**International Laws Apply To Gaza As Well**

July 30, 2014

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EIPA

http://eipa.eu.com/2014/07/international-laws-apply-to-gaza-as-well/

\*This article is the translation of an article by Arne Willy Dahl, a former Attorney General of the Norwegian Armed Forces and an internationally respected authority on the laws of warfare, published in Aftenposten, Norway’s largest daily newspaper.

Employing human shields is a war crime, whether they be volunteers or not. The question is what the adversary is to do in such a situation.

The Israeli relationship to the population of Gaza and the West Bank, commonly referred to as the Palestinians, has several aspects applying to international law. I will here focus on the rules of International Law being of direct relevance to the fighting against the Hamas in Gaza.

A general ban on the use of force.

International law carries with it a general ban on the use of force: self-defense against armed attacks being the most important exemption. Launching rockets carrying explosive payloads across border is a clear example of an armed attack. If it is a question of isolated and sporadic events; it will be required that the countermeasures are kept within the limits of necessity and proportionality.

Proportionality implies a reasonable relationship between the provocation and the response. When an armed attack reaches a certain extent; the attacked party has the option to act in such way as is needed in order to make his opponent unable to repeat the attack; this means going to a war or an armed conflict.

Large scale civilian casualties are banned.

When one has resorted to war, no principle of proportionality applies to enemy soldiers or civilians taking direct part in hostilities. What applies is that no attack shall be carried out which may be expected to lead to excessive civilian losses in relation to the anticipated military advantage. By “attack” it is hereby meant the use of armed force; even though one in a larger context is fighting a defensive war.

Coincidences may result in civilian losses being greater or lesser than expected. What counts are not the actual outcomes; it is what the attacker reasonably could expect as the attack was launched. Civilian casualties may result from mistake. If one has not done what is practically possible to verify a target being military; the state has made itself guilty of a breach of international law.

The same applies to attacks not directed at any specified military target; rather randomly hitting military and civilian targets alike. Personal responsibility for war crimes arise if the person has attacked civilian persons or objects on purpose; or attacked a military target having the information over civilian casualties being clearly excessive in relation to the concrete and direct military advantage anticipated by the attacker.

Military targets are not civilians.

What is a military target? Military targets include military weapons and installations; however, also buildings which may be civilian in their basic purpose, but who are being used for military purposes, like using schools for the storage of munitions. If the building is used for both civilian and military purposes; the considerations towards civilian use and possible civilian presence has to be evaluated according to the principle of proportionality.

Part of this picture includes a duty on those expecting an attack to take measures to protect the civilian population. This includes avoidance of the interspersing of civilian and military objects; evacuating civilians from exposed areas or establishing shelters to them. What has been implemented or neglected concerning this; must be evaluated when guilt and responsibility is to be distributed. Those planning an attack on their hand have the duty to act such as to minimize civilian casualties.

Besides carefully considering whether the intended target to be attacked really is military; and whether excessive civilian losses can be expected, weaponry and methods to be used shall be chosen with the intention to avoid or reduce civilian losses. If the situation allows this; the civilian population shall also receive warnings over impending attacks; giving them the opportunity to take shelter or evacuate the areas.

Civilians do not carry weapons.

Who are the civilians? In principle, this is a question of whether one belongs to the armed forces of a state entity or not; traditionally this is indicated by soldiers wearing a military uniform, and civilians don’t. However, when it comes to who can be legally attacked; the decisive criterion is whether one belongs to an armed group or for the occasion takes directly part in hostilities, for instance through serving weapons or carrying ammunition.

Voluntary human shields should not be attacked.

A controversial question is how one should relate to voluntary humans shields; i.e. civilians placing themselves on or in front of military targets; so as the enemy is unable to attack them without causing civilian casualties which may eventually be regarded as disproportionate. It is a war crime to employ human shields, whether these are volunteers or not. The question is what the opposing party is to do in such a situation. Many would state that participation as a voluntary human shield equates direct participation in hostilities; and that voluntary human shields may therefore legally be attacked.

I do not agree with this; however, I hold these do not have the same right to protection as civilians in general. Involuntary humans shields, including children who do not have the prerequisites to understand what they are taking part in, must however be considered. If significant civilian casualties can be attributed to the use of human shields; in particular if these are involuntary; these (casualties) should be the responsibility of those behind this.