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Is Israel’s Operation Protective Edge Justified?

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Is Israel’s *Operation Protective Edge* Justified?

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I am grateful to many readers who took the time to comment on my article “*Israel Cannot Be Complete and It Cannot Be Secure Without Just Peace*”, published in *Sharnoff’s Global Views* (July 18, 2014), http://www.sharnoffsglobalviews.com/israel-secure-peace-360/. Some have questioned the legitimacy of Israel’s *Operation Protective Edge*. None of the readers pondered whether indiscriminate, random rocket-fire on civilians is justified. Granted it is not. They questioned the Israeli conduct of war. While I think it is too early to evaluate whether this round of hostilities is morally just in terms of *jus in bello*, the means employed in the conduct of war, the critical readers prompted me to clarify and explain my position. I think *Operation Protective Edge* is justified in terms of *jus ad bellum*, i.e., the reasons that brought about this war. I presume a lot will be written about Israel’s conduct of war, enough to fill volumes. My position on the situation is based on the following principles:

The Right of Self-Defence – every society has right to protect itself against aggression. Every leadership has an obligation to its citizens to ensure life free of violence and terror.

Terrorism – my objection to terrorism is unqualified. All that terrorism is likely to provoke is counter-violence.

Realism – as a peacenik I never lose hope. My burning desire for peace is unflinching. But I am also a realist. In 2006, when Hamas was elected to power in Gaza, I thought this might be a good thing, that with governance comes responsibility; once Hamas is faced with the responsibility to cater for the basic needs of its population – health, education, housing, social welfare, transportation, energy etc, Hamas will enter a new path and desert or at least compromise its prime commitment to destroy Israel.

This did not happen.

Hamas does not invest in its people. It invests in violence and destruction. Hamas is not interested in any form of reconciliation with Israel. It is a bitter enemy that is demanding significant sacrifices from its own people in order to realize its ends of destruction.

But no political organization can build itself solely on violence. “You can do anything with bayonets except sit on them”, said Napoleon. His metaphor is pertinent for Gaza. The Palestinians know better, and they deserve better. For the time being, Israel needs to take all measure to defend against this stalwart enemy.

Responsibility - A responsible government is required to ponder the consequences of its decisions and to calculate the cost-benefits of conduct before and during conflict. It should be in control of events and not allow snow-ballng, rapid escalation when events control government rather than government control events.
International law – Hamas is a terrorist organization. It seeks destruction and violence, it despises international norms, and is willing to condone and justify all means to achieve its destructive ends.

Israel is a democracy that is cognizant of standards of international law. Israel is also guided by the rich principles and values of the Judea-Christian tradition of justice and morality. It should be extremely careful in its conduct of war, knowing that its conduct is closely observed by the international community. Harsh conduct might lead to an increased Israeli isolation from the world.

Thus the world is not employing double standards about Israel and Hamas. The Israeli conduct should rightly be evaluated differently from that of Hamas.

In this context, Article 57 of Protocol 1 Additional to the Geneva Conventions (1977) emphasises that the attacking side should “refrain from deciding to launch any attack which may be 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.” Article 57 further stresses that when a choice is possible between several military objectives for obtaining a similar military advantage, the selected attack should be the one that is expected to cause the least danger to civilian lives and to civilian objects (Article 57: Precautions in Attack, Protocol 1 Additional to the Geneva Conventions, 1977, http://deoxy.org/wc/wcproto.htm).

The concept of proportionality - Proportionality means that the evil inflicted on the enemy does not significantly exceed the resisted evil caused by the enemy. It requires weighing the moral wrong of an attack against the military advantage that it is aimed to achieve.

The Principle of Distinction - the first core principle of the Law of Armed Conflict as postulated in Protocol 1 Additional to the Geneva Conventions (1977), is that “the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” It is thus unlawful to deliberately target civilians. Civilians should never be the object of attack. Civilians do not take part in the fighting; they are unable to defend themselves, and they do not constitute a threat. This is why they are called non-combatants. It is not necessary to kill them in order to win.

Collateral damage – The international community should devise laws of combat when dealing with fighting in populated areas, where combatants hide among the civilian population, using them as protective shields, and where combatants operate from mosques, hospitals and government buildings. This lacuna needs to be filled.

Occupation – when Israel evacuated Gaza, the aim was never to return. Gaza, unlike the West Bank, is not occupied. There is no Israeli presence in Gaza. You may say it is likened to a large prison because freedom of movement is restricted. Gaza is surrounded by Israel and Egypt, both constrict and monitor the Gazan activity. But those who rightly note Gaza’s isolation need

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1 Although the State of Israel is not a party to the Additional Protocols to the Geneva Conventions, it accepts that this provision accurately reflects customary international law. See HCJ 769/02 Public Committee against Torture in Israel v. Government of Israel, at ¶ 20 (11 December 2005).
to look at the reasons for these restraints. And there are valid reasons. Both Israel and Egypt take protective measures against Hamas violence and terror.

Naval Freedom – Israel simply cannot allow the import of terror into Gaza. As long as Hamas is in control, we all can assume that its prime motivation is to continue investing in terror. Gazans should be allowed to have access to the sea, and to use the sea for their livelihood (fishing), but Hamas should not have the freedom to exploit naval freedom for terrorism. Israel has the right to defend itself.

At the same time, it is in Israel’s interest not to isolate Gaza and to assist Gaza in developing a viable, independent economy that could provide for its citizens. This could happen only when there will be some trust between Gaza and Israel. A lot needs to be done by both Israel and the Palestinians to establish trust.

Endgame – the solution for this protracted and bloody conflict is peace. The best solution remains two-state solution. I am not saying that this will happen soon. I say that this should happen. I hope for a two-state solution. I believe it is the best and most viable solution. There is, unfortunately, a slight difference between the “is” and the “ought”.

Israeli leaders aspire for the demilitarization of Gaza. Undoubtedly, the Palestinian Authority (PA) should have the monopoly on weapons. Without having such a monopoly, the PA aspirations for a sovereign state will not materialize. Every government should be able to provide law and order for its citizens. It cannot allow the operation of armed militias against their perceived enemies and opposition. Hamas has not flinched from employing violence against its own Palestinian brethren.

The international community - Israel is not an island for itself, and should be careful not to become one. While Israel should not expect the community of nations to come to its help in times of trouble, and should solely be responsible for the security of its people, Israel cannot afford itself hostile public opinion across continents.

The international community is likely to extend assistance to Gaza at the end of hostilities. It should monitor its funds and assistance to ensure that they are used for civilian, constructive purposes, not to sponsor terror and violence.

I am looking for the post-Hamas era, for the opening of a new page in which the Palestinian government will be accountable for the welfare and well-being of the Palestinian people. This new page will, ipso facto, be better also for Israel.