

Much is being written and spoken about in the international media and by leaders in the international community regarding the recent violence between the Hamas terror entity in the Gaza Strip and Israel, especially given the graphic pictures displayed by the various media sources. But there are pertinent legal points that do not always figure in this barrage of selective, often inaccurate, and even malicious commentary and criticism.

The following points summarize some of the legal aspects of this situation:

The Inherent Character of Hamas as a Terrorist Entity

The professed ideological foundation of Hamas, as set out in its national charter¹, aligns it integrally with the Muslim Brotherhood and clearly identifies it as a terrorist entity. According to Hamas' ideology, Israel has no place in the world and its declared goal is the destruction of the Jewish state: "Hamas strives to raise the banner of Allah over every inch of Palestine." In addition, the organization promotes an anti-Semitic ideology that glorifies jihad and the killing of Jews.

Whether the Hamas administration in the Gaza Strip is regarded as a component of the Palestinian Authority, following the recent April 2014 unification accord with the head of the PLO Mahmoud Abbas (Abu Mazen),² or as a "quasi-state," a "non-state entity," or even as a "state" (with borders and government), its character as a terrorist entity is well-established and universally recognized.

Such recognition includes formal and legal classification and outlawing of Hamas as a terror organization by the United States, Canada, the European Union, Jordan, Egypt, Israel and Japan.³

Its declared modus operandi advocates and espouses terror against Israel as the means to achieve its ends. It views every Israeli man, woman and child as a legitimate military target thereby justifying its terrorist attacks by missiles, suicide bombings, murder and abductions. It openly admits its strategy of

terrorizing Israel's civilian population through the use of rockets and missiles indiscriminately aimed at Israel's towns and villages. Its leaders and spokesmen are on public record admitting their responsibility for such acts of terror. Thus the indiscriminate rocket fire is consistent with its ideology, which sees Israeli civilian casualties as strategic and tactical military successes. 4

Terrorism in International Law

International law and practice outlaw the use of terror, for whatever reason or justification. This is confirmed in a number of resolutions adopted by the UN Security Council, especially following the 11 September 2001 attacks against the United States.⁵

In its resolution 1269 (1999)⁶ the Council, in the first operative paragraph of the resolution:

“Unequivocally condemns all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which could threaten international peace and security”.

More specifically, United Nations Security Council resolution 1566, dated October 2004, passed under Chapter VII of the UN Charter, states as follows:

“Condemns in the strongest terms all acts of terrorism irrespective of their motivation, whenever and by whomsoever committed, as one of the most serious threats to peace and security”. “....criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the

international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.” 7

No less than 16 international conventions and protocols have been adopted between 1963 and the present day by the United Nations, criminalizing all aspects of international terror, including significant landmark resolutions of the UN General Assembly. Together they represent the clear consensus of opinion of the international community in outlawing all forms of terror.⁸

One such UN Convention, the 1997 International Convention for the Suppression of Terrorist Bombings⁹ , determines:

“1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.”

Similarly, in this context the operative provisions of the unanimously supported 1994 “UN Declaration on Measures to Eliminate International Terrorism” ¹⁰ are no less relevant:

“1. The States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States;

2. Acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society;

3. Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or another nature that may be invoked to justify them;”

In addition to the multinational instruments outlawing terror, there is an extensive series of regional counter-terror conventions, encompassing the African Union, OAS, ASEAN, CIS, SHARC, Shanghai Cooperation Organization, Council of Europe, EU Action Plan, Arab League and the Organization of Islamic Conference¹¹ .

International Crimes and Criminal Responsibility by Hamas

The terrorist actions practiced by Hamas - both indiscriminate targeting of Israeli towns, villages and civilians, as well as the exposure of its own residents as human shields — are violations of international law and internationally accepted humanitarian norms, specifically, the violation of the rule of distinction, which requires combatants to limit attacks to legitimate military targets.¹²

As such these constitute both crimes against humanity and war crimes, prosecutable before the International Criminal Court (ICC), as well as before municipal courts and tribunals that are guided by universal criminal jurisdiction.

Advocating a religious holy war aimed at creating a regional Islamic entity encompassing the whole of the territory of Israel, and the call to “liberate Palestine” and to “raise the banner of Allah over every inch of Palestine”¹³ appear to contravene the provisions of the 1948 Convention on the Prevention of Genocide.¹⁴

The 1998 Rome Statute that founded the International Criminal Court (ICC) declares that the court is intended to deal with “the most serious crimes of concern to the international community as a whole.” Specifically, it gives the court jurisdiction regarding the above-mentioned crimes, and in the absence of a referral by a state, it enables both the UN Security Council and the court’s prosecutor to initiate investigations. ¹⁵

Hamas has its own structured military force, political and social institutions, and de facto control over a defined territory, and has launched thousands of rockets towards Israeli towns, terrorizing and jeopardizing the lives of thousands of Israelis. Hamas, even as a non-state entity, or part of a non-state entity, is considered by all accepted criteria, to be fully accountable under international humanitarian law for its actions in carrying out its terror attacks against Israeli civilians and for using its own civilians as human shields. Thus, its leadership, commanders and fighters are punishable for crimes against humanity and war crimes.

In her article “Accountability of Hamas under International Humanitarian Law” jurist Sigall Horowitz states the following¹⁶ :

“Under international law, non-state actors are bound by customary IHL norms when they become a party to an armed conflict. Thus, the Appeals Chamber of the Special Court for Sierra Leone held as follows: “it is well settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties.” 17

Regarding the individual criminal responsibility of Hamas members Horowitz adds:

“...the use by Hamas members of Qassam and Grad rockets in connection with the armed conflict, may amount to a war crime under the Rome Statute. Accordingly, these acts may entail the individual criminal responsibility of Hamas fighters who committed, ordered or assisted them, or otherwise contributed to their commission. These acts may also entail the individual criminal responsibility of Hamas military commanders and political leaders, under the principle of superior responsibility.”¹⁸

In addition to the crime of conspiring and attempting to commit genocide referred to above, the following acts of terror carried out by Hamas constitute serious crimes of concern to the international community:

Indiscriminate Targeting Israeli towns and Villages and Civilians with rockets

a. 1907 Hague Regulations¹⁹ :

Article 25: “The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.”

b. 1977 Protocol I to the Geneva Conventions²⁰ :

Article 48: “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives”.

Article 51(2): “The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited”.

Article 51(4): “Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.”

Article 57 requires that civilian population, civilians and civilian objects be spared in the conduct of military operations, and that all feasible precautions be taken in order to avoid and minimize incidental loss of civilian life, injury to

civilians and damage to civilian objects, and the giving of effective advance warning of attacks.

Using Civilians as Human Shields

Deliberately storing and firing rockets from within, or in close proximity to hospitals, mosques, schools and houses in densely-populated areas, both to shield and camouflage rocket emplacements and in order to deliberately generate Israeli military action against such emplacements and thereby endanger Palestinian civilians, constitutes a war crime.²¹

The storing of rockets in an UNRWA school in Gaza is perhaps a typical example of this crime, which generated a statement of condemnation by UNRWA itself.²²

The use of one of Gaza's central mosques - the Al-Farouq Mosque in the Nuseirat refugee camp - for storing rockets and weapons and as a compound for Hamas operations is a further example of this crime.²³

Article 51(7) of the 1977 Protocols to the Geneva Convention²⁴ states:

“The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.”

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Article 58(b) requires avoiding locating military objectives within or near densely populated areas.

The following provisions of the ICC Statute refer to such crimes:

Article 7: crimes against humanity — the multiple commission of “widespread or systematic attack directed against any civilian population.”

Article 8: war crimes - large-scale commission, as part of a plan or policy of intentional attacks against the civilian population or against individual civilians and civilian objects; intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians; attacking or bombarding towns, villages dwellings or buildings which are not military objectives; utilizing the presence of civilians to render certain points, areas or forces immune from military operations; and using children under fifteen to participate in hostilities.

Israel’s Right to Self-Defense

International law recognizes two basic rights to self-defense, conventional international law as set out in Article 51 of the UN Charter:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations...”²⁵

The second right is that of customary international law, based on the Caroline case (1837) which established a right of self-defense in the face of a necessity which is

“instant, overwhelming, leaving no choice of means, and no moment of deliberation”.²⁶

Israel’s right to invoke the Article 51 right to self-defense vis-à-vis terrorist attacks against its towns and villages was curiously denied by the International Court of Justice (ICJ) in its 2004 Advisory Opinion on the Israeli Security Fence case²⁷ on the grounds that the threat can only come from another “state.” This strange conclusion has been rejected both by judges of the court as well as international jurists.

As stated by Judge Higgins (UK):

“I do not agree with all that the Court has to say on the question of the law of self-defence. In paragraph 139 the Court quotes Article 51 of the Charter and then continues “Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State.” There is, with respect, nothing in the text of Article 51 that thus stipulates that self-defence is available only when an armed attack is made by a State. The question is surely where responsibility lies for the sending of groups and persons who act against Israeli civilians and the cumulative severity of such action.....

This is formalism of an un-evenhanded sort.”

In a similar vein, Judge Buergenthal (U.S.)²⁸ criticized the above conclusion as being “dubious” and stated²⁹ :

“...the United Nations Charter, in affirming the inherent right of self- defence, does not make its exercise dependent upon an armed attack by another State.”

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“Attacks on Israel coming from across that [green] line must therefore permit Israel to exercise its right of self-defence against such attacks, provided the measures it takes are otherwise consistent with the legitimate exercise of that right.”

In several key resolutions, the Security Council has made clear that “international terrorism constitutes a threat to international peace and security” and has affirmed the inherent right of individual or collective self-defense as recognized by the Charter of the United Nations in the face of such terror.

This has been reiterated in resolution 1368 (2001) 30 , adopted only one day after the 11 September 2001 attacks on the United States, in which the Security Council invokes the right of self-defense in calling on the international community to combat terrorism. Similarly in Security Council resolution 1373 (2001)31 adopted pursuant to Chapter VII of the Charter, the Council “reaffirmed the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001)”.

Needless to say, neither of these resolutions imposed any limit on their application to terrorist attacks by State actors only, nor was an assumption to that effect implicit in these resolutions.³²

Claims Being Made against Israel

Collective Punishment

The claim that Israel is collectively punishing the population of the Gaza Strip, enunciated by the UK Deputy Prime Minister Nick Clegg,³³ is both wrong and based on misleading legal assumptions. As stated above, Israel’s actions are directed towards one strategic and tactical purpose - not to punish the population but to halt the indiscriminate rocket fire and use of infiltration tunnels to carry out acts of terror against the civilian population.

While international law bars “collective punishment,”³⁴ none of Israel’s combat

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actions against Hamas constitute collective punishment, whether in the form of imposition of penalties on individuals or groups on the basis of another's guilt, or the commission of acts that would otherwise violate the rules of distinction and/or proportionality.³⁵

However, the deliberate and systematic exposure by Hamas of its residents to Israeli combat activities, rather than permitting them to enter shelters and tunnels, and the systematic intimidation and threat of terror through indiscriminate daily rocket attacks directed against Israeli towns and villages, constitute collective punishment of millions of Israeli citizens as well as Palestinian residents of the Gaza Strip and as such, are flagrant and willful violations of the norms of international humanitarian law.

Deliberate Targeting of Residences

Israel is being falsely accused by the United Nations and others of deliberately and willfully targeting residences.³⁶

Tragically, one of the many violations by Hamas of international humanitarian norms is the conduct of its terror activities within residential areas throughout the towns and villages in the Gaza Strip, including the use of commanders' own homes where their families and other civilians may be residing. These houses have been used for weapons storage, command, control, and communication centers.

The use of houses, homes and other residential structures for military purposes endangers them and render them as legitimate military targets under international law.

Article 52(2) of the First Geneva Protocol³⁷ specifically refers to the obligation to limit attacks to military objectives - "objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the

time, offers a definite military advantage;”

In order to accurately determine military targets, the IDF employs advanced methods, including multiple levels of intelligence, the provision of legal advice; and extensive prior training provided to operational commanders. Even when a house is considered by all relevant legal criteria to be a legitimate military target, the Israeli forces minimize potential harm to the surrounding civilian population through real-time visual coverage in order to assess the civilian presence at a target; provision of advance warning before striking a target; and the careful choice of weaponry and ammunition in order to minimize harm to civilians.³⁸

As such, Israel has no policy of deliberately targeting civilians or civilian property, and makes every effort to give effective advance warning of impending strikes that could potentially affect the civilian population.

Despite the deliberate policy and practice of Hamas to forcibly use civilians, including children, to shield their rocket and weapons emplacements, Israel has gone to great lengths in responding to the Hamas rocket attacks to ensure minimal harm to such civilians. This includes providing early warnings to persons residing or located in, or in the vicinity of houses targeted because of their use for purposes of planning acts of terror, storing weapons or as rocket emplacements, and public appeals to non-combatants to distance themselves from such targets.³⁹

The Claim of Disproportionate Force/Casualties

Allegations in the international media and by international organizations and some governmental representatives⁴⁰ that Israel’s actions are “disproportionate” and thus in violation of international law, are both factually and legally incorrect .

The requirement of proportionality in armed conflict is a measure of the extent of force needed in relation to the concrete and direct military advantage anticipated.

It is not a comparison between casualties of the parties involved, nor of the damage caused during the fighting.⁴¹

A monograph entitled “Applying the Principle of Proportionality in Combat Operations,” published by of the Oxford Institute for Ethics, Law and Armed conflict⁴² , states:

“...harming civilians is not in itself illegal. An injury to civilians or damage done to civilian objects as a side-effect of a military operation may be permissible provided that it is proportionate to the military gain anticipated from the operation.

This principle is considered part of customary international law, which binds all states. It has become part of the positive law of armed conflict (IHL) with its codification in the First Additional Protocol to the Geneva Conventions of 1977. Article 51 para. 5b) states that “[a]n attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated,” is prohibited.”

The tragic and regrettable fact that there are more civilian casualties and property damage within the Gaza Strip than there are in Israel is not a function of disproportionate use of force by Israel, or use of disproportionate weaponry, but of the fact, as outlined above, that Hamas forcibly and deliberately utilizes civilians and civilian structures and homes as human shields. The buildings are used for their rocket emplacements and command centers, thereby knowingly exposing the residents to harm with a view to both preventing Israeli actions against their rocket launching and other military facilities, and to cynically parade dead civilians in front of television cameras that transmit these gruesome pictures around the world with captions blaming Israel.

In so doing, Hamas is committing a double war crime by deliberately targeting

Israeli civilians while at the same time embedding its weapons, leaders, operatives and infrastructures in the midst of uninvolved Palestinian civilians.

Similarly, the fact that Hamas prevents civilian access to its underground web of tunnels and bomb shelters, reserving them for its military commanders and for storage of rockets, and the fact that Israel has developed extensive framework of shelters as well as its “Iron Dome” anti-missile defensive system, cannot be used as basis for accusing Israel of disproportionate force.

The Comparison of Casualties

Perhaps one of the most reprehensible practices of the international media is the so called “body-count” comparison, and the sad conclusion that disproportionality is exemplified by the fact that more Palestinians are killed than Israelis.⁴³ The absurd assumption that this comparison makes is that more Israeli casualties would be preferable in order to “even-out” the count. Israel’s “Iron Dome” missile defense system, which has protected thousands of potential Israeli civilian casualties from Hamas rockets, is blamed as the cause of this disparity in casualties.

Clearly Israel cannot be held responsible for such an equation. As in any armed conflict, and especially in light of the circumstances of the present one, civilians are tragically killed and injured. Unlike Hamas, Israel does not have a policy of deliberately targeting civilians, but regrettably, whether due to the fact that Hamas deliberately exposes its civilians to shield targets, or whether due to the occasional human or targeting error or inaccurate mapping, civilians are casualties.

Israel has very strict policies of investigating such instances, and in cases of alleged war crimes or negligence, taking the appropriate legal and disciplinary action.

Threats to Institute Action against Israeli Leaders in the International Criminal Court (ICC)

Amongst the media hype and political declarations by Palestinian leaders and senior elements within the international community, there is a constant wave of threats to institute proceedings for alleged war crimes against Israel's leaders and military commanders before international and national criminal tribunals.,

As outlined above, Israel's code of military law and command structure require strict conformity with international humanitarian norms, and any allegation of violation of such norms by soldiers or commanders are duly investigated and where appropriate, legal proceedings are instituted within Israel's military justice framework. As such, the threats to institute action in the ICC are unrealistic and fail to consider the requirements of the statute of the ICC.

However, the openly-admitted and blatant series of war crimes committed by Hamas and its leaders as detailed in this paper and the lack of any will, capability, legal framework or means within the Hamas or Palestinian legal structure of investigating and trying such crimes, require that they be referred to the ICC with a view to ensuring that the leaders and instigators of the Hamas terror infrastructure be brought to criminal justice.

Closing Points

This paper is intended to place the current Hamas-Israel conflict within the proportions of international law and practice, with a view to dispelling some of the media hype and exaggeration, and the selective and biased statements and allegations being made against Israel.

Armed conflict in any circumstances involves situations in which civilians are regrettably affected. International law aims to limit harm to innocent civilians by ensuring that the involved parties conduct the hostilities in accordance with

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humanitarian norms with a view to preventing, as much as is possible, civilian casualties.

Israel, a sovereign state with an army that conducts itself in accordance with such norms, is making every effort to abide by them, despite the blatant, willful and indiscriminate violation by Hamas, both vis-a-vis its own population as well as vis-a-vis Israel's population.

One hopes that the crimes against humanity and the war crimes committed by the leaders and senior terrorist commanders of Hamas will not go unpunished, and that the international community will act to ensure that they do not benefit from impunity.

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Notes

1 Hamas Charter, <http://www.acpr.org.il/resources/hamascharter.html> see Article 2:

The Islamic Resistance Movement is one of the wings of the Muslim Brothers in Palestine. The Muslim Brotherhood Movement is a world organization, the largest Islamic Movement in the modern era. It is characterized by a profound understanding, by precise notions and by a complete comprehensiveness of all concepts of Islam in all domains of life: views and beliefs, politics and economics, education and society, jurisprudence and rule, indoctrination and teaching, the arts and publications, the hidden and the evident, and all the other domains of life.

See also article 7:

Hamas is one of the links in the Chain of Jihad in the confrontation with the Zionist invasion. It links up with the setting out of the Martyr Izz a-din al-Qassam and his brothers in the Muslim Brotherhood who fought the Holy War in 1936; it further relates to another link of the Palestinian Jihad and the Jihad and efforts of the Muslim Brothers during the 1948 War, and to the Jihad operations of the Muslim Brothers in 1968 and thereafter.

And Article 13:

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There is no solution to the Palestinian problem except by Jihad. The initiatives, proposals and International Conferences are but a waste of time, an exercise in futility. The Palestinian people are too noble to have their future, their right and their destiny submitted to a vain game

2 <http://english.al-akhbar.com/node/19580>

3 See U.S. “Country reports on terrorism 2005”, United States Department of State. Office of the Coordinator for Counterterrorism. U.S. Dept. of State Publication 11324. April 2006. p 196

see also <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

See Canadian “Currently listed entities”. Department of Public Safety and Emergency Preparedness. November 22, 2012.

See EUCouncil Common Position 2003/651/CFSP.

See Jordan policy <http://www.gatestoneinstitute.org/3978/king-abdullah-hamas> .

See Cairo court bans activities by Palestinian Hamas in Egypt, brands it a terrorist organization. Associated Press. March 4, 2014

4 See headline in “Middle East Eye”, 8 July 2014 “Hamas claims responsibility for rockets fired at Jerusalem, Tel Aviv and Haifa” - See more at:

<http://www.middleeasteye.net/news/israels-army-prepared-ground-assault-gaza-official-275282816>: “For the first time, the Ezzedine al- Qassam Brigades strike Haifa with an R160 rocket, and strike occupied Jerusalem with four M75 rockets and Tel Aviv with four M75 rockets,”

See also “Hamas claims responsibility for rocket fire on

Israel” <http://www.jpost.com/Middle-East/Hamas-claims-responsibility-for-rocket-fire-on-Israel-361830> and “The Islamic Jihad took responsibility for the rockets fired toward Tel

Aviv” <http://www.jpost.com/Operation-Protective-Edge/Rocket-alert-sirens-sound-in-Zichron-Yaakov-120-km-north-of-Gaza-362087>

See also

i24news <http://www.i24news.tv/en/news/israel/diplomacy-defense/36623-140708-gaza-israel-launches-operation-protective-edge> “In a video statement that was broadcast across Arab media late on Thursday evening, the brigade said: “The more shahids falling make us stronger and more determined for victory. For the first time yesterday, we showered from the north of the homeland to the south in Dimona. Tens of rockets showered the center of the occupation. That is only a few of what is waiting...”

See also Fatah joins Hamas and Islamic Jihad in missile launches | The Times of Israel <http://www.timesofisrael.com/moderate-fatah-joins-hamas-and-islamic-jihad-in-missile-launches/#ixzz37KhRmK25>

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See also

<http://www.theaustralian.com.au/news/world/israeli-warplanes-pound-gaza-strip/story-e6frg6so-1226982452456?nk=30dd8b2330cf43d6507b130e303ae6c6> “The Ezzedine al-Qassam Brigades, the armed wing of Hamas, said it had fired four M75 rockets at Jerusalem, which lies 65 kilometres from the Palestinian enclave. It also claimed to have launched a rocket at Haifa, 165 kilometres away. There was no report of anything hitting the northern port city but the army said a rocket did fall on Hadera, 100 kilometres north of Gaza. Hamas militants also said yesterday they fired four rockets at Tel Aviv, 60 kilometres north of Gaza, setting sirens off across the city. Earlier, another rocket aimed at Israel’s commercial capital was shot down by the Iron Dome antimissile defence system.”

See also: <http://www.haaretz.com/news/diplomacy-defense/.premium-1.604437>

Hamas armed wing has warned airlines that it intends to target Israel’s Ben Gurion International Airport with its rockets from Gaza and has told them not to fly there, a statement by the group said on Friday.

See also

<http://www.israelnationalnews.com/News/News.aspx/182770#.U8I-Yy2KCM8> State Department spokeswoman reminds reporters that Israel is defending itself against endless rocket attacks by Hamas. “There’s a difference between Hamas, a terrorist organization that’s indiscriminately attacking innocent civilians in areas where there are innocent civilians in Israel, and the right of Israel to respond and protect their own civilians. And that’s what we’re seeing on the ground take place,”

See Canadian Globe and Mail:

<http://www.theglobeandmail.com/news/world/lopsided-rocket-warfare-rages-on-between-israel-and-hamas/article19578271/> “Hamas also showed no sign of letting up its missile strikes against Israel, acknowledging responsibility for scores of rockets fired Friday against Israeli centres including the launch of a powerful Iranian-built Fajr-5 against Tel Aviv.”

http://www.shanghaidaily.com/article/article_xinhua.aspx?id=229441 “The armed wing of Islamic Hamas movement, al-Qassam Brigades, said on Saturday that it will fire new rockets called J80 into Tel Aviv and its suburb at 9:00 p.m. local time. It is the first time that Hamas declared in advance that it will fire rockets into Israel. The group claimed responsibility for launching hundreds of rockets into Israeli over the past five days against the Israeli offensive on the Gaza Strip”.

Washington Free

Beacon <http://freebeacon.com/national-security/hamas-rockets-from-gaza-target-haifa-reach-far-into-northern-israel/>: “The barrage of rocket fire coming from the Gaza Strip reached far beyond the known range of Hamas’ missile arsenal, hitting

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the northern Israeli town of Hof HaCarmel on Wednesday. The town is just south of Haifa, Israel's third-largest city. Hamas claimed responsibility for the attacks and said that Haifa was the intended target."

See also

http://voiceofrussia.com/news/2014_07_08/Israeli-Defense-Forces-launch-operation-Protective-Edge-against-Hamas-6359/

"The Ezzedine al-Qassam Brigades claimed responsibility for the attacks. 'Al-Qassam fired dozens of rockets on Netivot and Ashkelon, Ashdod and Ofakim in response to the Zionist aggression,' a statement said. 'Qassam rockets are a natural reaction to the Israeli crimes against our people.'"

5 See UN Security council resolutions 1267 (1999) of 15 October 1999, 1373 (2001) of 28 September 2001, 1540 (2004) of 28 April 2004 as well as its other resolutions concerning threats to international peace and security caused by terrorism.

6 http://www.mefacts.com/cached.asp?x_id=10835

7 <http://www.state.gov/j/ct/rls/other/un/66959.htm>

8 <http://www.un.org/en/terrorism/instruments.shtml>

9 <http://www.un.org/law/cod/terroris.htm>

10 <http://www.un.org/documents/ga/res/49/a49r060.htm>

11 https://www.unodc.org/tldb/en/regional_instruments.html

12 See Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict*, 82 (2005).

13 Article 6 of the Hamas charter

14 78 UNTS 277

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http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf. See specifically Articles 7(1) and (2)a (Crimes against humanity) and Article 8(2)(b)(i)(ii)(iv) (War crimes), and Article 13 (Exercise of the court's jurisdiction)

16 See Sigall Horowitz "Accountability of the Hamas under International Humanitarian Law", 2009 Jerusalem Center for Public Affairs

<http://jcpa.org/article/accountability-of-the-hamas-under-international-humanitarian-law/> Horowitz adds "...it can safely be argued that Hamas fighters, who daily targeted Israeli civilians by launching Qassam and Grad rockets, violated the provisions of Common Article 3 (to the Geneva conventions)"

17 Quoted in Horowitz article, citing Prosecutor v. Sam Hinga Norman, Case No. SCSL-2004-14-AR72(E), Decision on preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), 31 May 2004, para. 22. - See more at:

<http://jcpa.org/article/accountability-of-the-hamas-under-international-humanitarian-law/>

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n-la/#sthash.MX0iG9lu.dpuf

18 Ibid. See also Lisbeth Zegveld, Accountability of Armed Opposition Groups in International Law(2002).

19

<http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=D1C251B17210CE8DC12563CD0051678F> Art. 25, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

20 1977 Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed

Conflicts<http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8A9E7E14C63C7F30C12563CD0051DC5C>

21 For a detailed exposure of the use by Hamas of homes of senior Hamas operatives as command centers and weapons storage facilities see

http://www.terrorism-info.org.il/Data/articles/Art_20677/E_116_14_1313703276.pdf

22
<http://www.unrwa.org/newsroom/press-releases/unrwa-strongly-condemns-placement-rockets-school>. Evidently, according to media reports, this did not prevent the UNRWA officials from transferring the rockets found in the school, to the Hamas authorities. See <http://www.inn.co.il/News/News.aspx/280357>

23

http://www.terrorism-info.org.il/Data/articles/Art_20672/E_113_14_1401598645.pdf

24 See note 10 above

25 <http://www.un.org/en/documents/charter/chapter7.shtml>

26 <http://www.uni-miskolc.hu/~wwwdrint/20042rouillard1.htm>

27 <http://www.icj-cij.org/docket/files/131/1671.pdf> at para 139

28 <http://www.icj-cij.org/docket/files/131/1687.pdf>

29 <http://www.icj-cij.org/docket/files/131/1687.pdf>

30 <http://www.un.org/News/Press/docs/2001/SC7143.doc.htm>

31

[http://www.un.org/en/sc/ctc/specialmeetings/2012/docs/United%20Nations%20Security%20Council%20Resolution%201373%20\(2001\).pdf](http://www.un.org/en/sc/ctc/specialmeetings/2012/docs/United%20Nations%20Security%20Council%20Resolution%201373%20(2001).pdf)

32 See Thomas Franck, “Terrorism and the Right of Self-Defense”, American Journal of International Law, Vol. 95, 2001, pp. 839-840

33 <http://rt.com/uk/173592-clegg-israel-gaza-ceasefire/>

34 http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule103

35 “International Law and the Fighting in Gaza” Justus Reid Weiner and Abraham Bell, 1 Global Law Forum 2008 at page 16

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36 See statement by Robert Turner, director of UNRWA operations in Gaza at <http://www.unrwa.org/newsroom/official-statements/statement-director-unrwa-operations-gaza-robert-turner-unfolding>

37 See note 10 above

38

<http://www.idfblog.com/blog/2014/07/10/idf-strikes-houses-gaza-used-military-purposes/>

39

<http://israelaa.ca/palestinian-envoy-to-unhrc-israelis-warn-civilians-before-attacks-we-dont/>

40 Argentina condemned the violence in Gaza and Israel's "disproportionate" use of military force

<http://www.telam.com.ar/english/notas/201407/2801-argentina-condemned-the-violence-in-gaza-and-israels-disproportionate-use-of-military-force.html> see also

Turkey condemns "disproportionate" Israeli violence in Gaza

<http://www.jpost.com/Breaking-News/Turkey-condemns-disproportionate-Israeli-violence-in-Gaza> see also British parliament accuses Israel of war

crimes.<https://socioecohistory.wordpress.com/2014/07/22/british-parliament-accuses-israel-of-war-crimes/>

41 http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14

42 Janina Dill "Applying the Principle of Proportionality in Combat Operations"

http://www.elac.ox.ac.uk/downloads/proportionality_policybrief_%20dec_2010.pdf

43 Stephanie Gutman "The Body-Count Cliché - The victim-loving Western media have a weakness for Palestinians.

http://mosaicmagazine.com/picks/2014/07/the-body-count-cliche/?utm_source=Mosaic+Newsletter&utm_campaign=41f995f534-2014_7_15&utm_medium=email&utm_term=0_0b0517b2ab-41f995f534-42449961 See also Time magazine, Eric H. Yoffe, July 14, 2014, 2014 "The Bizarre Moral Criticism Against Israel"

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