

## Legal analysis of Armed Conflict: Israel/Gaza Context

On the 7<sup>th</sup> of October 2023 an indiscriminate slaughter was launched by terrorist organisation Hamas from Gaza and its continuing firing of 7,500+ rockets, Israel. There has been a notable public and media call for Israel to provide a response that is proportionate and reasonable. This document aims to explain the legal interpretation of these terms and the legality of Israeli actions in response to the threat posed by Hamas through the principles of international law. This document has been adapted from Lord Verdirame KC's speech (based on his expertise as a professor in public international law) in the House of Lords Israel/Gaza debate on the 24 October 2023.

### I. Proportionality in Self Defence

- Proportionality in self-defence does not require equal force but rather force proportionate to the defensive objective.
  - State action to stop, to repel and to prevent further attacks.
- Israel has been clear that its war aims are focused on destroying Hamas's capability. These aims align clearly with the principle of proportionality – given Hamas's actions on October 7<sup>th</sup> and their stated genocidal objectives (as stipulated in their charter)

### II. Ceasefire and Legitimate Defensive Goals

- Requesting a ceasefire before the state can fulfil its lawful defensive objectives in effect, is asking the state to stop defending itself.
- To make calls for ceasefire credible, they must come with a concrete proposal outlining how Israel's legitimate defensive goals against Hamas can be achieved through alternative means.
  - Suggestions to simply propose a peace treaty are not sufficient, as Hamas are not interested in such an agreement.

### III. Proportionality in Conduct of Hostilities

- Proportionality extends to the law governing the conduct of hostilities, not limited to self-defence.
  - The law of armed conflict mandates that in any attack with potential risk to civilian life, the risk should not be disproportionately excessive compared to the anticipated military advantage.
  - Even when the rules of proportionality are adhered to meticulously - this rule does not guarantee the absence of civilian casualties during armed conflict.

**The law of armed conflict, at its best, can mitigate the horrors of war, but it cannot eliminate them.**

#### IV. Exploitation of Rules by Hamas

- Hamas exploits the rules of warfare by deliberately putting civilians at risk.
- Hamas tactics use civilians as a means to seek immunity for its military operations, equipment and personal.
  - e.g. Using Human shields and storing weapons in schools and hospitals.
- Any analysis of proportionality in targeting during this conflict must begin by recognising this manipulation and flagrant disregard of the rules of warfare.

#### V. Siege Warfare

- The UK manual of the law of armed conflict, an official Ministry of Defence document which reflects the Government's official Legal position states:

*"Siege is a legitimate method of warfare ... It would be unlawful to besiege an undefended town since it could be occupied without resistance".*

- The manual makes clear that Siege is considered unlawful only when applied to an undefended town that can be occupied without resistance.
- Gaza Is not an undefended town, therefore despite their being civilians inside – encircling and sieging this area it is permitted under laws of war, so long as obligations are followed.
  - There are obligations including facilitating humanitarian relief via third parties. (62 trucks have passed through the Rafah crossing into Gaza with humanitarian aid since 25/10/23, with an additional 31 expected in the next 24 hours)

#### VI. Occupation Status of Gaza

- Despite Israel's withdrawal from Gaza in 2005, the British Government still considers Gaza to be under Israeli Occupation
  - Traditionally, occupation required a physical presence in the territory, aligned with Article 42 of the Hague regulations of 1907.
- The UK manual of the law of armed conflict, which reflects the UK's official position, similarly states that occupation ends when the occupying power evacuates the area.
  - The European Court of Human Rights has a comparable view on occupation in its jurisprudence.
  - However, since 2005 the Government has defined Gaza as an occupied territory, despite Israel having no physical presence.

There is a question as to why the government has adopted this definition, which is inconsistent with the legal principles in traditionally upholds.

- Israel does have significant control over the Gazan airspace and maritime areas; however, it is both Israel and Egypt that control the land access points to Gaza, and yet Egypt are not accused of occupying Gaza, a breach of international law.

## VII. Hamas's Responsibility and Exploitation

- Hamas is responsible for governing and administering Gaza since 2007
- The legal fiction that Israel is still considered the occupying power under the laws of armed conflict has been exploited by Hamas.
  - This exploitation involves blaming Israel for various issues whilst Hamas exercise effective control over Gaza, its people and resources, enabling its military activities including their horrific acts on October 7<sup>th</sup>.

## VIII. Responsible Reporting

- With regards to war-time reporting, when a serious allegation is made, especially one that could be a war crime, a law-abiding belligerent responds by stating “we are investigation.”
  - On the other hand, non-law-abiding belligerents tend to immediately lame the other side and may even provide precise (false) casualty figures.
- The duty to investigate is one of the most important duties in armed conflict.
  - The reporting of the Al-Ahli Arab Hospital strike rewarded Hamas – the side that does not comply with any laws of armed conflict – with the headlines it sought.
- Media institutions have a responsibility to report with accuracy and precision in order to ensure they do not skew public perception of the conflict.