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Israel's rhetoric exposes some disturbing moral grey areas

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<http://www.thenational.ae/opinion/israels-rhetoric-exposes-some-disturbing-moral...> [1]

Israel's rhetoric exposes some disturbing moral grey areas

[Hussein Ibish](#)[2]

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In the ongoing Gaza campaign, Israel and its supporters have once again fallen back on the shopworn idea that civilian casualties are justifiable because its primary intention is not to specifically target non-combatants.

Israel's arguments – that this can all be explained by either error or Hamas's use of innocents as “human shields” – simply cannot be squared with the huge proportion of civilian and children's deaths. More than 1,000 Palestinians have died in the conflict, the vast majority of them civilians, according to the UN.

Israel insists it “does not target” civilians and civilian sites, even if history tells us otherwise. For the sake of argument, let's stipulate that Israel really has never or very seldom actually targeted civilians. There's still a crucial missing category between intention and culpability: that of inevitable consequence.

Israel's rhetoric focuses entirely on primary intentions, without acknowledging the problem of responsibility for civilian deaths when they are a predictable and inevitable result of voluntary, calculated actions.

The Israeli military has been very reluctant to explain its conduct, even when asserting there was no mistake. Entire families have been wiped out in the recent campaign in attacks that remain not only apparently indefensible but also inexplicable. In some cases, Palestinians have suggested that a neighbour or relative might have been a Hamas employee or operative possibly targeted by Israel for assassination. But that often doesn't rationally explain the decision to take or risk so many innocent lives.

International courts have been increasingly ruling that a decision to carry out a strike on what might otherwise be considered a legitimate military target, despite knowledge of the potential for a huge number of innocent and civilian deaths, constitutes an example of unlawful recklessness or negligence. This principle isn't mentioned in either the Statute of Rome or the Geneva Conventions, but it's making its way quickly into international law through these rulings.

Courts are thereby undermining the traditional categorical differentiation between “unlawful” murderers, who deliberately seek to cause civilian casualties, versus “lawful” regular armies that foresee and expect, and are willing to accept, the deaths of innocents.

Israel's incongruous actions and rhetoric highlights uncomfortable moral grey areas between those who may hope to hit a military target with a random weapon versus those who hope not to hit civilian ones with more sophisticated and guided tools (especially when both are almost certainly hoping in vain). There is a clear ethical difference between the two.

But it is precisely the contrast with those who deliberately want to kill civilians that indicts soldiers who are also knowingly responsible

for non-combatant deaths. If the effect is the same, even when the primary intention is distinct, can those intentions really exonerate the conscious decision to produce that same effect?

The principle of “proportionality” would be the primary recourse under such circumstances. But in almost every practical case, proportionality boils down to a subjective value judgement. Is the military objective “worth” a given number of innocent lives? That certainly depends on whether one identifies with the military or the people who are the potential “collateral damage”.

Similarly subjective are efforts to establish “responsibility” – for putting civilian lives at risk in the first place – as the essential criterion to defend militaries that might otherwise be seen as acting with disproportionate force or reckless disregard for human life. But, again, subjectivity rules the day. Who “started it?” It’s almost never clear-cut.

No wonder, then, that both “proportionality” and “responsibility” have fared so badly in the proceedings and rulings of international tribunals into war crimes since the end of the Cold War. Fascinating in theory, they are virtually useless to an actual trier of fact.

Which brings us back to intentions.

If it really were a matter purely of intent, to pluck only one random incident out of today’s headlines, whoever shot down the Malaysian civilian airliner over rebellious parts of Ukraine couldn’t be held particularly culpable. Their evident intention, after all, was almost certainly to hit some sort of military aircraft. The minute one starts interrogating what they were doing firing surface-to-air missiles at vaguely identified targets in international flight paths, one abandons the question of direct intention and raises those of recklessness, negligence and the likely consequences of calculated actions. The principle of intentionality, unattenuated by that of predictable consequences, might actually absolve these murderers.

Intentions are important. People instinctively understand this.

But they also instinctively understand, unless taught to think otherwise, that inevitable and unavoidable consequences of an action are important as well and have a major impact on the question of culpability. Simply asserting that one had a legitimate overriding intention (killing an “enemy combatant”), and that this renders moot the predictable if not inevitable consequences (the deaths of non-combatants), is repugnant to reason and universal human values.

Although obviously “better” than deliberate mass murder for its own sake, the moral validity of such arguments will be rejected by most people with indignation and contempt. Predictable, inevitable consequences are an essential criterion for culpability in the deaths of innocents.

TAGS: [International Condemnation](#) ^[3] [Isareli Military Action in Gaza](#) ^[4] [Qassam Rocket Attacks](#) ^[5] [Civilian Deaths](#) ^[6] [Hamam](#) ^[7] [Humanitarian](#) ^[8] [International Community](#) ^[9] [Israeli Military Action](#) ^[10]

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Links:

- [1] <http://www.thenational.ae/opinion/israels-rhetoric-exposes-some-disturbing-moral-grey-areas>
- [2] <http://www.thenational.ae/authors/Hussein-Ibish>
- [3] http://www.americantaskforce.org/international_community/international_condemnation
- [4] http://www.americantaskforce.org/israeli_military_action/israeli_military_action_gaza
- [5] http://www.americantaskforce.org/terrorism/qassam_rocket_attacks
- [6] http://www.americantaskforce.org/civilian_deaths
- [7] http://www.americantaskforce.org/hamas_0
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- [9] http://www.americantaskforce.org/international_community
- [10] http://www.americantaskforce.org/israeli_military_action