**Has Hamas Overplayed Its Lawfare Strategy?**

August 5, 2014

By Charles J. Dunlap

Just Security

http://justsecurity.org/13781/charles-dunlap-lawfare-hamas-gaza/

In the current Gaza conflict, the adversaries are employing very different strategies to achieve their operational objectives. Israel is executing a robust *military* strategy. By striking rocket launch capabilities, as well as tunnel complexes, Israel is conducting what the generals calls a “[strategy of denial](http://www.britannica.com/EBchecked/topic/1953739/denial),” that is, operations that aim to “deny” its adversary the physical capability to wage war.

[Hamas’](http://www.cfr.org/israel/hamas/p8968) strategy is, however, quite different. Lobbing rockets indiscriminately at Israeli population centers along with engaging in a few firefights in an effort to kill at least some Israelis is not, *militarily* speaking, a meaningful warfighting effort.

Rather, [Hamas is employing a “lawfare](http://www.losangelesregister.com/articles/civilian-602802-law-casualties.html)” strategy. A [lawfare](http://www.dtic.mil/dtic/tr/fulltext/u2/a515192.pdf) strategy uses (or misuses) law essentially as a substitute for traditional military means; it is employing law much like any “weapon” to create *effects* or obtain results in an armed conflict that can be indistinguishable from those typically produced by kinetic methods.

There are many versions of lawfare, but in this case Hamas is attempting to use the fact of Palestinian civilian casualties to cast Israelis as war criminals. In doing so it seems that Hamas is hoping to achieve their aims not by defeating Israelis on a Gaza battlefield, but rather by delegitimizing Israel in the eyes of the world community by establishing them as lawbreakers in an era when adherence to the rule of law is so important to democracies.

According to an Associated Press [report](http://m.apnews.com/ap/db_353320/contentdetail.htm?contentguid=XRxOqRAh), the Palestinian Center for Human Rights believes that since the previous conflict with the Israelis in 2009, they have become “more efficient in touring sites of destruction, taking photos and collecting witness accounts.”

And Hamas has enjoyed some real success.  Many, perhaps most, governments and nongovernmental organizations are accusing Israel of excessive use of force in Gaza.  Disturbingly, however, some of the opposition in Europe even appears to be morphing into [anti-Semitism](http://www.nytimes.com/2014/08/02/world/europe/anger-in-europe-over-the-israeli-gaza-conflict-reverberates-as-anti-semitism.html), which must be pleasing to Hamas operatives.

Regardless, Hamas won an important lawfare victory when a [resolution passed by the UN Human Rights Counci](http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session21/Pages/21stSpecialSession.aspx)l denounced Israel for “widespread, systematic and gross violations of international human rights and fundamental freedoms” during its military operations in Gaza (even though the “independent” investigation also called for by the resolution has not yet gotten underway).

As successful as Hamas has been thus far, its lawfare offensive may be slowing down. Unsurprisingly, the [Israeli government has been insisting](http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Israel-protection-and-Hamas-exploitation-of-civilians-in-Operation-Protective-Edge-July-2014.aspx) all along that Hamas violations of international law are primarily responsible for the tragic loss of life in the Gaza conflict. What is different now is that [more balanced renditions of the law of war](http://www.hrw.org/news/2014/08/03/qa-2014-hostilities-between-israel-and-hamas) are emerging, and [a few legal experts are even beginning to speak out](http://www.americanthinker.com/2014/07/israel_does_not_violate_the_laws_of_war_in_gaza.html) in an affirmative defense of Israeli operations.  These may begin to [counter](http://www.nationalreview.com/article/383808/laws-war-matter-gaza-andrew-c-mccarthy) to a degree at least what has been characterized as a Hamas strategy that actually [“relies on the deaths of civilians.”](http://www.cnn.com/2014/07/21/opinion/oren-hamas-media-strategy/)

To be sure there are still plenty of [legal scholars critical of Israel’s](http://interviews.jadaliyya.com/pages/index/18699/joint-declaration-by-international-law-experts-on-) Gaza offensive. A few even [decry its high-tech efforts to warn civilians](http://opiniojuris.org/2014/07/30/guest-post-israels-use-law-warnings-gaza/) as somehow being a cynical form of lawfare itself. For its part, the Israeli Defense Forces are countering with a [state-of-the-art public information campaign](http://www.idfblog.com/blog/2014/07/20/exclusive-interview-iaf-pilots-limit-casualties/) heavy with videos and charts designed to illustrate what it does to minimize civilian casualties. And it does seem that at least for some audiences the more facts they get the less likely they are to be supportive of Hamas.

For example, a late July [Gallup poll](http://www.gallup.com/poll/174110/americans-reaction-middle-east-situation-similar-past.aspx) shows that 71% of Americans who are following the news “very closely” believe that Israel’s actions are justified as opposed to just 18% who do *not* follow very closely who hold that view. Additionally, the poll also shows that those with more education support the Israeli actions. All of this might suggest that as people become more familiar with the facts they are less likely to support Hamas, and this could mean that time is not on Hamas’ side.

Most problematic may be a growing belief that, as already suggested, Hamas is *deliberately* jeopardizing lives of Palestinians in order to pursue its lawfare *strategy*. Indeed, Hamas seems to be admitting as much. [*USA Today*](http://www.usatoday.com/story/news/world/2014/07/24/israel-gaza-human-rights-human-shields/13112057/) quotes a Hamas spokesman Sami Abu Zuhri using the word “strategy,” in commending people for “ignoring Israeli warnings” to evacuate before a bombing: “The fact that people are willing to sacrifice themselves against Israeli warplanes in order to protect their homes, I believe this strategy is proving itself.”

To many observers Hamas’s lawfare strategy is obvious. CNN analyst Michael Oren quotes former President [Bill Clinton as saying that](http://www.cnn.com/2014/07/21/opinion/oren-hamas-media-strategy/) Hamas “has a strategy designed to force Israel to kill their own [Palestinian] civilians so that the rest of the world will condemn them.”

Of even more significance may be the claim in [*Algemeiner Journal*](http://www.algemeiner.com/2014/07/28/saudi-official-hamas-responsible-for-deaths-in-gaza/) that Turki al Faisal, who once headed Saudi Arabia’s intelligence services, said “Hamas is responsible for the slaughter in the Gaza Strip.” This is especially damaging given other [reports](http://www.nytimes.com/2014/07/31/world/middleeast/fighting-political-islam-arab-states-find-themselves-allied-with-israel.html) that many Arab leaders are now assessing Hamas as “worse than Israel.”

The bloodshed and destruction may be [weakening support even among suffering Palestinians](http://www.theguardian.com/world/2014/aug/02/weakened-hamas-support-gaza) themselves. Moreover, the *New York Times* [reports](http://www.nytimes.com/2014/07/24/world/middleeast/israel-says-hamas-is-using-civilians-as-shields-in-gaza.html) that Hamas, perhaps “feeling pressure over the mounting deaths,” altered its message to Palestinians from telling them to ignore Israeli warnings to telling Palestinians to “avoid hot areas” and to “stay inside after 11 p.m.” Furthermore, the [overwhelming support](http://www.theguardian.com/world/2014/jul/31/israeli-polls-support-gaza-campaign-media) Israelis have shown for their offensive seems to remain undiminished.”

Still, the situation remains sufficiently in flux that the outcome of Hamas’s lawfare strategies and Israeli counter-lawfare efforts is still uncertain. Though the legal concept of “proportionality” has been often misunderstood in the press despite [expert efforts at clarification](http://thehill.com/blogs/pundits-blog/international/213546-asymmetries-and-proportionalities), at some point the sheer numbers of Palestinian deaths, however legally justifiable, may cause [even those who support Israel](http://www.huffingtonpost.com/h-a-goodman/i-support-israel-but-bomb_b_5646780.html) to insist upon an end to the fighting at almost any price.

The lesson here may be that [sophisticated counter-lawfare techniques](http://www.washingtonpost.com/blogs/worldviews/wp/2014/07/09/roof-knocking-the-israeli-mjilitarys-tactic-of-phoning-palestinians-it-is-about-to-bomb/) such as those Israel has employed cannot replace a reasoned dialogue about how much military force [is truly essential to the nation’s strategic interests](http://www.economist.com/node/21610264/print). Law professors Michael Reisman and Chris Antoniou presciently [warned](http://books.google.com/books/about/The_laws_of_war.html?id=-mTuAAAAMAAJ) in 1994 that the public support that democracies need for even a limited armed conflict can “erode or even reverse itself rapidly, no matter how worthy the political objective, if people believe that the war is being conducted in an unfair, inhumane, or iniquitous way.”

In its unadulterated form lawfare, as a manifestation of the rule of law itself, could help a party to a conflict achieve success – even *enduring* success – in the complex pol-mil milieu of 21st century conflicts. To do so, however, lawfare – to include counter-lawfare efforts – must be more than simply a shrewd and aggressive public relations campaign. It must be supported by *facts* that demonstrate *actual* adherence to the law, an axiom both Hamas and Israel may want to note.