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Protecting Human Rights in Conflict

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Protecting Human Rights in Conflict

Abstract

The Just War Theory of Jus in Bello is the international community's attempt to ensure respect for human rights and human welfare during armed conflicts. The principle of proportionality and the obligation to distinguish between combatants and civilians in attacks are two related notions that are fundamental to the protection of human rights during conflict. The principle of proportionality limits the amount of violence and destruction that is morally permissible. By contrast, the principle of discrimination (or distinction) discriminates between legitimate targets, such as soldiers and weapons depots, and illegitimate targets, specifically noncombatants such as civilian populations and their property.

Keywords

Human rights, Gaza, Israel, Palestine, War, Proportional use of force

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Protecting Human Rights in Conflict

by Clair Apodaca

The [Just War Theory](#) of *Jus in Bello* is the international community's attempt to ensure respect for human rights and human welfare during armed conflicts. The principle of proportionality and the obligation to distinguish between combatants and civilians in attacks are two related notions that are fundamental to the protection of human rights during conflict. The principle of proportionality limits the amount of violence and destruction that is morally permissible. By contrast, the principle of discrimination (or distinction) discriminates between legitimate targets, such as soldiers and weapons depots, and illegitimate targets, specifically noncombatants such as civilian populations and their property.

The principle of discrimination protects civilians from indiscriminate, battle-related carnage. Governments cannot indiscriminately drop bombs in heavily populated areas on hopes of destroying combatant targets. [Michael Walzer](#), in his classic *Just and Unjust Wars* (1977), asserts that the government maintains the responsibility to determine who is a combatant and who is not before it employs force. The fact that members of Hamas do not necessarily wear uniforms or visibly carry guns does not relieve Israel from its obligations under Just War Theory, particularly with regards to the principle of discrimination. There are legitimate and illegitimate military targets in any conflict. The principle of discrimination permits, as an unavoidable military necessity, a country to kill hostile combatants who are participants in the conflict. But this same principle protects non-combatants from being directly targeted with deliberate intent. Israel's response to the provocative, yet generally unsuccessful, acts of overt, calculated violence by Hamas violates the principle of discrimination. Israel's retaliatory attacks have led to civilian casualties with, in fact, very few Hamas fatalities. To date, over [1100 Gaza civilians have been killed](#) (more than a third of them children) and many more have been injured by Israel's disproportional response to Hamas' confrontational actions. Under no condition is the killing of children an acceptable or regrettable form of collateral damage justifiable on the grounds of an anticipated military advantage. Furthermore, it is difficult to imagine how the casualty count could include so many children unless non-discrimination between combatants and civilians was part of Israel's recent military strategy.

As for the principle of proportionality, it attempts to restrict both the excessive use of force and the gratuitous recourse to violence against civilian populations. It does not mean, however, that the number of civilian casualties must be approximately equal on both sides. Proportionality means that the injury suffered by the civilian population must be relative to the military advantage sought for through military action. Proportionality is thus designed to rein in retributive violence that a sense of revenge or retaliation in conflict often provokes. As [Jason Litwack](#) explains, "the principle of proportionality has long been firmly established in humanitarian law as it is inherent in principles of necessity and humanity which form the basis of humanitarian law. The prohibition of unnecessary suffering (Article 23(c) of Hague Convention IV of 1907) was the first codification of the principle of proportionality which had, however, already been accepted in international customary law. Today it has found broad recognition in the new rules for victims of armed conflicts in Protocol I Additional to the [Geneva Red Cross Convention of 1949](#)." Again, proportionality in *Jus in Bello* prohibits the use of excessive force. [Thomas Hurka](#) argues that even acts of self-defense are wrong if harm caused by the retaliatory

attack is out of proportion to the aggressive act. In this context, the [bombing of the UN Relief and Works Agency warehouse](#) (which under international humanitarian law enjoys immunity from attack), located in the heavily populated Gaza Strip, with white phosphorus shells is a clear violation of the principle of proportionality. Not only did the attack of January 15, 2009 violate the right of the civilian population to humanitarian aid, but the use of phosphorus shells is illegal in civilian areas because such bombs cause extremely painful (and often indiscriminate) injuries that are difficult to treat. White phosphorus sticks to the skin and burns to the bone. In addition, white phosphorus fires can not be put out with water or traditional fire extinguishers, thus rendering the risk of fire propagation in densely populated areas very high.

It is difficult to get parties to a conflict to see the benefits of respecting human rights and humanitarian law principles while in the heat of battle. This is precisely why the international community needs to step in. The international community should demand that both principles of discrimination and proportionality be respected. But more than demands for the respect of the *Jus in Bello*, specific actions by the international community are required. The West, particularly the United States, can, and in fact ought to, suspend transfers of cash, weapons, or ammunition to Israel while it is using those to violate the basic rights of the people of Gaza. Likewise, countries that are sympathetic to the plight of the citizens of Gaza should use their influence to contain the aggressive actions of Hamas since, in the end, such acts and hostilities towards Israel put Gaza's population at risk for further human rights violations, injuries and death. The international community, under the authority of the United Nations, needs to establish a committee to investigate the many reports of human rights violations, the targeting of civilian populations, and other violations of international humanitarian law by both sides of the conflict. Israel, a prominent military power, has the sophisticated technologies to track down Hamas' rocket launchers and destroy them with few civilian casualties. By targeting civilians and humanitarian aid, Israel ends up boosting Gaza's population's loyalty and support for Hamas. By provoking Israel into using indiscriminate and disproportionate military violence, Hamas hopes to garner increasing support from Palestinians but, in so doing, condemns them to be victims of violence and human rights exactions. Following the principles of discrimination and proportionality of the *Jus in Bello* are absolute preconditions (to be recognized by all) for any protection of the civilian populations, including children, in conflicts such as the present one between Israel and Hamas.

Clair Apodaca is an Associate Professor in the Department of Politics and International Relations at Florida International University. Dr. Apodaca has published extensively in the areas the international protection of human rights, women's human rights and refugee studies. She is the author of Understanding U.S. Human Rights Policy: A Paradoxical Legacy (Routledge 2006). Her work has appeared in the Journal of Human Rights, International Studies Quarterly and Human Rights Quarterly among many others. In recognition of her scholarship in the field, human rights scholars and practitioners elected her to the first Executive Committee for Human Rights at the American Political Science Association (APSA) in 2001. Presently, Dr. Apodaca serves on the Executive Committee for Human Rights Section of the International Studies Association.