nation's right to defend itself against armed attacks. Over the past eight years, more than 8,000 rockets and mortar shells were launched into Israel from the Gaza strip. Hamas is the democratically elected government of Gaza (as certified by the Carter Center) as well as a recognized terror group (and a proxy for Iran) by the US and the EU. Yet after the elections it seized power in a violent and bloody coup. It then continued to authorize, support, and carry out the launch of these rockets, rockets aimed at civilian population centers, even during the recent six month period truce.

No one - with the exclusion of Hamas and company and the assortment of their "enlightened" supporters - disputes Israel's right to defend itself. Likewise, few dispute that Hamas' indiscriminate rocket launchings constitute war crimes. Hamas has a triple violation: it shoots from among civilians, whom it uses as human shields, it purposefully targets civilians and it declared its desire to destroy a member state of the United Nations. Recently, however, many have argued like Bisharat that Israel's response, an invasion and bombardment of the densely populated Gaza strip, is legally disproportional, and, thus, a violation of international law. When confronted with the number of deaths, over nine hundred on the Palestinian side to about twenty on the Israeli side, those facts seem hardly proportional. But this argument is as vacuous as it is seductive.

The legal doctrine of proportionality is rooted in the [Just War Doctrine](#), a Christian theological principle of war-fighting that has been borrowed by international law. In 1907, the doctrine of proportionality was adopted by the [Hague Conventions](#). Both its original form and as adopted as part of the Hague Conventions, proportionality never mandated equality. That doctrine has never stood for the proposition that if your enemy has no air force, you ground your jets; that if your enemy has no warships, you moor your ships; or that if the enemy has no armor, you park your tanks. Rather, the doctrine of proportionality mandates that there must be a reasonable relationship between the military actions employed and the goals of a just war, a war, for example, of self defense.

The IDF has clearly identified its goals; they are to disable and destroy Hamas's rocket launching infrastructure in order to protect Israel's civilian populations, and to prevent the resupply of Hamas's rockets once hostilities end. Thus, the "ends" are important if not compelling. The limited bombardment and invasion of Gaza are substantially related to the twin goals of Israel's military action. Thus, the "means" are substantially related to the "ends" and judged in their own right. In common terms, the doctrine of proportionality simply put is that the ends cannot justify the means, that is, the means must stand alone on their own merit as understood in the context of the conflict and the stated objective of self defense. That, in this case, they clearly do.

Those who argue that Israel has engaged in war crimes by violating the doctrine of proportionality seek to deny the history of that doctrine by a sleight of hand. They seek to equate proportionality with a politically correct infusion of what they perceive should be fair and equitable. Namely, that they are entitled to murder (with complete immunity) while Israel is denied the right of self-defense. That is absurd. War is not about fairness or equality. It is about overwhelming force, violence, and unfortunately death and misery. By transforming a phrase with specific legal meaning into an empty vessel, those who care to, can fill it with ideological and political rhetoric, arguing all along that what they speak is the "law." Nonsense. Enough. If one seeks to make a political argument against Israel it has to be made explicitly and Hamas did so by repeatedly stating its desire to destroy Israel. That does not make it legal nor does it make it legitimate. Cloaking it within a patina of legality simply broadcasts both the terrorist supporter's bias and intellectual weakness.

All those who so eagerly blame Israel should carefully examine their position and redirect their efforts to the correct address: Hamas, Hizbullah, Iran (to name a few). After all, it is more than obvious that if they will not initiate any hostilities Israel will not need to defend itself. That should be plainly visible to the pro-terrorist pseudo-intellectuals who provide them with false moral justifications and faulty legal ones.

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