UN Reports on IDF response to Hamas are misguided and pose serious concerns

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On Monday, the U.N. held a hearing and issued a report by its special commission on Israel’s response to the mass demonstrations along its border with Gaza, known as the “March of Return.” The U.N.’s [findings](https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIOPT/A_HRC_40_74.pdf), which assert Israel violated international law and downplay or ignore systematic legal violations by Hamas, are misguided and pose serious concerns not only for Israel but also the United States.

As a former senior U.S. commander and a U.S. military lawyer with decades of experience, we recently visited the Israel-Gaza border and met with Israeli and U.N. officials as part of a [task force](https://www.hybridwarfaretf.com/) commissioned by the Jewish Institute for National Security of America (JINSA). We examine how groups like Hamas exploit international law to combat Israel, the United States, or others politically rather than militarily.

Based on this fact-finding mission, our assessment of the conduct of Hamas and Israel is detailed in a forthcoming task force report, and pivots on four central findings.

First, there is overwhelming evidence Hamas – designated by the United States and European Union as a terrorist organization – violated international law. Fundamentally opposed to Israel’s existence, Hamas set the stage by [declaring](https://www.algemeiner.com/2018/05/15/hamas-co-founder-calling-gaza-riots-peaceful-resistance-is-deceiving-the-public/) “we will take down the border and we will tear out their hearts from their bodies.” It used demonstrators as human shields to enable its armed fighters to approach and attempt to breach the border fence and attack Israelis. After one of the largest actions last May, a senior Hamas official [admitted](https://www.haaretz.com/middle-east-news/palestinians/50-of-dead-in-gaza-protest-were-hamas-activists-says-hamas-official-1.6094899) its operatives accounted for 50 of the 60 deaths.

These actions, a clear violation of Hamas’s obligations under international law, made it challenging for the Israel Defense Forces (IDF) to distinguish between innocent civilians and individuals who could lawfully be targeted for breaching or attempting to breach the border fence.

Second, and contrary to the U.N.’s findings, the IDF’s rules of engagement were consistent with international law in regulating the use of force in this setting.

The IDF operated in a context defined both by Israel’s broader ongoing armed conflict with Hamas, and by the complicated tactical environment presented by the approaching mass crowds that mixed unarmed protestors with operatives of enemy armed groups. Hamas’ use of crowds meant that more harm could result on both sides, particularly to civilians, if the fence was breached in any meaningful way.

Provided the appropriate steps are taken, in situations like these it is reasonable under international law for commanders on the scene to permit use of live ammunition, both in response to a breach of the fence and – under certain conditions – to prevent a breach in the first place. It is also lawful to use lethal force against a belligerent operative of an enemy armed group like Hamas.

Accordingly, we believe it was reasonable for the IDF to authorize lethal force against individuals identified as enemy belligerents, or any other individual posing an imminent threat to the lives of IDF personnel or Israeli civilians. Even then, the IDF rules of engagement called for progressive escalation of force, including text messages, phone calls, leaflets, warnings over loudspeakers, and tear gas. Lethal force was used only as a last resort, and even that was aimed primarily at legs in an effort to produce non-lethal results.

Third, Hamas won in the court of public opinion despite it, not Israel, setting the conditions for increased civilian casualties. Hamas effectively exploited the IDF’s compliance with international law and shifted the narrative from the Gazans’ grievances (including against Hamas) that initially spawned the protests, to blaming the IDF for these casualties.

Hamas did so by manipulating misunderstandings about international law, chiefly the common but incorrect belief that legal responsibility for civilian casualties automatically lies with those using force. Unfortunately, such misunderstandings are widespread, not only among the media and the watching world but also many civilian legal experts as well. We are skeptical of judgments about international law – including the law of armed conflict – from a U.N. commission whose principal members appear to lack expertise in military law or these types of security operations.

Finally, the U.N.’s findings are dangerous because they incentivize further bad acts by Hamas and others who would seek to similarly weaponize the law.

Indeed, like much of the reporting on the March of Return or the 2014 Gaza [conflict](http://www.jinsa.org/gaza-assessment), the commission’s findings reflect the effectiveness of Hamas’ strategic misinformation campaigns. As such, they reinforce Hamas’ incentive to continue violating international law and exposing Palestinian civilians to harm. Hezbollah likely will pursue a similar [strategy](https://docs.wixstatic.com/ugd/298956_258cc02947c34888b401a61fed12772a.pdf) in its next conflict with the IDF.

We also appreciate how this challenge confronting Israel strongly resembles what the United States faces in its conflicts against Islamic State, the Taliban and others. Adversaries emboldened by the lack of censure for Hamas’ illegal tactics are now more likely to employ similar strategies against U.S. forces.