

# The New York Times

## ***When Fighting Erupts Between Israel and Hamas, the Question of War Crimes Follows***

*Civilian deaths on both sides raise urgent questions about which military actions are legal, what war crimes are being committed and who, if anyone, will be held to account.*



*A Palestinian boy in front of the ruins of his house in Gaza City on Friday after it was destroyed in an Israeli airstrike.*

**By Declan Walsh**

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The Israeli missile that slammed into a Palestinian apartment exacted a shocking toll: eight children and two women, killed as they celebrated a major Muslim holiday, in one of the deadliest episodes of the war between Israel and Palestinian militants that has raged for nearly a week.

Israel said a senior Hamas commander was the target of the Friday attack. Graphic video footage showed Palestinian medics stepping over rubble that included children's toys and a Monopoly board game as they evacuated the bloodied victims from the pulverized building. The only survivor was an infant boy.

"They weren't holding weapons, they weren't firing rockets and they weren't harming anyone," said the boy's father, Mohammed al-Hadidi, who was later seen on television holding his son's small hand in a hospital. "Oh, love," he said to his son.

Civilians are paying an especially high price in the latest bout of violence between Israel and Hamas in the Gaza Strip, raising urgent questions about how the laws of war apply to the conflagration: which military actions are legal, what war crimes are being committed and who, if anyone, will ever be held to account.

Both sides appear to be violating those laws, experts said: Hamas has fired more than 3,000 rockets toward Israeli cities and towns, a clear war crime. And Israel, although it says it takes measures to avoid civilian casualties, has subjected Gaza to such an intense bombardment, killing families and flattening buildings, that it likely constitutes a disproportionate use of force — also a war crime.

In the deadliest attack yet, Israeli airstrikes on buildings in Gaza City on Sunday killed at least 42 people including 10 children, Palestinian officials said.

No legal adjudication is possible in the heat of battle. But some facts are clear. Israeli airstrikes and artillery barrages on Gaza, an impoverished and densely packed enclave of two million people, have killed at least 197 Palestinians, including 92 women and children, between last Monday and Sunday evening, producing stark images of destruction that have reverberated around the world.

In the other direction, Hamas missiles have rained over Israeli towns and cities, sowing fear and killing at least 10 Israeli residents, including two children — a greater toll than during the last war, in 2014, which lasted more than seven weeks. The latest victim, a 55-year-old man, died on Saturday after missile shrapnel slammed through the door of his home in the Tel Aviv suburb of Ramat Gan. One Israeli soldier has also been killed.

With neither side apparently capable of outright victory, the conflict seems locked in an endless loop of bloodshed. So the focus on civilian casualties has become more intense than ever as a proxy for the moral high ground in a seemingly unwinnable war.

“The narrative around civilian casualties takes on a bigger importance than normal, perhaps even bigger than the numbers, because it goes to the moral legitimacy of the two sides,” said Dapo Akande, a professor of public international law at the Blavatnik School of Government at the University of Oxford.

The calculus of the war is brutal.

Although Hamas fires unguided missiles at Israeli cities at a blistering rate, sometimes over 100 at once, the vast majority are either intercepted by Israel’s Iron Dome defense system or fall short inside Gaza, resulting in a relatively low death toll.

Israel sometimes warns Gaza residents to evacuate before an airstrike, and it says it has called off strikes to avoid civilian casualties. But its use of artillery and airstrikes to pound such a confined area, packed with poorly protected people, has led to a death toll 20 times as high as that caused by Hamas, and wounded 1,235 more.

Israeli warplanes have also destroyed four high-rise buildings in Gaza that it said were used by Hamas. But those buildings also contained homes and the offices of local and international news media organizations, inflicting enormous economic damage.

It may not look it, but there are rules to govern the carnage.

The laws of war — a collection of international treaties and unwritten laws, also known as international humanitarian law — govern the behavior of combatants. The killing of civilians is not, of itself, illegal. But combatants must abide by widely accepted principles, Professor Akande said.

Most important, they must discriminate between civilian and military targets, he said. After that, they must weigh the military advantage gained from any potential strike against the damage to civilians that it will cause.



*A funeral on Sunday for people killed in an overnight airstrike by Israel on Gaza City.*

And when they attack, combatants must take all reasonable precautions to limit any civilian damage, he added.

Unsurprisingly, applying those principles in a place like Gaza is a highly contentious affair.

Israeli officials say they are forced to strike homes and offices because that is where Hamas militants live and fight, using civilians as human shields. Hamas is responsible for civilian casualties inflicted during those strikes, Israeli officials say, because it fires rockets close to schools, offices and homes.

In a statement about the attack on Friday that killed 10 family members, the Israel Defense Forces said it had “attacked a number of Hamas terror organization senior officials, in an apartment used as terror infrastructure in the area of the Al-Shati refugee camp.”

Neighbors of the family, though, said no Hamas official was present at the time of the attack.

Human rights groups, however, say that Israel routinely pushes the boundaries of what might be considered proportionate military force, and that it has frequently breached the laws of war. “There’s been an utter disregard for civilian life that stems from the decades of impunity,” said Omar Shakir, Israel director for Human Rights Watch.

Mr. Shakir and others said Israel’s staunch alliance with the United States, which gives the country \$3.8 billion in military aid every year and offers reflexive diplomatic support, has shielded its actions from serious international censure for decades, emboldening it to commit abuses against Palestinians.

On Saturday President Biden again asserted his “strong support for Israel’s right to defend itself.”



*Rockets fired from the Gaza Strip on Saturday heavily damaged businesses and homes in Ramat Gan, near Tel Aviv.*

The top prosecutor with the International Criminal Court, which in February announced an investigation into possible war crimes by both Hamas and Israeli soldiers, warned on Friday that both sides in the current conflict could be subjects of future prosecutions.

“These are events that we are looking at very seriously,” the prosecutor, Fatou Bensouda, told the Reuters news agency.

But the criminal court, which Israel and the United States do not recognize, faces a host of political and logistical obstacles, and it could be years before any Israeli or Palestinian is put on trial — if ever.

Other bodies have adjudicated on previous rounds of fighting. In a report published last year, Human Rights Watch said Israel appeared to violate the laws of war when it killed 11 civilians during a flare-up in Gaza in November 2019. Palestinian militants, who fired hundreds of rockets into Israel at that time, also violated the laws of war, the report said.

A spokesman for the Israeli armed forces, Lt. Col. Jonathan Conricus, did not respond to several requests for comment for this article. But Lior Haiat, a spokesman for Israel's foreign ministry, said that his country did everything possible to minimize civilian casualties, and that the true culprit was Hamas.

“Every one of those missiles that are being launched from the Gaza Strip to Israel is actually a terror attack,” Mr. Haiat said. “But not only that — every one of those missiles is also a war crime.”



*Israeli ground troops near the border with Gaza on Sunday*

In 2018, Israel's defense minister then, Avigdor Lieberman, said, “The I.D.F. is the most moral army in the world.”

Some Israeli soldiers disagree.

A scathing report by Breaking the Silence, an organization of leftist combat veterans, into the conduct of Israel's army during its last major war against Hamas in 2014, accused the military of operating a “lenient open-fire policy” in Gaza. It said Israeli

commanders had called for “brutal and unethical” actions there and encouraged soldiers to behave aggressively toward Palestinian civilians.

The group’s executive director, Avner Gvaryahu, said that the Israeli military did not intentionally set out to kill civilians but that it routinely uses disproportionate force. He pointed to the use of artillery in recent days to hit targets with munitions that can kill anyone in a radius of up to 150 meters, or almost 500 feet.

“It speaks volumes to the fact that we are not doing everything in our power to prevent civilian casualties,” Mr. Gvaryahu said.

Others push back on Israel’s insistence that Hamas is to blame for the civilian casualties because it operates from residential areas. In a densely populated place like Gaza, “there is almost no way to fight from it without exposing civilians to danger,” said Nathan Thrall, author of a book on Israel and the Palestinians.

Mr. Thrall noted that the headquarters of the Israel Defense Forces was in a residential part of Tel Aviv, beside a hospital and an art museum.

Human rights researchers say Hamas strictly controls information about civilian deaths in Gaza to hide its losses and failures.

Although the casualty list provided by the local Ministry of Health — the source for the figure of 197 deaths over the past six days — is generally accurate, they say, Hamas will not say how many of the dead are militants, or were killed by Hamas missiles that fell short and exploded inside Gaza.

But others have found evidence. During the fighting in 2019, Human Rights Watch reported, at least two Palestinian rockets landed inside Gaza, killing one civilian and injuring 16 others.

Perhaps the greatest tragedy about civilian deaths, said Adil Haque, a professor at Rutgers Law School specializing in international law and armed conflict, is that they have become a way for belligerents to show their strength before inevitably agreeing to yet another cease-fire.

“Civilians are trapped between two sides,” he said. “Hamas wants to show it can survive the Israeli onslaught, and Israel wants to show that it is the stronger party.” “Both sides are able to stop if they want,” he added. “But neither is willing to stop first.”