

The Legal Battlefield: The Gaza War and International Law



Table of Contents

The Weaponization of International Law against Israel	
Adv. Avraham (Russell) Shalev	3
“A Bridge over Troubled Waters”	
Prof. Amichai Cohen	6
Reality of Perception:	
Evaluating Depictions of International Law in Media Coverage on Armed Conflict	
Dr. Brian L. Cox	11
The Assault on Israel’s Right to Exist:	
Politicized Lawfare and the Subversion of International Law	
Dr. Dan Diker	14
The Legal and Moral Quagmire of Information Warfare in Gaza:	
A Military Analyst’s Perspective	
Andrew Fox	18
The Role of Arms Embargo Campaigns in the Information War	
Adv. Anne Herzberg	22
Targeting Genocidal Terrorists:	
The Legal and Moral Quagmire of Modern Warfare	
Adv. Maurice Hirsch	24
Clarifying the Legal Status of Gaza	
Prof. Eugene Kontorovich	28
Urban Warfare Under Fire:	
Applying the Law of War Amid Operational Complexity	
Colonel (res.) Noam Neuman	30
Strategic Reorientation of Israel’s Engagement with International Legal Institutions	
Adv. Yifa Segal	34
Legal Counsel in Wartime	
Colonel (res.) Pnina Sharvit Baruch	37

The Weaponization of International Law against Israel



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Israel's seven-front war against Hamas and the Iranian axis includes an eighth battlefield – international law and institutions. Like the other fronts, the legal campaign against the Jewish state is coordinated and well-planned out, and aims at Israel's isolation, delegitimization and eventual destruction.

Several months before Hamas' deadly assault on Israel on October 7, 2023, Hamas-affiliated jurists held a [conference](#) in the Gaza Strip entitled "Jurists Confronting the Occupier". The International Center for Law Studies organized the conference, led by Faraj al-Ghoul, chairman of the Legal Committee of Hamas' Legislative Council. Among the speakers were top Hamas officials, including Mahmoud al-Zahar and Musa Abu Marzouq, members of Hamas' political bureau; as well as Richard Falk, former UN special rapporteur on the situation of human rights in the Palestinian territories.

The speakers emphasized the role of international legal bodies in "resistance" to the Israeli "occupation". Abu Marzouq revealed that Hamas had prepared files for the International Criminal Court against Israel and called for the prosecution of Israeli "war crimes". According to al-Zahar, legal resistance must work in tandem with armed military resistance to achieve Palestinian rights.

Hamas' genocidal attack on Israeli Jews was accompanied by immediate deployment of reverse accusations against the victims. On October 13, 2023, before Israel even began its counter-offensive in Gaza, Raz Segal, professor of Holocaust and genocide studies, charged that Israel's actions were "a [textbook case of genocide](#)". On November 16, 2023, UN Special Rapporteurs, many of them known for their hostility to Israel, issued a call to the international community "to [prevent genocide](#)."

The charge reached a new zenith when South Africa brought a complaint against Israel to the International Court of Justice in December 2023 for a supposed violation of the Convention on the Prevention and Punishment of the Crime of Genocide. This was not merely coincidental timing. The close ties between South Africa's ruling party and Hamas, including meetings with Hamas leadership in December 2023, suggest a coordinated strategy to use genocide accusations as a rhetorical and diplomatic sword against Israel. According to the [Institute for the Study of Global Antisemitism and Policy](#), Iran and Qatar, Hamas' principal patrons, may have financed the proceedings.

The calumny that Israel is engaged in genocide against the Palestinians is a staple of modern antisemitic discourse, going back to Soviet-era anti-Zionist propaganda. The ICJ proceedings, although unlikely to find Israel guilty of genocide, legitimize "Holocaust inversion" – Israel as the new Nazis, with the Palestinians playing the role of 1940s Jews.

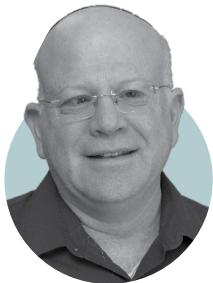
The arrest warrants against Israeli leadership represent the culmination of two and a half decades of anti-Israel activism. Beginning in 1995, twenty-five prominent NGOs united to form the Coalition for the International Criminal Court, advocating for the establishment of an international criminal tribunal. At the notorious 2001 NGO Forum of the Durban Conference, many of these same NGOs crafted the NGO Forum Declaration and Programme of Action, which outlined the action plan to dismantle the Jewish state through legal and pseudo-legal means. Israel was to be labeled as a racist, apartheid state that violates international law, ultimately leading to its isolation and destruction. Explicitly invoking the Rome Statute, the NGO Forum Declaration called for the creation of a war crimes tribunal to prosecute Israeli "war crimes."

In every military confrontation with Hamas, the same NGO actors have played a crucial role in disseminating reports of Israeli "atrocities" and "crimes" in Gaza. The Goldstone Report, which followed the 2008-2009 Cast Lead Operation, accepted without question claims and figures provided by Palestinian, Israeli, and international NGOs such as B'tselem, al-Haq, Amnesty International, and Human Rights Watch. These NGOs today promote the "Israeli genocide" canard before international tribunals and public opinion. The legal warfare against Israel operates in a vicious cycle of organizational and intellectual "incest"—the same non-governmental organizations, often in close collaboration with Palestinian entities, accuse Israel of violating international law and support these claims with pseudo-legal reports. These reports serve as the basis for lawsuits or decisions by UN bodies or international courts. The international courts lend legitimacy to the NGOs' claims, and the cycle repeats.

The current Gaza war presents fundamental challenges to the international legal system. Will pseudo-legal norms be effective in restricting democratic countries in their fight against terrorist organizations? The war also provides an opportunity to restate an axiom of international law – that states determine "the law of nations", not NGOs or activist

academics. By allowing themselves to be co-opted by Hamas and the PA, the ICC and ICJ bring themselves into disrepute. Their failure will likely encourage law-abiding sovereign nations to seek institutional and legal alternatives.

“A Bridge over Troubled Waters”



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► Introduction - Proceedings Against Israel

In January 2024, Israeli representatives appeared before the International Court of Justice (ICJ) in The Hague, for a hearing that garnered widespread public attention in Israel and abroad. While fighting a war forced upon it by the Hamas massacre on October 7, Israel also faced an international legal battle. The ICJ hearing was not, of course, the only clash Israel had with international judicial institutions and the claims that it had violated international law during the war.

Besides South Africa's case against Israel, for instance, the state also faces other proceedings in the ICJ, among them an opinion it issued on Israeli control of the occupied territories and a hearing on the request for an advisory opinion on humanitarian aid.

Another international court Israel faces is the International Criminal Court (ICC), which already issued arrest warrants for Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant at the request of the Chief Prosecutor, on charges relating to the claim that Israel used starvation as a tactic at the beginning of the war.

Israel's struggle with international legal challenges is not confined to proceedings in international institutions. The state also faces legal action within various national jurisdictions. In some instances, these involve attempts to prosecute Israeli soldiers. In other cases, proceedings are aimed at halting arms sales to Israel or severing economic ties with the country.

What all these proceedings and measures have in common is their reliance on the language and norms of international law, particularly the Law of Armed Conflict (LOAC), also known as International Humanitarian Law (IHL), and International Human Rights Law (IHRL). These legal frameworks are utilized as tools to promote actions that ultimately harm Israel, whether those actions are driven by actors with an explicitly anti-Israel agenda,

or by others who have broader goals, but for whom Israel's unique political and security circumstances make it especially vulnerable to such legal and diplomatic initiatives.

► International Law at a Crossroads

International law is currently contending with a tension between two opposing trends: on the one hand, a trend of maintaining the growing strength of international law, and on the other, revisionist trends that seek to challenge some of its foundational premises.

The Strengthening of International Law

In Israel, many attribute the extensive activity of international institutions against the state to anti-Israel bias, or even antisemitism. While there may be some truth to these claims, it is important to understand that the increased use of international legal mechanisms against Israel is part of a broader global trend: the expansion of powers granted to international legal institutions.

The case brought by South Africa against Israel before the ICJ, for example, builds on previous rulings that have expanded the Court's jurisdiction to allow states with no direct connection to a conflict to file claims under the Genocide Convention. Likewise, the issuance of arrest warrants against Prime Minister Netanyahu and former Defense Minister Gallant by the ICC is grounded in a line of precedents in which the Court, particularly in recent years, has expanded its operational reach to include actions against heads of state—even from countries that are not members of the ICC.

The trend of prosecuting soldiers abroad is another manifestation of a broader development over recent decades: the growing invocation of universal jurisdiction. Media attention has focused primarily on the relatively few attempts to take legal action against senior Israeli figures, most of which have been dismissed or halted at preliminary stages. However, dozens of other cases are currently ongoing across multiple countries around the world. These cases are based on the principle of universal jurisdiction, which enables states to exercise legal authority over war crimes and crimes against humanity committed outside their borders.

In addition to these institutional developments, the substantive content of the laws of war and other relevant branches of international law continues to evolve. This includes both the creation of new legal norms and the reinterpretation of existing ones. The common feature of these developments is the imposition of increasingly stringent limitations on the use and manner of use of force, along with broader protections for civilian populations during armed conflict.

The Weakening of International Law

The trend of strengthening international law and its institutions is in tension with an opposing trend, led by the United States under the presidency of Donald Trump. In recent months, the American administration has undertaken a series of initiatives that challenge international law in various areas unrelated directly to the war in Gaza. For example, the United States adopted a “neutral” position in the conflict between Russia and Ukraine. The United States also withdrew from the Paris Agreement (2015) on reducing greenhouse gases and is acting contrary to the General Agreement on Tariffs and Trade with its aggressive tariff policy.

It appears that the current U.S. administration’s policy reflects a broader ideology regarding international law. The goal of the United States is to bring about a partial withdrawal from the policy pursued by Western countries since World War II of gradually strengthening international institutions and arrangements based on the concept of a collective response to global challenges. According to the current policy of the American administration, international law is meant to return to the role it played since the early 19th century: anchoring agreements between sovereign states acting independently to agree on specific, limited cooperation subject to their interests, and in a manner that reflects their relative power. As the strongest country in the world, international law in this configuration would especially reflect American interests.

► Israel’s Choice

The crossroads at which international law currently stands present the State of Israel with numerous challenges. The intensification of criticism based on international law complicates matters for the State of Israel. Israel is dependent on the world and on its allies. The evolution and increased power of international law result in limitations on Israel’s ability to act.

International law is part of Israel’s international standing. It is part of its ability to defend itself against its enemies and act on behalf of its citizens. Legal proceedings and political-legal measures, both in the international arena and in various countries around the world, erode its international legitimacy, and harm — or threaten to harm — its national security and other vital interests, from restrictions on operational freedom, through political and economic damage, and up to impairing its ability to maintain cooperation in the fields of science and culture.

The consequences of the changes made to the laws of armed conflict and in the activity of judicial institutions in the context of war are highly significant, as they generate an

asymmetrical effect on Israel. While the State of Israel is committed to the rules of international law that apply to its actions, and are the standards by which its allies judge it, its enemies adopt a strategy of violating these rules.

In the face of this strengthening of international law, Israel hasn't changed its regular policy of handling international pressure, one that is primarily defensive. This is the "ping-pong game" strategy. We respond, for the most part, to the balls thrown at us. We succeed at this to varying degrees, but ultimately, interactions with international institutions end in some form of loss. We have almost nothing to gain from international legal proceedings.

This challenge creates a clear temptation for Israel to join the American confrontational strategy toward international judicial institutions, which seeks to curtail their sphere of influence.

However, a series of considerations lead me to believe it would be a mistake for Israel to adopt this approach:

First, there is no guarantee the US will continue this policy over the years. The current administration's policy is not explicitly formulated. President Trump has been known to adjust his policy in response to his perception of American interests at a given moment. In any case, there is no guarantee that the next US administration won't reverse this approach, certainly not if the presidency returns to the Democrat party.

Secondly, international law is a mechanism that creates relative certainty regarding how states should behave. The absence of such certainty creates chaos. It is possible, although an open question, that uncertainty may be an advantage for the strongest player in the international arena, namely the US. What is clear, however, is that uncertainty generates problems for smaller countries like Israel, when they cannot anticipate other states' reactions.

Finally, Israel can temporarily enjoy American support and be on the "winning side". However, in the medium term and certainly the long one, Israel would become – if it adopted a policy completely contrary to the way most countries perceive international law – utterly dependent on US decisions, without any ability to create any measure of counter balance.

► **What *Could* be an Effective Strategy?**

An alternative strategy to the two suboptimal options described – carrying on with the current policy or rejecting international law – is to use the support of the current administration in Washington as leverage power to score achievements in the international arena. Israel's goal should be to use American support to entrench its international position and achieve long term results in several areas.

First, Israel must act to promote change in the international courts. A comprehensive discussion of the required changes is beyond the scope of this paper, but in brief, three types of reform should and could be implemented in international institutions:

- A. Jurisdictional:** Israel can work to restrict the courts' jurisdiction more clearly. Regarding the ICC, it is necessary to clarify its jurisdictional limits as it regards to states that have not joined the Rome Statute. Concerning the ICJ, Israel can act to limit the use of its advisory opinions and to confine its jurisdiction strictly to disputes between two states with a genuine disagreement between them.
- B. Appointment Mechanism:** The judicial appointment mechanism can be improved to reflect more professional appointments and fewer political ones by the states.
- C. Evidentiary Standards:** The evidentiary threshold that these courts may rely on should be raised. Specifically, a significantly higher evidentiary standard should be required for issuing provisional measures at the ICJ and for issuing arrest warrants at the ICC.

Secondly, working together with the United States, Israel can promote the adaption of international law interpretation, most effectively by proposing a balanced interpretation of the laws of armed conflict that is tailored to situations of urban warfare against terrorist organizations, particularly those that employ the strategy of embedding their operatives and operations within the civilian population. This opportunity is primarily available because, beyond the criticism of Israel's actions during fighting, there is broad international recognition that Israel's confrontation with terrorism is likely to be replicated in the future, and that effective operational and legal responses must be found to the methods of warfare used by terrorist organizations.

In addition, Israel employed several technological capabilities during the fighting - such as the "Lavender" and "Habsora" AI systems, the pager operation against Hezbollah, and the Iron Dome defense system - which can serve as a basis for structured discussion on effective and lawful methods to combat terrorist organizations.

Action on these two fronts can advance Israel's long-term interests while maintaining its commitment to international law, thus contributing to the restoration of the State of Israel's legitimacy after the war.

Reality of Perception: Evaluating Depictions of International Law in Media Coverage on Armed Conflict



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Perception is reality. According to this popular expression, what a person or group believes may eventually become regarded as some version of the truth simply by virtue of the widely-held belief. Although this common adage may possess varying degrees of accuracy depending on the context, public perception of the practical application of international law involving armed conflict is one example that demonstrates this idiom does not represent a universal truth.

In this context, it is more fitting to explore the reality of perception. That is, one should investigate the extent to which popular public belief regarding how international law functions in warfare aligns with the doctrinal version states actually apply in practice. If public perception of the law diverges from doctrine, existing doctrinal law does not actually change in conformity therewith. Rather, it is extant popular belief that fails to align with the reality of doctrinal law.

As an industry with at least a self-appointed mandate to inform the public, news media plays a vital role—at least in theory—in preventing and countering sociopolitical misinformation. Standards and practices protocols for most news reporting entities in countries that foster a free press include values such as “truth and accuracy” in reporting and contributing to the “public good” by presenting “fair and balanced” coverage to the populace and, thereby, to the electorate. Successfully achieving these aspirational objectives, however, requires media professionals to possess a degree of substantive knowledge and a capacity to adequately account for latent ideological biases.

One common practice utilized by media professionals to account for a lack of personal

expertise related to substantive topics covered when reporting the news is to solicit commentary from specialists on those subjects. The effectiveness of this method, however, is compromised by the divergence between communities involved in the interpretation and application of international law involving armed conflict. This expanding separation between communities of practice is portrayed succinctly in a 2024 article written by U.S. Army military lawyer Captain Thomas Wheatley on the popular blog Articles of War.

Reflecting on his experience attending and participating in a conference at Cambridge, [Wheatley recalls](#) that “academics, military practitioners, and other law of war experts gathered for two days of substantive discussion and debate on some of the law of war’s most pressing issues.” One primary substantive topic the author reports was addressed during conference programming was discussing “the varying approaches to the law of war among its communities of practice.” After engaging in extensive discussion with members of both the general humanitarian and military communities of practice, Wheatley reports he encountered a “growing sense that these communities of practice are increasingly dissimilar in their approach to the law of war, perhaps even to an extent that they are now more unlike than alike.”

This expanding divergence between general communities of practice has a profound effect on the ability of media professionals to engage with international law involving armed conflict in a manner that is faithful to the doctrinal version in the applied context. Although this is an observation that is not as yet based on empirical data, anecdotally it seems that the overwhelming majority of experts available in the general humanitarian community of practice have little or no background in or experience with applying the law of armed conflict in a military setting. Yet, when high-profile incidents of civilian harm occur and the media solicit expert commentary regarding international law considerations related to the event, it is generally the humanitarian community of practice that is available to provide commentary in the public domain.

As Captain Wheatley succinctly suggests following his experience interacting at the conference in Cambridge with a diverse collection of professionals who routinely engage with international law involving armed conflict, the humanitarian and military general communities of practice are perhaps “now more unlike than alike.” Even so, it is the general humanitarian community of practice that is most accessible to media professionals when reporting on incidents that occur during armed conflict. Likewise, journalists generally do not seek commentary on the substance of international law in the abstract when reporting on high-profile incidents.

Rather, expert commentary is generally sought for the purpose of explaining to the audience how relevant aspects of international law apply to a specific set of facts known about the incident. Because journalists and editorial staff are not expected to be subject

matter experts in the topics they cover when reporting the news, media professionals may not be aware that sources from whom they solicit expert commentary are not necessarily qualified by way of credentials and professional experience for the specific task of analyzing compliance with international law in the applied setting. Additionally, media professionals are likely not aware of the sentiment that humanitarian and military communities of practice can be regarded, as Thomas Wheately reports, to be more unlike than alike.

The combined result of these factors is a media industry that is not thoroughly capable of informing the public regarding compliance with relevant aspects of international law when reporting on high-profile incidents that occur during the conduct of armed hostilities. In the context of a counterinsurgency conflict that may be expected to result in only periodic high-profile incidents of civilian harm, the effect of the divergence between public perception and doctrinal application of international law is intermittent rather than sustained. However, in a large-scale combat operation setting such as the conflict between Israel and Hamas in the Gaza Strip, media coverage of high-profile incidents provides a persistent source of information that influences and shapes public opinion regarding compliance by armed belligerents with international law in the applied context.

During an address in 2016 for a Brookings Institute lecture series, Harold Koh [suggested](#) that “the emerging law of 21st century war” is in many ways “the most discussed, but least understood” body of evolving transnational public law. If this observation is accurate, two prevalent sociopolitical factors may well be largely responsible for this deficit in knowledge. One is the expanding divergence between the humanitarian and military communities of practice, especially since the former tends to be disproportionately represented in the forum of public discourse compared to the latter.

Another factor that likely contributes to international law involving armed conflict being perhaps the “most discussed, but least understood” body of evolving transnational law is a general lack of familiarity among media professionals regarding both the conceptual characteristics and the practical application of the law. Because a free press is widely regarded in the liberal Western sociopolitical model to have a responsibility to inform the public, this prevailing gap in professional knowledge represents an impediment to the media’s capacity to fulfill a vital public interest function. In the absence of government-imposed obligations to address this deficiency, the media as a profession bears the primary responsibility to mitigate this deficiency in professional knowledge on behalf of respective audiences and electorates. Unless and until this happens, public perception of how international law involving armed conflict applies in practice will predictably not align with doctrinal reality.

The Assault on Israel's Right to Exist: Politicized Lawfare and the Subversion of International Law



Dr. Dan Diker

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The October 7, 2023, Hamas massacre – branded by Hamas as the “Al Aqsa Flood” – marked a brutal escalation in the war against Israel’s existence, not only through terrorism but also via a sophisticated legal-political assault. This “eighth front,” the subject of Kohelet Forum’s “Legal Battlefield” panel on which I participated, leverages Soviet-inspired “hybrid warfare” and Islamist ideology to subvert the United Nations and international law. Drawing on George Orwell’s warning that political language can make “murder respectable” and Carl von Clausewitz’s insight that war is politics by other means, the UN’s complicity in assaulting Israel’s legitimacy – a campaign that threatens U.S. interests and the global legal order – contradicts the precepts of its founding Charter which guarantees the protection of human rights and national sovereignty of all UN member states.

► **The UN’s Subversion: From Founding Principles to Resolution 3379**

Established in 1945 to foster peace and uphold self-determination, the UN affirmed Israel’s founding as a Jewish state in 1948. Yet, by 1975, its General Assembly passed Resolution 3379, branding Zionism as racism – a negation of Israel’s right to exist. This Soviet-orchestrated resolution marked the UN’s “suicide,” contradicting the intent of its 55 founding members. The PLO, under Soviet mentorship, had already begun this assault in 1961 when, at the UN, standing against then-Foreign Minister Golda Meir, the then-ambassador of Saudi Arabia,

Ahmed Shukeiri, who would become the first PLO chairman, labeled Israel “Eichmann in a state,” effectively “Nazifying” Israel, and predating any claims of “occupation.” By 1974, Yasser Arafat’s UN speech framed Israel as colonialist and racist, a narrative cemented at the 2001 Durban Conference on racism and persisting in today’s International Criminal Court (ICC) and International Court of Justice (ICJ) actions.

Post-October 7, the UN assault intensified. The UN Security Council refused to condemn Hamas’s atrocities unconditionally, while UNRWA compounds were used as firing sites, and UN Special Rapporteur Francesca Albanese’s biased reports inverted victim and villain. The ICC’s 2024 warrants against Israeli leaders, equating them with Hamas, and the UN’s reliance on Hamas’s propaganda numbers via the UN Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory (OCHA) exemplify this moral collapse. As Natan Sharansky’s “3D” test – demonization, delegitimization, double standards – reveals, the UN’s actions mirror antisemitism, equating Zion-hatred with Jew-hatred, as Martin Luther King famously noted in 1967.

► Hybrid Warfare and Lawfare: The Eighth Front

The PLO and Hamas employ Eastern-style “hybrid warfare,” blending Soviet-style disinformation with Islamist ideology. This “eighth front” strategy combines terrorism, propaganda, and lawfare to delegitimize Israel. Soviet tactics, taught to the PLO in the 1960s and to Iran’s Revolutionary Guard Corps via its Marxist allies, involve “active measures,” like antisemitic bot farms and dual messaging – genocidal rhetoric for Arab audiences, while disseminating “human rights” messages for the West. The 1965 Soviet push to equate Zionism with Nazism, culminating in Resolution 3379, racialized Israel, a narrative of Nazification from colonialism to genocide, which has been amplified by the religious accusation that Israel is a usurper of Islamic lands.

Lawfare, wielded through UN resolutions and ICC and ICJ cases, weaponizes international law. The PLO’s Soviet-backed Resolution 3236 (1974) framed Palestinians as victims of colonization, while Hamas’s 2017 rebranding, guided by Iran, adopted social justice rhetoric to appeal to Western progressives. UNESCO’s reclassification of Rachel’s Tomb as a mosque and UNIFIL’s inaction against Hizbullah normalize this assault. The 2001 Durban NGO Forum’s “genocidal” label for Israel, echoed in South Africa’s 2023 ICJ genocide case, racializes the conflict, building on Resolution 3379’s legacy, aiming to isolate and cancel Israel.

► Cultural and Strategic Impacts

This assault extends beyond Israel, infiltrating Western campuses and NGOs via the Boycott Divestment and Sanctions movement (BDS), Students for Justice in Palestine (SJP), and the Palestinian Academic and Cultural Boycott of Israel (PACBI). Post-October 7, Hamas hijacked U.S. social justice narratives, infusing Muslim Brotherhood ideology to drive wedges between Israel, diaspora Jewry, and the West. The UN's double standards – ignoring Jordan's 1949–1967 rule while condemning Israel – erode the moral order.

The assault also targets U.S. interests. The Soviet war on Israel was a proxy war on America, using the Palestinian cause to rally Arab support. Today's lawfare – Resolution 3379, Durban, ICC warrants – continues this, with Iran and the Muslim Brotherhood fueling anti-Western narratives. The ICC's 2020 investigation into U.S. actions in Afghanistan, the ICJ's 1986 Nicaragua ruling, and the UN's annual Cuba embargo condemnations illustrate parallel attacks on U.S. sovereignty. China's rising UN influence, the Non-Aligned Movement's anti-Western tilt, and the erosion of U.S. moral authority post-Iraq further diminish American power, amplifying the UN's politicization.

► Remedies: A Counteroffensive

Israel and its allies must shift from defensive “hasbara” to a proactive legal-political and information counteroffensive. The Trump administration's 2017 and proposed 2025 ICC sanctions, alongside Hungary's ICC withdrawal, reflect the efficacy of assertive punitive measures. The United States funding of 22 percent of the UN budget, should leverage sanctions to demand reform, in the spirit of former U.S. Secretary of State Henry Kissinger and U.S. Senator Daniel Patrick Moynihan's response to Resolution 3379. Reviving and expanding the scope of former U.S. Secretary of State Madeleine Albright's Community of Democracies can make for a values-based UN caucus and perhaps a more independent and powerful union. Adopting the IHRA definition of antisemitism at the UN and designating Hamas, Hezbollah, and Iran as terror supporters are critical steps to any reform in this forum.

Israel must unite with the United States in reframing BDS and UN actions as political antisemitism, exposing their Soviet-Islamist roots. A 24/7 counteroffensive, involving Jewish organizations and media, can debunk disinformation in real-time and fight misinformation, as was seen in Gaza's al-Ahli hospital bombing misattribution. By aligning with the West, Israel can reverse the PLO's divisive legacy, which Resolution 3379 exacerbated, and strengthen the West against this assault.

The UN's assault on Israel's right to exist – from its founding to Resolution 3379 and Hamas's

2023 “Al Aqsa Flood” – is a Soviet-Islamist war masked as justice, equality, and freedom, as the BDS crusade asserts. By politicizing the UN and international law, it undermines U.S. leadership and the global legal order. Israel, as the West’s frontline in the volatile Arab Muslim majority Middle East, must lead a united counteroffensive to restore legitimacy and protect democratic values. The stakes are clear: either we act, or the Orwellian inversion of truth prevails.

The Legal and Moral Quagmire of Information Warfare in Gaza: A Military Analyst's Perspective



Andrew Fox

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► Introduction

As a military analyst with master's degrees in war studies and psychology, I have spent years examining the complexities of modern warfare, particularly in the context of the Gaza conflict following 7 October 2023. My firsthand experiences in Gaza, coupled with extensive research, reveal a troubling reality: the battle for legal and moral legitimacy is being lost in an information vortex. This article, grounded in my observations and analysis, explores how disinformation campaigns exploit emotional reactions to distort the application of international humanitarian law (IHL) in Gaza. I argue that Israel's adherence to legal standards is overshadowed by a psychologically astute narrative driven by Hamas, posing unprecedented challenges to justifying military actions in a live-streamed war.

► The Information Vortex: a legal and analytical challenge

Gaza is an information-poor environment for analysts not embedded within the Israel Defense Forces (IDF). Unlike Ukraine, where tactical developments are spread over a vast landscape, Gaza's confined 360 square kilometers make every airstrike and casualty hyper-visible. This creates a vacuum that Hamas fills with unverified casualty figures and graphic imagery, dominating global headlines. As someone who has served in war zones and studied IDF targeting processes, I recognize that the IDF operates under stringent rules of

engagement—62 iterations by July 2024. However, the lack of transparent, real-time data from Israel hampers external validation of these efforts.

Under IHL, military operations must comply with the principles of distinction (targeting only combatants), proportionality (balancing civilian harm against military advantage), and necessity (using force only for legitimate objectives). My visits to Rafah and interactions with IDF units confirm their strict adherence to these principles, including pre-strike assessments to minimize civilian casualties. However, the lack of immediate, accessible evidence allows Hamas to inundate the information space with narratives of “genocide” and systemic war crimes, allegations I categorically reject based on my observations.

► The Psychological Weaponization of Emotion

My background in psychology informs my understanding of why Hamas’s narrative resonates globally. Information campaigns thrive on emotion, not legality. When civilians see airstrike footage on their phones, their amygdala (the brain’s fear center) triggers a visceral reaction, bypassing the prefrontal cortex where critical thinking occurs. This emotional hijacking renders legal explanations irrelevant to a horrified public. For someone in London with no military context, an airstrike’s devastation feels inherently immoral, irrespective of its compliance with IHL.

Hamas exploits this by anchoring biases—planting the initial narrative that people encounter. For instance, their early claim of 500 deaths from an Israeli airstrike on a hospital was later debunked as a Palestinian Islamic Jihad rocket with significantly fewer casualties, but the original story had already shaped global perceptions. Confirmation bias then reinforces this narrative as subsequent footage aligns with the “genocide” framing. My analysis, published with the Henry Jackson Society in December 2024, revealed Hamas’s manipulation of casualty lists, including misreported genders, ages, and deaths from earlier conflicts. Nevertheless, major outlets like the New York Times and BBC failed to report Hamas’s own downward revision of casualties, with 72% of the 13–45 age group being male, resulting in a civilian-to-combatant death ratio among the lowest in modern conflicts.

► Legal Justifications vs. Moral Perceptions

The law of armed conflict seeks to impose boundaries on the inherent immorality of war. IHL permits civilian casualties as collateral damage if they are proportionate and necessary; however, public perception equates any civilian death with immorality, regardless of legality. This disconnect is heightened in Gaza, where the war’s live-streamed nature—

unprecedented in scale compared to Ukraine—intensifies emotional reactions. I visited Rafah in July 2024. While driving along the Philadelphia Corridor, the devastation left me stunned, despite my awareness of IDF protocols. If even I, with operational experience, felt this recoil, how can civilians without context process such imagery?

Israel's legal compliance is further undermined by disinformation actors such as Al-Jazeera, which I have observed lend credibility to Hamas's claims despite its tarnished reputation among experts. This narrative cascades through influencers, social media, and a news cycle that prioritizes speed over accuracy. The rush to publish circumvents editorial checks, perpetuating falsehoods. For instance, the failure of Western media to scrutinize Hamas's casualty figures since October 2023 reflects this systemic issue.

► **Strategic Failures in the Information War**

Israel's struggle to counter this narrative stems from a strategic misstep: underestimating the importance of the information battlefield. When I questioned the IDF Southern Command's commander, he dismissed the information war, stating, "We've been fighting a real war." This reflects a critical oversight, as social media saturation renders information a key terrain. The IDF has improved its response speed, yet errors, such as the rushed and initially false explanation of the Palestinian Red Crescent ambulance incident, fuel accusations of deceit.

Israel missed an opportunity after October 7. The horrifying footage of Hamas's attacks, which I have reviewed extensively, was not widely shared due to respect for the deceased and concerns about enemy exploitation. While I understand both perspectives, this decision surrendered the narrative to Hamas, whose Gaza footage is incessantly broadcast. A proactive approach, such as releasing curated evidence or establishing the context before strikes, might have mitigated this loss.

► **A Path Forward: Fighting Emotion with Emotion**

Countering disinformation requires matching emotion with emotion, as legal arguments alone fail against amygdala-driven reactions. I propose a long-term PR campaign to showcase Israel's peaceful, vibrant society—its people, culture, and cities like Tel Aviv, which surprised my wife, a London police officer, with its modernity. This approach, distinct from traditional Hasbara, must leverage social media and emotional storytelling to rebuild Israel's image post-war. Accelerating factual responses is also critical, though truth requires time for verification, unlike lies that spread instantly.

► Conclusion

The Gaza conflict underscores a stark truth: legal compliance with IHL is inadequate when disinformation exploits human psychology. Hamas's narrative, amplified by a complicit media ecosystem, has manipulated global perceptions, depicting Israel's actions as immoral despite their legality. My experiences in Gaza and analysis of casualty data confirm the IDF's restraint; yet, the information war remains a formidable challenge. Israel can reclaim the narrative by prioritizing emotional engagement and rapid, truthful communication. This struggle is not merely about legality but about winning hearts and minds in a world where emotions often outweigh reason.

The Role of Arms Embargo Campaigns in the Information War



Adv. Anne Herzberg
Legal Advisor NGO Monitor

The armed conflict with Hamas, Iran, Hezbollah, the Houthis, and other terror proxies involves kinetic operations and information war. The information space should not be viewed merely as a distraction, but rather, it must be seen as a critical military front aimed at disrupting Israel's war strategy and actions.

A key component of the information front is the use of "[lawfare](#)" to hamper Israel's military edge and disrupt allied military cooperation. This takes place in two ways. First, efforts to target Israeli officials and soldiers with harassment and arrest. Second, a coordinated campaign to block arms transfers to Israel. The same actors are involved in both initiatives, though the rest of this piece will focus on the arms embargo.

The campaign to block arms transfers to Israel is taking place at both the international and the domestic level. In some cases, activities are coordinated by hostile states, and in others, they are coordinated by the UN and non-governmental organizations ideologically sympathetic to or actively part of the Iranian axis.

Internationally, UN mechanisms are being instrumentalized. Most notably, the International Court of Justice (ICJ) and the UN Human Rights Council. Hostile states, UN officials, and NGOs also seek to leverage the proceedings at the International Criminal Court to bolster their activities. These efforts not only target Israel but threaten States and officials allied with Israel.

At the ICJ the "genocide" proceedings started by South Africa have been used to try and impose a "ceasefire" on Israel, while a related, but unsuccessful, case brought by Nicaragua against Germany was used to try and block German military assistance to Israel and test the boundaries for attacking other allies. Two advisory proceedings conducted in 2024 and

2025, “Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory,” and “Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory,” are being used to support BDS initiatives and block Israel’s ability to prevent Hamas infiltration of UN agencies and humanitarian organizations operating in Gaza.

In April 2025, the Human Rights Council passed a [resolution](#) calling for “all States to cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel.” UNHRC-associated mechanisms are also heavily involved. Notorious UN Rapporteur Francesca Albanese and the Permanent Commission of Inquiry led by Navi Pillay are both compiling reports to promote an arms embargo. At the same time, the Office of the High Commissioner for Human Rights (the UNHRC’s bureaucratic arm) is expanding a [database of companies](#), including defense companies, to be used for conducting BDS campaigns.

At the national level, NGOs are engaged in lobbying campaigns to block military assistance and the cancellation of arms export licenses to Israel. In addition, [a core coalition of NGOs](#) have filed lawsuits for court orders imposing arms embargoes. Some of these NGOs have been designated by the Israeli government for operating on behalf of the PFLP. These efforts are taking place even in countries where there is not a significant arms trade with Israel, but the goal is to amplify the global campaign by generating negative PR, setting negative precedents, and furthering international isolation of Israel.

Countries where these lawsuits are taking place include the Netherlands, the UK, Denmark, Canada, Germany, the US, and Australia. Regardless of the outcome, several of these cases have generated negative comments by government officials or judicial dicta against Israel. In the UK proceedings, even though a full arms embargo is opposed, the Labour government nevertheless inserted into the court record that there was a “clear risk that the items might be used to commit or facilitate serious violations of international humanitarian law”. This language is then operationalized for further BDS activities.

Several key takeaways emerge from the arms embargo campaigns. First, it is very clear that the international cases and UN Human Rights Council initiatives are being brought in order that they can then be used to bolster domestic lawsuits and lobbying campaigns. Second, these efforts will have lasting impact to expand BDS even after the war. Third, allied governments are allowing their court processes to be exploited by terror-linked actors. Hostile states such as South Africa are also playing integral roles. Fourth, these activities pose a national security and economic threat to both Israel and allied countries where they are taking place. It is incumbent that Israel and its allies take these campaigns seriously, and investigate their organization and funding.

Targeting Genocidal Terrorists: The Legal and Moral Quagmire of Modern Warfare



Adv. Maurice Hirsch

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On June 23, 1944, the International Committee of the Red Cross (ICRC) visited the Theresienstadt concentration camp, issuing a report that praised the Nazis' treatment of Jews imprisoned there. This moment stands as a stark reminder of the ICRC's historical failure to confront genocidal actors, a failure that reverberates in today's debates over whether genocidal terrorists — those who exploit human shields and operate outside traditional state frameworks — can be legitimately targeted in their most vulnerable moments, or, metaphorically, “in their beds.” This article explores the evolving nature of warfare, the limitations of international law as shaped by the ICRC, and the profound challenges of combating terrorism within a framework that often protects the perpetrators.

► **The ICRC's Historical Shortcomings: A Legacy of Inaction**

The 1944 Theresienstadt visit was a debacle, a propaganda victory for the Nazis that exposed the ICRC's inability to protect victims of genocide. That same year, the ICRC received the Nobel Peace Prize, an ironic accolade given its failure to hold the Nazis accountable. This “halo effect” surrounding international organizations like the ICRC grants them disproportionate influence over international law, despite their lack of enforcement power. Fast forward to the present, and the ICRC's inaction persists. In the ongoing conflict involving Hamas, the ICRC has failed to secure access to hostages or ensure that medicine reaches them, underscoring its powerlessness against genocidal terrorist groups that disregard international norms. This raises a critical question: how can international law, shaped by such organizations, address the unique challenges posed by non-state actors who operate with impunity?

► The Transformation of Warfare: From States to Terrorist Organizations

The laws of war were originally designed for conflicts between state armies, where combatants and civilians were clearly distinguished. However, the rise of non-state actors—groups like ISIS, al-Qaeda, Hamas, Palestinian Islamic Jihad, and Boko Haram—has upended this framework. These organizations blur the line between combatants and civilians, often controlling territories while engaging in both terrorism and governance. This dual role creates a legal vacuum that international law struggles to address. These groups are not merely small cells committing isolated acts of violence; they are sophisticated entities with territorial control, military operations, and political structures. The question becomes: how does one apply the laws of war to actors who defy traditional categories?

To address this, the ICRC introduced its 2009 Interpretive Guidance on the Law of Armed Conflict, a document heralded as a watershed moment for terrorists worldwide. The guidance sought to define “direct participation in hostilities” (DPH), establishing when a civilian loses their protected status and becomes a legitimate target. However, the framework imposes a “temporal limitation,” meaning a civilian is only targetable during the specific moments they are actively engaged in hostile acts. This creates a “revolving door” scenario: a terrorist in the morning, a civilian barman in the evening, and a terrorist again the next day. Such a framework is nearly impossible to implement on the battlefield, where real-time intelligence is often incomplete and the distinction between combatant and civilian is obscured.

► The ICRC’s Guidance :A Shield for Terrorists?

The 2009 guidance introduces two key concepts: direct participation in hostilities and membership in organized armed groups. The former applies to civilians who temporarily engage in hostile acts, while the latter refers to individuals within structured terrorist organizations. However, the criteria for qualifying as an organized armed group are so stringent that many terrorist groups may not meet them, leaving their members shielded as civilians. For example, the guidance suggests that individuals producing or storing improvised explosive devices (IEDs) are not direct participants unless their actions have an immediate, direct impact on the enemy. This means a terrorist like Ahmed, standing next to a rocket launcher and pressing the button, is targetable only for those fleeting seconds. Moments later, he regains civilian status, rendering him untouchable under the ICRC’s framework.

This narrow definition creates an absurd situation. Those digging tunnels for Hamas to hold hostages or storing weapons may not qualify as direct participants or members of

organized armed groups, despite their critical role in terrorist operations. The guidance assumes a default civilian status, making it nearly impossible for militaries to target those who enable terrorism indirectly. This framework, while claiming to clarify the laws of war, effectively provides cover for genocidal terrorists, undermining the ability of states to defend themselves.

► **Propaganda and the Manipulation of International Law**

Terrorist organizations exploit the ICRC's guidelines to manipulate public perception and international opinion. For instance, Hamas has released statistics claiming that, in a single week from March 29 to April 5, 468 people were killed in Gaza, of whom, according to Hamas, at least 500 women and 1,500 children among the casualties. These figures, mathematically impossible and propagandistic, are nonetheless adopted by international organizations like the United Nations, which rely on the ICRC's frameworks. This uncritical acceptance of terrorist-provided data perpetuates a narrative that vilifies states like Israel while ignoring the complexities of fighting groups that embed themselves within civilian populations and use human shields.

The reliance on such data is not merely a statistical issue; it is a poisonous and deadly manipulation that distorts the reality of asymmetric warfare. The ICRC's guidelines, by setting unrealistic standards for targeting, enable this propaganda, as they fail to account for the deliberate blending of civilian and combatant roles by terrorist groups. This dynamic is not unique to Israel but has broader implications for any nation combating genocidal terrorism. Countries like the United States, Britain, and Canada, which engage in counterterrorism operations, reject the ICRC's restrictive definitions. For example, recent U.S. strikes against Houthi targets in Yemen demonstrate a willingness to target terrorists in their operational bases, regardless of the ICRC's temporal limitations.

► **A Dangerous Precedent: Rewriting International Law**

The ICRC's 2009 guidance risks creating a new, Israel-specific standard that could be applied to other democratic nations fighting terrorism. By prioritizing the protection of civilians — even those indirectly supporting terrorist activities — the guidance undermines the ability of states to defend their citizens. Military expert John Spencer has argued that Israel's current conflict is setting a precedent for how international law is interpreted in asymmetric warfare. If unchallenged, this precedent could hinder other nations' efforts to combat groups like ISIS or al-Qaeda, who exploit the same legal ambiguities.

The guidance, while claiming not to invent new law, effectively rewrites international law in favor of terrorists. By redefining who can be targeted and imposing impractical constraints, it tilts the balance against states fighting for their survival. The United States' approach, as seen in its operations against the Houthis, offers a counterpoint: a rejection of the ICRC's narrow definitions in favor of a more pragmatic application of force. This divergence underscores a critical tension between theoretical legal frameworks and the realities of modern warfare.

► **Conclusion :The Need for a New Approach**

The question of whether genocidal terrorists can be targeted “in their beds” remains unresolved, but the ICRC's current framework is woefully inadequate for addressing it. The 1944 Theresienstadt debacle and the ICRC's inaction in modern conflicts highlight a persistent failure to confront genocidal actors effectively. The 2009 Interpretive Guidance, far from clarifying the laws of war, creates a legal quagmire that shields terrorists and hampers counterterrorism efforts. As non-state actors continue to dominate modern conflicts, international law must evolve to address their unique challenges. States like Israel and the United States, fighting for their right to exist against genocidal terrorism, must lead the charge in redefining these rules to ensure that those who murder indiscriminately cannot hide behind the protections of a flawed system. The stakes are too high for anything less.

Clarifying the Legal Status of Gaza



Prof. Eugene Kontorovich
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Senior Scholar at Kohelet Policy Forum

► Introduction

President Trump has recently proposed a “Gaza Riviera” plan that would see the territory under some form of United States control. Gaza’s unique status—not being part of the sovereign territory of any state — distinguishes it from territories like the Panama Canal Zone or Greenland. These comments discuss Gaza’s non-sovereign status, explains why it does not qualify as an occupied territory.

► Gaza’s Non-Sovereign Status

Gaza is a rare contemporary example of a territory without a sovereign authority. It was part of Mandatory Palestine until 1948, with Britain as the clear sovereign. At the end of the Mandate Israel declared independence and was immediately invaded by neighboring states. Gaza was occupied by Egypt and under Egyptian military administration until 1967. Then it was under Israeli control until 2005, when Israel dramatically withdrew all its military and civilians from the territory. Since Israel’s withdrawal, Gaza has not been recognized as a sovereign state by Israel, the United States, or most European nations. Despite arguably satisfying international statehood criteria — defined territory, population, and a government (Hamas) — the Palestinian leadership has not declared statehood for Gaza, likely due to internal political divisions and greater territorial aspirations. Gaza claims to be part of a Palestinian state, but this is not recognized by the U.S., and does not satisfy the international tests for statehood. Gaza has not been jointly governed with any part of the West Bank since 2006. In 2019, the United States officially ceased to refer to Gaza and the West Bank as a single entity, recognizing their separate governance structures.

► Why Gaza Is Not Occupied

Gaza does not meet the legal criteria for occupation under the Fourth Geneva Convention. When Israel took Gaza in 1967, it argued that the territory was not occupied because the prior incumbent, Egypt, had no sovereign claim. However, much of the international community took the position most prominently articulated by U.S. State Dept. Legal Advisor Herbert Hansell, in a 1977 government memo. He took the position that the laws of occupation apply in any international armed conflict where one high contracting party takes territory from another, even if the latter lacked sovereignty. In this view, Egypt's de facto administration of the territory was enough to trigger the occupation provisions of the Fourth Geneva Convention, given the international character of the armed conflict between Cairo and Jerusalem. However, the State Department opinion made clear that a peace treaty between Israel and its belligerents would terminate any condition of occupation.

Egypt's 1979 peace treaty with Israel and its explicit disclaimer of control over Gaza eliminate it as a sovereign belligerent. Nor has Egyptian control been replaced with the sovereignty of administration of any other state. Post-2005, with no sovereign state claiming Gaza, the conflict with Hamas is classified as a non-international armed conflict. This precludes the application of occupation laws, aligning Gaza with conflicts like Syria's civil war, where only basic rules of war (e.g., distinction) apply.

Urban Warfare Under Fire: Applying the Law of War Amid Operational Complexity



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► Urban Warfare and the Principle of Distinction²

Urban warfare has become an increasingly prominent feature of contemporary armed conflicts, especially in asymmetric confrontations involving non-state actors such as terrorist organizations. These adversaries often embed themselves within civilian populations and use civilian structures, including hospitals, UN facilities, and other specially protected buildings, for military purposes. This reality poses serious challenges to the practical application of the Law of Armed Conflict (LOAC), also known as International Humanitarian Law (IHL), particularly the principle of distinction. This principle must be interpreted and applied in a manner that balances humanitarian considerations with operational imperatives.

The principle of distinction obligates parties to a conflict to distinguish at all times between civilians and combatants, and between civilian objects and military objectives. Applying this rule, however, may become challenging during high-intensity ground operations in densely populated areas.

In particular, operational practices common to all modern armed forces—such as

- 1 The opinions in this paper do not necessarily represent the views of the Ministry of Justice or the Government of Israel.
- 2 For a more detailed analysis of the challenges in applying the law of armed conflict in urban warfare, as well as a discussion of alternative approaches to address these challenges, see N. Neuman, “*Challenges in the Interpretation and Application of the Principle of Distinction During Ground Operations in Urban Areas*,” 51 Vand. J. Transnat’l L. 807 (2018).

maneuvering through buildings, breaching structures to avoid ambushes, or using heavy machinery to create safe routes—frequently result in unfortunate incidental harm to civilian objects located in densely populated urban environments. This reality raises a legal challenge, as in many such cases, it may be unclear whether the affected objects met the LOAC's definition of a military objective. This challenge underscores the need to reconcile such widely accepted operational practices with the principle of distinction, which remains a binding and foundational rule under LOAC.

► Operational Complexity and the Underground Threat

Subterranean threats, as starkly demonstrated in the fighting in the Gaza Strip beginning on October 7, 2023, add a further layer of complexity. Adversaries operating through extensive underground tunnel networks can maneuver, launch attacks, and retreat undetected beneath urban terrain. These tunnels often run under civilian infrastructure, blurring the physical boundaries between military and civilian spheres. As a result, above-ground structures may be functionally connected to hostile activities below, further complicating legal assessments and targeting decisions.

In such scenarios, engineering solutions may be required to neutralize subterranean threats, particularly when there is a credible risk of explosives or booby traps. These methods—such as using controlled demolitions or high-impact engineering tools—can cause extensive structural damage. However, their purpose is twofold: to eliminate the threat posed by tunnel networks and to mitigate excessive risk to advancing forces. Recognizing the operational necessity of these actions is critical to maintaining both military effectiveness and legal compliance.

► Interpreting the Law in Light of Operational Realities

Urban military operations aim to achieve lawful military objectives effectively and in compliance with international law. Minimizing civilian harm is not a secondary concern, but an integral part of mission planning, execution, and ultimately – success. Any incidental harm to civilians or civilian objects, as such, is never the intended outcome, but a tragic byproduct of confronting adversaries who systematically exploit civilian environments as shields for their own military activities.

At the same time, the tension between LOAC's doctrinal formulation and the realities of urban combat calls for a thoughtful legal approach—one that reflects how professional armed forces operate lawfully in complex environments. The goal is not to weaken legal

protections but to ensure that the interpretations and implementation of LOAC remain aligned with how modern militaries—acting in good faith—carry out their missions.

Practices such as maneuvering through buildings, breaching walls, operating in environments saturated with civilian infrastructure, or employing engineering alternatives to address tunnel threats are not violations of LOAC. Rather, when conducted appropriately, they are widely accepted operational methods designed to protect both civilians and soldiers, consistent with LOAC's core principles.

Recognizing this operational consensus is essential to maintain the law's credibility and ensuring it remains a meaningful framework in the field. This is particularly pressing given the increasing frequency of urban warfare and the risk of escalation in ongoing conflicts across multiple regions.

► State Practice and the Shaping of Legal Interpretation

Equally important is for states to clearly articulate how they interpret and implement their LOAC obligations. This can be achieved through official manuals, policy documents, and military guidance. For example, the development of a publicly available Israeli manual on the law of armed conflict would not only reinforce Israel's commitment to LOAC but also clarify how its obligations are understood and applied in practice.³ This is critical to the development of customary international law, which evolves through consistent state practice undertaken out of a sense of legal obligation (*opinio juris*).

At a time when civil society organizations and international actors often promote overly restrictive interpretations of LOAC—interpretations sometimes detached from operational realities—it is especially important for specially affected states to contribute actively to the legal discourse. Their perspectives help ensure that the interpretation of LOAC remains grounded in practical experience of contemporary warfare rather than shaped solely by actors with limited exposure to the complexities of armed conflict.

► Conclusion

Urban warfare presents some of the most difficult dilemmas in contemporary conflict, where military necessity, humanitarian considerations, and legal obligations converge. The challenge of applying the principle of distinction under fire highlights this difficulty and

3 See, for example, Noam Neuman, "Lawfare 2.0: Insights from the Russia-Ukraine War and the Israeli Context," *Ma'arachot* No. 498, August 2023 (available in Hebrew), discussing, inter alia, the importance of developing a national military manual on the law of armed conflict.

reflects the complex and evolving nature of modern warfare.

To remain effective, LOAC must be responsive, field-informed, and grounded in operational reality. It is not a distant theoretical constraint but a practical framework meant to be implemented on the battlefield —shaped by practical legal reasoning and applied in dynamic, high-risk environments. A pragmatic approach that reconciles legal principles with widely accepted military practices, including those used to address subterranean threats, is essential. Legal advice, military manuals, and active international engagement are indispensable in this effort. Ultimately, LOAC's strength lies not in abstraction, but in its capacity to guide lawful and effective conduct amid the most complex and demanding arenas of modern conflict.

Strategic Reorientation of Israel's Engagement with International Legal Institutions



Adv. Yifa Segal

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► Introduction

International legal institutions, such as the International Criminal Court (ICC), International Court of Justice (ICJ), and UNESCO, function as political arenas where geopolitical interests often overshadow legal impartiality. This dynamic perpetuates antisemitism and biases against Israel, as evidenced by decisions like UNESCO's designation of Jerusalem's Old City as a Muslim holy site, ignoring its Jewish and Christian heritage. Israel's reactive approach — defending itself within these forums — yields limited results. This policy paper proposes a strategic shift: enhancing understanding of the politicized nature of international law and adopting proactive, unconventional legal strategies to reshape global narratives.

► The Politicized Nature of International Law

Decisions in international forums are driven by political alliances, not objective justice. A decade ago, UNESCO's Jerusalem resolution prevailed despite advocacy efforts, including a petition with tens of thousands of signatures, due to vote-trading for budgets and Arab bloc influence. Similarly, ICC and ICJ rulings reflect the sway of hostile coalitions, rendering accusations of antisemitism insufficient to counter systemic bias. This political reality is rarely addressed in academic or public discourse, leaving many of Israel's advocates unprepared to navigate or challenge these dynamics effectively.

► Policy Recommendations

1. Build Domestic and Allied Capacity for Understanding International Law

Israel must institutionalize education on the political underpinnings of international legal systems to strengthen advocacy.

- **Action:** Develop training programs for government officials, military personnel, and civil society leaders, focusing on how geopolitical interests shape ICC, ICJ, and UN decisions.
- **Action:** Collaborate with academic institutions to integrate curricula on the politicization of international law, using case studies like UNESCO's Jerusalem ruling.
- **Action:** Launch public awareness campaigns to inform citizens and allies about vote-trading and coalition dynamics, moving beyond oversimplified antisemitism narratives.
- **Outcome:** A cadre of advocates equipped to articulate structural biases, enhancing Israel's diplomatic resilience.

2. Adopt Proactive and Creative Legal Strategies

Israel must transition from defensive to offensive engagement, leveraging international and domestic legal tools to disrupt hostile narratives. Be smart, creative and crafty.

- **Action:** Enlist friendly states (e.g., Argentina) to file strategic complaints in international forums, such as against Egypt for violating refugee conventions by blocking Gazan civilians. Withdraw petitions if outcomes seem unfavorable to prioritize narrative impact.
- **Action:** Recruit non-Israeli plaintiffs, particularly Arab victims of Hamas, to file cases in Western courts or parliaments, testify at the UN, amplifying credible voices to expose terrorist abuses.
- **Action:** Allocate funding for global advocacy campaigns using proxy actors to challenge antisemitic narratives, drawing on Iran's use of South Africa at the ICJ.
- **Outcome:** Shifted global perceptions through diversified advocacy, reducing Israel's isolation and exposing adversarial tactics.

► Implementation Considerations

These strategies demand significant resources, inter-ministerial coordination, and a shift from traditional diplomacy. The Ministry of Foreign Affairs, Justice, Defense and Diaspora should lead implementation. Risks include diplomatic backlash and resource constraints, but continued reliance on reactive strategies perpetuates vulnerability. A pilot program testing proxy filings in select forums can evaluate effectiveness within 12 months.

► Conclusion

The politicized nature of international legal institutions requires Israel to overhaul its engagement strategy. By fostering deeper understanding of these dynamics and deploying creative legal tactics, Israel can counter antisemitism and reshape global narratives. The government must act decisively, supporting state-backed initiatives to navigate and exploit the international legal landscape effectively. Israel must properly evaluate where it is weak and what it can leverage and forge creative strategies to maximize success.

Legal Counsel in Wartime



Colonel (res.) Pnina Sharvit Baruch

INSS, former head of the International Law Department of the Military Advocate General (MAG) Unit in the IDF

One of the controversial issues in Israeli society concerns the role of IDF legal advisors during wartime. Some argue that legal advisors tie the army's hands in ways that prevent it from defeating its enemies, and that operational decisions should be made without their involvement. These claims are fundamentally mistaken and fail to grasp the complexity and significance of the legal advisors' role.

Legal advisors in the IDF and the broader governmental system play a crucial role in enabling military personnel and security agencies to act in accordance with legal norms. Adherence to the law and the rule of law is a cornerstone of Israel's identity as a democratic state, setting it apart from its unrestrained and immoral enemies.

The claim that legal advisors obstruct victory in battle often reflects a misunderstanding -- both of the laws of war and of the way legal advisors operate in the IDF. Legal advisors in the IDF and other security bodies, particularly in wartime, do not prevent the military from defending the state or achieving victory. Rather, they ensure that operations are conducted within the framework of the applicable laws of war.

The laws of war are designed with considerable flexibility, reflecting an understanding of the battlefield's complexities. Their application takes into account combat scenarios in densely populated areas where the enemy uses civilians as shields. For example, civilian buildings used for military purposes are legitimate targets; even hospitals may be attacked in certain circumstances, subject to specific limitations. The severity of the threat posed by the enemy is also central to the assessment of proportionality. In practice, military actions that adhere to the IDF's combat ethics — its guiding principle — generally comply with legal requirements as well.

Integrating legal advisors into operational planning provides legal backing for military action and protects the IDF, its commanders, and soldiers from violations of international law. There are many examples of this constructive integration, ensuring both mission success and legal

compliance. For instance, civilians must be warned, where feasible, before an attack, but terrorizing the civilian population is prohibited — a delicate distinction that requires legal review of every leaflet text before distribution, preventing potential missteps. Legal advice is also crucial in assessing the legality of combat means and methods, enabling the military to select lawful options that still fulfill operational goals.

In this context, it is worth recalling the words of former Israeli Supreme Court President Justice Meir Shamgar, who also served as Military Advocate General and State Attorney General:

“The military jurist must seek a legally correct solution that serves the military objective. If such a solution is found – the army will act upon it. However, the main point is that if no such solution is found – the military jurist must provide a clear answer that excludes unlawful alternatives. The response must always be legally correct, but it is beneficial if it is given by someone familiar with the army and who understands all aspects of the problem. This must be stated clearly: a military jurist is not obligated to provide a positive solution at any cost; he must beware of being drawn, without sufficient basis, into a precarious solution, as doing so may mislead those seeking his counsel. But if a lawful alternative exists, he must bring it to their attention.”

While these words refer to peacetime legal counsel, their logic applies equally in times of war.

Beyond the intrinsic value of upholding the law, legal counsel also plays a critical instrumental role in addressing the political and legal challenges faced by the State of Israel.

Alongside the military campaign, Israel faces a complex political struggle in the international arena. This struggle affects the military effort directly — for example, through limitations on arms transfers or other aid — and indirectly, through political and economic pressures or attempts to promote measures against Israel. It also carries long-term consequences for Israel’s global standing and even for the treatment of its citizens and businesses abroad.

A key front in this struggle is the legal battlefield, where Israel faces accusations of war crimes, crimes against humanity, and even genocide. In this arena, legal tools — including claims in courts and before international legal bodies — are the primary “weapons.” Successfully navigating this front requires deep professional expertise in international legal discourse.

Of course, there are parties who will condemn any Israeli action, regardless of its legality. But others, especially allies such as the United States, as well as other Western countries, do care about actual adherence to the law. Their support is often shaped by their perception of the legal validity of Israel’s actions. Moreover, even in academic and professional circles, not everyone approaches these issues with predetermined hostility toward Israel. It is

therefore vital to present the legal foundations for Israeli actions to these more objective audiences. There is particular value in having these arguments presented by legal advisors who were directly involved in the decision-making process and fully understand the operational context.

Legal counsel is also essential in addressing the ongoing International Criminal Court investigation into alleged war crimes during the current conflict, as well as attempts to initiate legal proceedings against IDF personnel in foreign courts. The very existence of legal review during operational decision-making serves as an important defense in such proceedings. In addition, under the principle of complementarity, one of the key defenses against these legal challenges lies in Israel's own investigative processes, in which legal advisors play an important role, including, where necessary, formal investigations into alleged violations.

Furthermore, the laws of war continue to evolve through state practice and the legal justifications (*opinio juris*) states offer for their actions in combat. The integration of legal advisors into military decision-making allows them to develop expertise in the realities of combat and to contribute to shaping the interpretation of the laws of war. For example, during my tenure at the International Law Department of the Military Advocate General, we influenced the development of legal frameworks concerning targeted killings of terrorists, detention of unlawful combatants, and the classification of terrorist operatives as non-civilians — all based on professional experience, dialogue with legal counterparts from other militaries, and participation in professional forums.

In conclusion, alongside the fundamental importance of upholding the rule of law, there is also clear practical value in embedding expert legal advisors within military operations. These advisors serve a dual role: internally, they provide guidance on applying the law during operations, giving legal backing to IDF actions and protecting soldiers and commanders from violations of international law; and externally, they help explain military actions and their legal basis, strengthening Israel's international legitimacy and defending against legal proceedings. Furthermore, legal advisors who understand the real challenges of modern warfare — such as those seen in the conflict with Hamas in Gaza — are able to contribute to the evolution of the laws of war to ensure they remain relevant and effective in addressing contemporary security threats.