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## Changing the rules of war

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The extent of Israel's brutality against Palestinian civilians in its 22-day pounding of the Gaza Strip is gradually surfacing. Israeli soldiers are testifying to lax rules of engagement tantamount to a license to kill. One soldier commented: "That's what is so nice, supposedly, about Gaza: You see a person on a road, walking along a path. He doesn't have to be with a weapon, you don't have to identify him with anything and you can just shoot him."

What is less appreciated is how Israel is also brutalizing international law, in ways that may long outlast the demolition of Gaza.

Since 2001, Israeli military lawyers have pushed to re-classify military operations in the West Bank and Gaza Strip from the law enforcement model mandated by the law of occupation to one of armed conflict. Under the former, soldiers of an occupying army must arrest, rather than kill, opponents, and generally must use the minimum force necessary to quell disturbances.

While in armed conflict, a military is still constrained by the laws of war - including the duty to distinguish between combatants and civilians, and the duty to avoid attacks causing disproportionate harm to civilian persons or objects - the standard permits far greater uses of force.

Israel pressed the shift to justify its assassinations of Palestinians in the Occupied Territories, which clearly violated settled international law. Israel had practiced "targeted killings" since the 1970s - always denying that it did so - but had recently stepped up their frequency, by spectacular means (such as air strikes) that rendered denial futile.

President Bill Clinton charged the 2001 Mitchell Committee with investigating the causes of the second Palestinian uprising and recommending how to restore calm in the region. Israeli lawyers pleaded their case to the committee for armed conflict. The committee responded by criticizing the blanket application of the model to the uprising, but did not repudiate it altogether.

Today, most observers - including Amnesty International - tacitly accept Israel's framing of the conflict in Gaza as an armed conflict, as their criticism of Israel's actions in terms of the duties of distinction and the principle of proportionality betrays. This shift, if accepted, would encourage occupiers to follow Israel's lead, externalizing military control while shedding all responsibilities to occupied populations.

Israel's campaign to rewrite international law to its advantage is deliberate and knowing. As the former head of Israel's 20-lawyer International Law Division in the Military Advocate General's office, Daniel Reisner, recently stated: "If you do something for long enough, the world will accept it. The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries ... International law progresses through violations. We

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invented the targeted assassination thesis and we had to push it. At first there were protrusions that made it hard to insert easily into the legal molds. Eight years later, it is in the center of the bounds of legitimacy."

In the Gaza fighting, Israel has again tried to transform international law through violations. For example, its military lawyers authorized the bombing of a police cadet graduation ceremony, killing at least 63 young Palestinian men. Under international law, such deliberate killings of civilian police are war crimes. Yet Israel treats all employees of the Hamas-led government in the Gaza Strip as terrorists, and thus combatants. Secretaries, court clerks, housing officials, judges - all were, in Israeli eyes, legitimate targets for liquidation.

Israeli jurists also instructed military commanders that any Palestinian who failed to evacuate a building or area after warnings of an impending bombardment was a "voluntary human shield" and thus a participant in combat, subject to lawful attack. One method of warning employed by Israeli gunners, dubbed "knocking on the roof," was to fire first at a building's corner, then, a few minutes later, to strike more structurally vulnerable points. To imagine that Gazan civilians - penned into the tiny Gaza Strip by Israeli troops, and surrounded by the chaos of battle - understood this signal is fanciful at best.

Israel has a lengthy history of unpunished abuses of international law - among the most flagrant its decades-long colonization of the West Bank. To its credit, much of the world has refused to ratify Israel's violations. Unfortunately, our government is an exception, having frequently provided diplomatic cover for Israel's abuses. Our diplomats have vetoed 42 U.N. Security Council resolutions to shelter Israel from the consequences of its often illegal behavior.

We must break that habit now, or see international law perverted in ways that can harm us all. Our government has already been seduced to follow, in Afghanistan and elsewhere, Israel's example of targeted killings. This policy alienates civilians, innocently killed and wounded in these crude strikes, and deepens the determination of enemies to harm us by any means possible.

We do not want civilian police in the United States to be bombed, nor to have anyone "knock on our roofs." For our own sakes and for the world's, Israel's impunity must end.

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