

# Opinion

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## Measuring Israel by the Yardstick of a 'Just War'

A. Walter Dorn

A professor of defense studies at the Royal Military College of Canada in Kingston, Ontario, and the Canadian Forces College in Toronto.

ISRAEL'S response to the horrifying Hamas attack on Oct. 7 has caused widespread protest among its critics and soul-searching among some of its supporters. The deaths of thousands of Palestinian civilians in a ferocious bombing campaign and an increasingly intense ground war in the Gaza Strip cry out for a careful examination of the moral basis for Israel's actions.

The most prominent moral framework that applies is "just war" theory, which has guided Western thought for centuries and forms the intellectual framework for international law on the use of force. Based on works by thinkers ranging from Roman philosophers to modern-day jurists, just-war theory offers a time-honored set of criteria to consider whether and how force should be used — though it is admittedly impossible for any analysis to be absolutely impartial.

The standard elements used in assessing whether a war is just are just cause, right intent, legitimate authority, net benefit or likelihood of success, last resort, proportionality of means and noncombatant distinction. Ideally a state should meet all of the criteria, but the case for a just war can still be made even if a few of the benchmarks are weak.

While Israel easily has just cause and constitutes a legitimate authority, its case is far weaker regarding the other five criteria. In addition, the fact that Hamas has violated these principles does not absolve Israel from an obligation to live up to higher moral standards.

While applying these standards to Israel is ultimately a theoretical exercise, a perception that it falls short could have major practical effects, potentially damaging Israel's diplomatic standing and trade and the world economy while strengthening support for its enemies.

If Israel is widely seen to have committed war crimes, a trial could be held at the International Criminal Court in The Hague — though Israel does not recognize its jurisdiction — or Israeli soldiers could be arrested and tried in any of the nations that have adopted universal jurisdiction to prosecute such crimes.

To determine how just or unjust are Israel's current actions, let's examine each criterion and the evidence, based on the approach in my scholarship examining some 20 conflicts.

On the first measure, just cause, Israel would seem to have plenty of that, given its inherent right to self-defense, as provided for in the United Nations Charter. Even Israel's declared aim of eliminating Hamas — though perhaps more properly formulated as destroying the fighting capacity of Hamas — seems well justified, especially as rockets continue to fly into Israel. Certainly, the rescue of Israeli hostages held in Gaza is a meritorious goal.

Right intent, the second criterion, means that force should be used to help establish peace in the long term, rather than in pursuit of a short-term or politically self-serving gain or in an act of vengeance. Though some might argue that Israel is fighting to establish peace in Gaza from a position of strength and dominance, Israeli actions can easily be questioned. Prime Minister Benjamin Netanyahu's governments have scant history of genuinely seeking peace, even with the more pliable Palestinian Authority and even with the road map of the Oslo Accords. Israel recog-



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**A moral framework exists for considering whether and how force should be used.**

nized the United States-backed two-state solution, but the current government has made no progress toward carrying it out, and several ministers actively oppose such a plan. Instead, the steady growth of settlements has resulted in the de facto confiscation of Palestinian land.

The Israeli government does satisfy the criterion of having legitimate authority. The government was democratically elected, even if Mr. Netanyahu's right-wing coalition has sought to undermine the checks and balances provided by the Israeli judiciary.

The criterion of net benefit, weighing the gain against the harm, would include the potential gain of removing Hamas from power or at least neutralizing its capacity to attack Israel in the short term. The war might also provide new opportunities for the Palestinian Authority or some other transitional administration to govern Gaza, and eventually free and fair elections. Israel might also be able to rescue the hostages held by Hamas.

However, the enormous loss of Palestinian lives will most likely create intergenerational rage against Israel and catalyze recruitment for extremist groups. Even if Hamas is effectively disarmed and loses control of Gaza, more extremist groups are likely to spring up.

Further, there is a great risk of a wider war, with fire already being exchanged over Israel's borders with Lebanon and Syria, and escalating violence in the West Bank. Damage to Israel's foreign relations is also likely: the suspension of peace talks with Saudi Arabia and possible withdrawals from the Abraham Accords, which Israel recently signed

with certain Arab states with the goal of normalizing relations.

So the downside of Israel's war outweighs any benefit.

The criterion of last resort is crucial to all just-war considerations. Force should be used only when all other means have failed or would be clearly ineffective. Israel sees no other way to neutralize Hamas and rescue the hostages. But it has forsworn direct negotiations out of hand, and it is not considering a peace process for Gaza. Mr. Netanyahu has dismissed Hamas's proposed deals for the release of hostages. He has said that he does not want to negotiate with Hamas, though we know that negotiation with adversaries, however distasteful, has often proven successful.

Proportionality of means is an important principle to uphold during fighting. Civilian casualties and damage in Gaza have been far in excess of any military advantage gained by Israel and thus not proportionate. Demanding the almost immediate evacuation of half the population of over two million to the southern part of the Gaza Strip is unrealistic, especially as corridors of travel are extremely hazardous. Israel has attacked Gaza, including the southern part, with ferocity. The death toll of many thousands is climbing alarmingly.

Noncombatant distinction is another major criterion for a just war. Civilians should not be targeted. Israel can rightly claim that its ground invasion helps Israeli forces better distinguish Hamas fighters from civilians. Israel accepts the risk of sending in soldiers instead of carpet bombing to destroy Hamas.

Furthermore, the extensive labyrinth of tunnels underground, probably holding hostages, need to be cordoned off and searched.

But engaging in urban warfare is exceedingly difficult and leads to soldiers killing civilians, especially as Hamas fighters hide among the population. The ethics of using force to overcome the use of human shields is debated among international human rights lawyers, but any future trials of both Israeli and Hamas fighters can examine each specific situation.

In any case, a law-abiding combatant must find ways to reduce civilian casualties to a bare minimum.

Israel claims it is not deliberately targeting civilians, but this is hard to reconcile with the extreme level of death and destruction in the first month of its response, including bombings that destroy entire apartment buildings. Furthermore, significant human suffering has resulted from shortages in electricity, water, food, fuel and medical supplies in Gaza because of Israel's blockade. Humanitarian aid has been stifled for weeks. A U.N. group said that more than 100 U.N. staff members have been killed and at least one school has been bombed.

Just-war theory reinforces the human instinct to not only preserve human life but also lament its loss, and to try to find solutions. Israel's conduct will be judged not only by theorists but by the nations and peoples of the world as well. It will also help determine Israel's place in history. Hopefully, that prospect will turn the Israeli government toward peace, and solutions other than war.