Analysis: What does US use of roof-knocking mean for ICC view of Israel's use of it?

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By Yonah Jeremy Bob

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There is a new front on the ongoing debate about the legality of Israel’s tactic of “knocking on roofs,” its effectiveness as a warning to civilians before an attack, and the International Criminal Court’s decision on the issue.

Roof-knocking is designed to be a second-round and final warning to civilians to leave a targeted premises if they ignore a first warning, such as a telephone call.

In the Israeli version of the tactic, a missile is then fired at the roof of the targeted building in order to produce a loud “knock” on the roof, without actually exploding.

Since January 2015, the ICC has been reviewing the legality of Israel’s approach to targeting and alleged war crimes relating to the 2014 Gaza war (Operation Protective Edge).

Last week, the US announced that it used the tactic to try to clear Iraqi civilians from an ISIS site for storing funds, making it the second country to adopt it.

US Air Force Maj.-Gen. Peter Gersten said that the IDF’s use of the tactic had inspired the US to try it.

The IDF patented the tactic during the 2008-9 Gaza war (Operation Cast Lead) and then expanded its use substantially during the 2014 Gaza war.

It has been known that top US military officials supported the tactic since November 2014 when then-US chairman of the Joint Chiefs Gen. Martin Dempsey praised the tactic as something worth considering.

But moving from considering to using it in the field, with all of the factors and controversy it entails, is a significant move.

Will the US adoption of the tactic be enough to shield the IDF’s use of it from criticism by the ICC? Neither the IDF nor the Foreign Ministry would comment on the issue, appearing to want the news to speak for itself.

Unfortunately for the IDF, until now major players have mostly sounded off against the tactic. Both the 2009 UNHRC Goldstone Report and the 2015 UNHRC McGowan-Davis Report deemed the tactic ineffective as a warning and possibly even illegal.

Those reports and critics from the human rights community have said that the tactic often confuses civilians into not leaving or returning to their residences too soon instead of saving them.

In a well-known case in the 2014 war, a group of civilians evacuated after a roof-knocking warning, waited outside for a few minutes and then returned, thinking it was a false alarm, only to return too early and be killed by the missile strike.

In fact, the same result occurred when the US used the tactic in Iraq, leading to questions about whether the US will use it again.

If it does not use it again, could that be a point against the tactic? The US use of the tactic differed somewhat from the IDF’s.

The US fired a Hellfire missile that exploded above the site it was attacking instead of hitting the roof. Could that difference lead to treating the US and IDF uses of roof-knocking differently? There is also a complaint that roof-knocking terrorizes the civilian populace, though leading US law of war scholar Michael Schmitt has written that this criticism fails to understand that in a spectrum of outcomes, scaring civilians to save their lives is well worth it.

The broader battle over roof-knocking is also about approaches to international law and war. Critics of the tactic say the IDF strikes targets that it should not hit in the first place due to the proximity of civilians, rationalizing that it has warned them to leave.

Supporters would say that if the tactic becomes state practice of law-abiding militaries, and if the US military is using it in Iraq, this could be proof of its legitimacy. The tactic should be encouraged, they would say, even if it is not perfect, since the motivation behind it is to save lives and since it often succeeds in doing so.

In February, The Jerusalem Post held a series of meetings at The Hague and found that the ICC prosecution was at least theoretically open to Israeli defenses of war-crimes charges for some of its controversial tactics.

While it by no means came out in support of the tactic, even its initial refraining from joining the IDF’s critics on the issue was significant.

The ICC prosecution would not comment on the issue on since it is still analyzing the broader question.

There is no assurance that the US decision to employ roof-knocking will persuade the ICC to give the IDF’s use of it a passing grade, but at the very least it moves the dial slightly more in that direction than it could have been.