

# Israel – Hamas 2023 Symposium – Inside IDF Targeting

[lieber.westpoint.edu/inside-idf-targeting](https://lieber.westpoint.edu/inside-idf-targeting)

October 20, 2023

by [John Merriam](#) | Oct 20, 2023



Events in Israel and Gaza have again plunged the Middle East into armed conflict. As this post is being written, intense fighting is underway in Israel and Gaza. There are skirmishes with Hezbollah along Israel's border with Lebanon, and a [hostile Iran](#) looms large on the horizon. The horrific opening act of this conflict, in which Hamas launched a daring surprise assault into southern Israel, included unthinkable law of armed conflict violations, war crimes, and crimes against humanity targeting the civilian population. Acting in self-defense, Israel has responded forcefully. Gaza is under "[siege](#)," airstrikes and artillery fire are striking targets across Gaza, and the Israel Defense Forces (IDF) are massing for a possible ground invasion. The prospects for a peaceful resolution to this decades-old struggle look dimmer than ever.

Previous posts on *Articles of War* have dealt with such operational topics as [siege](#), [hostage-taking](#), and [evacuation](#) and ranged across the law governing the use of force (*jus ad bellum*), the [law of armed conflict](#) (LOAC), international criminal law, and [international human rights law](#). In this post, I examine Israeli targeting practices and law. The post is based on an unprecedented opportunity the IDF offered Professor Michael Schmitt and me in 2015 to examine how Israel targets in practice and the law it applies when doing so. At the IDF's

invitation, we traveled to Israel, where we interviewed members, including senior leaders, of the Military Advocate General's Corps (MAG) on their processes and legal positions, talked with air and ground operators and commanders, and visited IDF headquarters at various levels to understand how their legal advice factored into military decision-making in practice. Our findings appeared in two articles, one, "The Tyranny of Context," for legal scholars in the *University of Pennsylvania's Journal of International Law* and a second geared for a lay military audience in the *Naval War College Review*. I combine that experience with my own to offer these thoughts.

Before turning to the IDF's practices and positions, I must emphasize that I will not assess the legality of any particular Israeli attacks. Our experience teaches us that such assessments are often unreliable in the fog of war, as illustrated in the case of the tragic explosion that caused hundreds of deaths at the Al-Ahli Arab Hospital. And I have no behind-the-scenes information on how the IDF is executing its strikes. Instead, the goal is simply to afford a glimpse into IDF practices generally and offer my thoughts on them in the context of the current conflict.

## **Overarching Conclusions**

Our visit, research, subsequent interaction with the IDF, and our own military experiences led us to three over-arching conclusions. First, the IDF's MAG Corps is an exceptionally competent group of advisors on the law of armed conflict that is organized to ensure IDF commanders have access to high-caliber legal advice in real time. Once planners identify and propose targets based on anticipated or actual missions and operational goals, lawyers from the International Law Department (ILD) review each. When hostilities break out, a group of additional LOAC experts, including both active duty and reserve officers, augments the ILD; this combined task-organized entity is known as the Operational Law Apparatus (OLA). The head of the ILD commands it. Members of the OLA determine whether the proposed target qualifies as a "military objective," identify possible proportionality concerns, and provide input on other LOAC prohibitions, restrictions, and obligations.

Second, we concluded that Israeli positions on the law of targeting are well within the mainstream. Israel is not a party to the 1977 Additional Protocol I (AP I) to the 1949 Geneva Conventions, which sets forth the key treaty-based targeting rules for parties to the instrument. But like the United States, Israel is of the view that most targeting rules contained therein reflect customary international law in international and non-international armed conflict, which does bind the IDF. In those cases where it believes an AP I targeting provision does not mirror a customary rule, it makes its position on the matter clear. For instance, it does not accept AP I's two rules imposing targeting restrictions based on environmental impact, a position shared with the United States (AP I, arts. 35(3) and 55; DoD *Law of War Manual*, § 6.10.3.1).

A further observation is true of any State in any conflict, for it reflects the “theory of war.” The context in which hostilities occur exerts an inexorable influence on how they are conducted. As Clausewitz observed, the fundamental nature of war may be unchanging, but the character of individual wars “vary with the nature of their motives and of the situations which give rise to them.” This reality affects how and why various factors are weighed when interpreting and applying the rules of war.

And finally, the Israeli context is unique. Hostile neighbors and terrorist groups surround Israel. Some seek its destruction and the annihilation of its people. It enjoys no strategic depth; there is nowhere to which the IDF may retreat, and when Israeli soldiers fight, they do so within hours, even minutes, of their homes. Perhaps most noteworthy is the high value Israel places on the safety of its soldiers and its civilian population. The IDF is not an all-volunteer force. Rather, it is one in which all Israelis know someone who has served, is serving, and can be called up in times of crisis. The IDF faces an enemy that targets the civilian population not as “a” tactic but as “the” tactic. Understandably, this context significantly influences Israeli commanders’ value judgments as they plan and execute military operations. These value judgments often come into play in the application of LOAC concepts such as proportionality. This context in no way justifies deviation from the strictures of LOAC, but it does inform an understanding of Israeli interpretation and application of that body of law.

### **IDF Positions on Targeting Law**

Targeting law reflects a delicate balance between military necessity and humanitarian considerations. On the one hand, the law must permit armed forces to fight effectively, but on the other, it must minimize harm to the civilian population when they do so. This can be a fraught relationship, one that underpins frequent tension between the military and humanitarian organizations. Complicating matters is the fog and friction of war, which challenges even the most scrupulous adherent to LOAC.

The fundamental questions underlying the law of targeting are broadly what (and who) may be attacked and how must attacks be constrained to protect civilians. Six issues loom large for the IDF in answering them: 1) qualification as a military objective; 2) targeting individuals; 3) uncertainty; 4) human shields; 5) feasible precautions when conducting an attack; and 6) proportionality.

#### *Objects as Military Objectives*

Israel adopts, as customary international law, the AP I, Article 52(2) criteria for a military objective: “insofar as objects are concerned, military objectives are . . . those which by their nature, location, purpose, or use make an effective contribution to military action and whose partial or total destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” In the context of Gaza, “purpose” and “use” will be

critical criteria. Purpose refers to a civilian object (such as a building) that will be used, at least in part, for military purposes in the future. Use denotes one that is currently being so used.

Hamas (and other Palestinian organized armed groups such as Islamic Jihad) does not have military installations as we ordinarily understand them. Instead, the group typically operates from civilian structures, storing weapons, basing fighters, and conducting command and control from apartment buildings, houses, schools, and other civilian objects. When it does so, these structures become military objectives that may be lawfully attacked, subject to the rule of proportionality and the requirement to take precautions in attack (see below). The IDF has already conducted attacks against such targets and will continue to do so as the conflict unfolds.

One significant issue concerning Gaza is the status of tunnels. There has been an ongoing debate over whether “lines of communication,” such as roads, bridges, and tunnels, qualify as military objectives by “nature” or by “purpose or use.” If the former, lines of communication in Gaza may be struck at any time irrespective of whether they are being, or going to be, used for military transportation. Conversely, if lines of communication qualify as objectives only by purpose or use, they may only be struck when used or when the intention to use them manifests. Depending on the context, a line of communication may qualify as a military objective under any of the criteria. Which will the Israelis apply in the current conflict?

In our 2014 talks, IDF legal advisers did not offer a definitive answer to this question, which strikes at the Rafah crossing have already implicated. But as a practical matter, and to avoid “lawfare” by its adversaries, they should be prepared to provide explanations for lines of communications attacks that satisfy the use or purpose criteria. This would, for instance, involve explaining the tactical and operational benefits of particular strikes.

Consider the tunnel systems running into Israel and Gaza. Those into Israel are built for military purposes and, therefore, qualify as military objectives by nature. However, those in the south often support smuggling across the Egyptian border; in the current context, they might also be used to evacuate civilians or bring in humanitarian supplies. To justify attacks on them, the IDF should be ready to explain their current or future military significance, such as bringing in weapons, allowing Hamas fighters to escape, or giving Hamas a way to exfiltrate hostages to prevent rescue.

### *Targeting Individuals*

Israel characterizes the al Qassam Brigades, the military wing of Hamas, as an “organized armed group,” which allows its members to be targeted based on membership in the group, so-called “status-based targeting.” The question is how to treat members of Hamas who are members of its fighting wing. Like the United States, Israel has long rejected the much-discredited and ICRC-purported requirement that only those in an organized armed group

with a “continuous combat function” (CCF) may be attacked based on membership alone. By that position, others may only be targeted “for such time” as they directly participate in hostilities. As Israel rejects the notion of CCF, it will treat every member as lawfully subject to attack.

As to those who are not members of an organized armed group, like members of the political wing of Hamas or individual civilians who become involved in the fighting, Israel, like the United States, takes the traditional position that they may be attacked “for such time” as they participate in hostilities. For example, Hamas political leaders who exercise command and control functions over Hamas military operations are clearly targetable.

### *Uncertainty*

The requirement to ensure a target is a lawful military objective or a targetable individual raises the question of how Israel addresses tension in targeting. The IDF applies, as a matter of customary international law, the AP I [Article 50\(1\)](#) rule that “in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.” With respect to objects, the IDF similarly applies the [Article 52\(3\)](#) rule that “an object normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school” is presumed to be a civilian object. But what triggers these presumptions, and how are they overcome?

Like the United States, the IDF applies a standard of “reasonableness” based on “the information available under the circumstances ruling at the time.” And reasonableness is necessarily a function of context. More time and resources may enable a commander to gain better fidelity on the nature of a proposed target, but neither time nor resources are as available as a commander wishes. Indeed, it may be one of the most salient features of large-scale combat operations that *both time and resources are stretched to the limit*, and commanders must make the best decision possible under the circumstances. We should expect the scale of the current conflict to test the IDF’s ability to obtain the kind of exquisite intelligence, surveillance, and reconnaissance (ISR) picture many have become accustomed to, and that poses correspondingly increased risks of mistakes in targeting decisions.

### *Human Shields*

Human shields pose a continuing challenge. Gaza is a densely populated urban environment with roughly 2 million inhabitants, and Hamas has a long history of employing human shields to deter attacks on civilian objects that have lost their protection. AP I, [Article 57\(7\)](#) forbids the use of human shields. By it, which the IDF finds to generally reflect customary law, Parties may not use “the presence [of civilians] to render certain points or areas immune from military operations, in particular . . . to shield military objectives from attacks” and may not “direct the movement of the civilian population . . . in order to attempt to shield military objectives from attacks.” So, Hamas’s intentional use of human shields is clearly unlawful.

However, violations of this rule by Hamas do not relieve the IDF from the requirement to consider the presence of civilians when performing a proportionality analysis or determining what precautions are required in the attack. This raises the question whether the prohibition on human shielding has any teeth. In this regard, the law is complex, with many variations in approach in State practice and scholarly opinion. A majority view among scholars, and the view held by many States, including Israel, is that *involuntary* human shields (those forced by Hamas to remain in the vicinity of military objectives or taken there) retain their protection from attack and must be accounted for in the proportionality analysis. With respect to *voluntary* human shields, physically blocking or shielding a military objective amounts to direct participation in hostilities, and civilians who do this accordingly lose their protection. However, there is a debate in the international law community about voluntary shields who do not physically block or shield a military objective but instead use their mere presence to try to influence the attacking force not to attack. The ICRC takes the position that they retain their civilian protections under LOAC, while States, including Israel, see them as direct participants in hostilities.

In the context of Gaza, it is not easy to see how the IDF will be able to distinguish between involuntary and voluntary shielding. And how will civilians who do not evacuate to the south, as the Israelis have urged, be treated? Should they be treated as voluntarily shielding Hamas fighters or materiel, or simply as civilians who have chosen to remain in place? After all, civilians are not obligated under LOAC to evacuate. Might they have been forced to stay in place? Do they even know whether there are military objectives nearby? Might they simply lack the means to evacuate? This is a daunting list of possible permutations in civilian behavior. Given the IDF's position on this matter, we may expect to see significant intelligence and surveillance resources dedicated to identifying and interpreting the behavior of civilians in the vicinity of Hamas positions – an extremely difficult task.

### *Precautions in Attack*

Precautions in the attack, including the requirement to give warnings when practicable, are inherently tied to the problem posed by human shields. During Operation Protective Edge in 2014, the IDF repeatedly issued warnings of pending attacks and directed the population to evacuate these areas, including by the use of identified evacuation routes to designated safe areas. We now see the same approach repeated on a much larger scale. Just as happened in 2014, we can expect Hamas to actively discourage civilians from heeding these warnings, as well as to impede their efforts to do so or even force them to remain at Hamas military sites. Still, we can expect to see warnings by Israel continue, both as a means of reducing the exposure of civilians to harm and as a practical measure to try and distinguish between voluntary and involuntary shields and between Hamas fighters and civilians more generally.

Article 57(2)(c) to AP I requires that “effective advance warning shall be given of attacks which may affect the civilian population, *unless circumstances do not permit.*” Although Israel is not a party to the instrument, the IDF has long been an active practitioner of this form of

precaution. In the context of the imminent ground invasion of Gaza, the IDF has loudly and continuously provided broad and generalized warnings, and we can expect that to continue.

What other precautions might Israel take? Past conflicts with Hamas have showcased the IDF's robust intelligence and surveillance capability. But the degree to which Hamas achieved strategic surprise in launching its latest offensive is sobering and may call into question the IDF's understanding of the environment. Still, we can expect the IDF to take advantage of its unrivaled air supremacy to gain and maintain a continuous ISR picture of the battlefield. That, in turn, will facilitate deliberate target selection and, in many cases, the active "weaponizing" of targets to be attacked. Weaponizing entails adjusting the size of munitions, angle of attack, and other factors to achieve the desired kinetic military effect while limiting the collateral damage. This has proven effective in the past and is generally a feature of all modern conflicts when one side has the technological means and the requisite air supremacy necessary to employ airborne sensors.

Both weaponizing and deliberate targeting processes based on robust ISR capabilities serve the dual purposes of achieving military aims efficiently (strikes hit what they're aimed at) and limiting collateral damage (strikes hit *only* what they're aimed at, and the damage is limited to the minimum necessary to achieve the desired effect). The obvious question this approach raises in the current context is whether observation *from the air* can provide enough fidelity and accuracy to enable IDF operations and limit civilian harm.

As noted, Hamas achieved not only tactical or operational but also *strategic* surprise – a rare feat. One must consider what we know of the theory of war: it is not "the action of a living force upon a lifeless mass but always the collision of two living forces" (Clausewitz). War is *interaction*, and one must, therefore, expect *adaptation*. Hamas knows its foe and has doubtless taken many lessons from past conflicts. Israel already knows Hamas has invested years digging underground tunnels and bunkers throughout Gaza. Will these frustrate the IDF's ability to maintain sufficient observation of the battlespace? It remains to be seen how effective IDF precautions in the attack may be, given the efforts of Hamas to increase uncertainty.

### *Proportionality*

Israel fully accepts the rule of proportionality set forth in AP I, Articles 51, 57(2)(a)(iii), and 57(2)(b) as reflective of customary international law. By the rule, attacks are prohibited when they are "expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated." This is a balancing test in which a commander must weigh dissimilar interests against one another. Not easy under the best of circumstances, it is an endeavor fraught with moral, legal, and practical risk when performed in the crucible of ground combat.

While calculating expected collateral damage is always difficult, the IDF has decades of experience fighting in Gaza and will likely take extraordinary measures to observe and quantify the presence of civilians on the battlefield. The greater challenge often lies in assigning some value—the concrete and direct military advantage anticipated—to the destruction of a particular target, and then weighing that against the cost in civilian lives and property damage. For example, what is the “value” of a small group of Hamas fighters?

In the present context, one can expect an extremely high value to be placed on targets whose destruction will enable the recovery of hostages, as well as on rocket launching sites and the rockets themselves. These two types of targets directly correlate to the strategic aims of the IDF and the defeat of Hamas. Therefore, it is appropriate to consider these targets as having “high value” when calculating “military advantage.” This does not relieve the IDF of its obligations to take feasible precautions to minimize or eliminate collateral damage, nor does it excuse excessive collateral damage. But it may affect a determination that a given expectation of collateral damage is not “excessive” because the target has strategic value.

## **Conclusion**

The law of targeting lies at the very heart of LOAC because the act of targeting requires consideration of both military necessity and humanity. Understanding how the IDF conducts its targeting analysis can go a long way towards explaining, and in some cases predicting, what we will see as the conflict rages on. Decision-making on all of these matters is time-constrained and challenging. The IDF, therefore, incorporates legal advice at every echelon of command. It is provided by its highly competent MAG attorneys, who operate fully aware that their foes will capitalize on mistakes, seek to inflame opinion, and practice “lawfare” in the global information arena.

This war began with atrocities, and it is too soon to predict how it will end, but I am confident that the IDF has mainstream legal positions and is equipped with first-rate legal advisors. What remains to be seen is whether the conflict can be contained and how well IDF precautions can serve to limit the death and destruction, as well as what further outrages Hamas may commit and the effects these have on the direction of the Israeli war effort.

\*\*\*

*Colonel John “J.J.” Merriam is a U.S. Army Judge Advocate, currently serving as the Staff Judge Advocate for America’s First Corps.*

Photo credit: IDF

SUBSCRIBE



## RELATED POSTS

[The Legal Context of Operations Al-Aqsa Flood and Swords of Iron](#)

by [Michael N. Schmitt](#)

October 10, 2023

–

[Hostage-Taking and the Law of Armed Conflict](#)

by [John C. Tramazzo](#), [Kevin S. Coble](#), [Michael N. Schmitt](#)

October 12, 2023

–

[Siege Law and Military Necessity](#)

by [Geoff Corn](#), [Sean Watts](#)

October 13, 2023

–

[The Evacuation of Northern Gaza: Practical and Legal Aspects](#)

by [Michael N. Schmitt](#)

October 15, 2023

–

[A “Complete Siege” of Gaza in Accordance with International Humanitarian Law](#)

by [Rosa-Lena Lauterbach](#)

October 16, 2023

–

[The ICRC’s Statement on the Israel-Hamas Hostilities and Violence: Discerning the Legal Intricacies](#)

by [Ori Pomson](#)

October 16, 2023

–

Beyond the Pale: IHRL and the Hamas Attack on Israel

by Yuval Shany, Amichai Cohen, Tamar Hostovsky Brandes

October 17, 2023

–

Strategy and Self-Defence: Israel and its War with Iran

by Ken Watkin

October 18, 2023

–

The Circle of Suffering and the Role of IHL

by Helen Durham, Ben Saul

October 19, 2023

–

Facts Matter: Assessing the Al-Ahli Hospital Incident

by Aurel Sari

October 19, 2023

–

Iran's Responsibility for the Attack on Israel

by Jennifer Maddocks

October 20, 2023