



STRATEGIKA

ISSUE 89

Conflicts Of The Past As Lessons For The Present

MARCH 2024



URBAN WARFARE, COLLATERAL CIVILIAN DEATHS, AND THE LAWS OF WAR

IN THIS ISSUE

PETER R. MANSOOR • JOSEF JOFFE • JOHN YOO & JEREMY RABKIN

EDITORIAL BOARD

Victor Davis Hanson, Chair
Bruce Thornton
David Berkey

CONTRIBUTING MEMBERS

Peter Berkowitz
Josiah Bunting III
Gordon G. Chang
Admiral James O. Ellis Jr.
Niall Ferguson
Chris Gibson
Jakub Grygiel
Josef Joffe
Robert G. Kaufman
Edward N. Luttwak
Peter R. Mansoor
Mark Moyar
Williamson Murray
Ralph Peters
Paul A. Rahe
Andrew Roberts
Admiral Gary Roughead
Kiron K. Skinner
Barry Strauss
Bing West
Miles Maochun Yu

CONTENTS

March 2024 • Issue 89

BACKGROUND ESSAY

A Not-So-Distant Mirror: What the Battle of Manila during World War II Suggests about Urban Combat, War Crimes, and the Battle for Gaza
by Peter R. Mansoor

FEATURED COMMENTARY

Urban Warfare: Old and New
by Josef Joffe

The Laws of War and Their Application in Israel's Fight Against Hamas
by John Yoo & Jeremy Rabkin

EDUCATIONAL MATERIALS

Discussion Questions

Suggestions for Further Reading



ABOUT THE POSTERS IN THIS ISSUE

Documenting the wartime viewpoints and diverse political sentiments of the twentieth century, the Hoover Institution Library & Archives Poster Collection has more than one hundred thousand posters from around the world and continues to grow. Thirty-three thousand are available online. Posters from the United States, the United Kingdom, Germany, Russia/Soviet Union, and France predominate, though posters from more than eighty countries are included.

A Not-So-Distant Mirror: What the Battle of Manila during World War II Suggests about Urban Combat, War Crimes, and the Battle for Gaza

By Peter R. Mansoor

Israel's retaliation for the horrific attacks by Hamas and other Palestinian terrorist groups on October 7 has resulted in some of the bloodiest urban combat since the end of World War II. Regardless of the inhumanity of the attacks by Hamas and other Palestinian terrorist organizations, the world community expects the Israel Defense Forces to abide by the laws of war as it seeks to destroy Hamas and other terror groups in the Gaza Strip, much of which is densely populated urban terrain.

The Geneva and Hague Conventions state that military forces must take precautions to protect noncombatants from the effects of military operations. If noncombatant casualties are unavoidable, they must be proportional to the advantages gained in prosecuting military operations. With more than eighteen thousand Palestinians dead and more than thirty-five thousand wounded due to Israeli military operations as of this writing, many international observers already believe Israel has crossed the proportionality line, however murky it might be. To gain a sense of perspective, an examination of similar urban combat during World War II is in order.

The Battle of Manila in February 1945 was of similar size and scope to ongoing Israeli operations in the Gaza Strip. Manila's population numbered around eight hundred thousand, with another three hundred thousand in the outlying suburbs, contrasted with roughly two million Palestinians in Gaza. Compared to upwards of forty thousand fighters under the control of Hamas and affiliated groups, the Manila Naval Defense Force under the command of Rear Adm. Sanji Iwabuchi had roughly eighteen thousand troops and naval personnel with which to defend the city.

The Japanese fortified buildings and tunneled to connect them via their basements, not unlike how Hamas utilizes the urban infrastructure of Gaza. Roadblocks as well as thousands of mines and improvised explosive devices prevented easy vehicular access along the streets. Japanese forces were armed with automatic weapons and a variety of mortars, artillery pieces, and rockets. Despite orders to the contrary from his higher commanders, Iwabuchi ordered his forces to fight and die in place.

By February 5, 1945, the 37th Infantry (Ohio National Guard) and 1st Cavalry Divisions were closing on the north bank of the Pasig River that bisects Manila, while the 11th Airborne Division approached Manila from the south. Under the control of XIV Corps, commanded by Maj. Gen. Oscar Griswold, the 37th Infantry Division would clear the northern half of the city and the 1st Cavalry and 11th Airborne Divisions would clear



Image credit: Poster Collection, BE 16, Hoover Institution Archives.

the southern half. To limit damage to the city, Gen. Douglas MacArthur forbade air strikes and unobserved artillery fire.

On February 7, the 1st Cavalry Division encountered its first significant resistance in the New Manila Subdivision, where a thousand heavily fortified Japanese naval troops halted the attack. The battle was a portent of engagements to come. Artillery fired more than seventeen hundred rounds of high explosive at Japanese strongpoints, while infantry cleared the area building-by-building. It took three days for the cavalrymen to clear the subdivision, destroying much of the area in the process.

As the fighting continued, MacArthur's stipulations on the pinpoint use of fire support to save Manila proved untenable. The Japanese had fortified every major building in the heart of the city, requiring massive amounts of artillery, tank, and tank destroyer fire to support the infantry, which otherwise would have taken heavy losses. The only way to reduce the number of casualties was to increase the use of heavy weapons against Manila's buildings, which would kill military personnel and civilians alike. MacArthur lifted restrictions on the use of artillery and direct fire weapons within a few days into the battle for Manila, after it became clear the Japanese were going to fight to the death. The 37th Infantry Division did its best to spare civilian lives but began to use artillery in front of advancing infantry without precisely targeting Japanese positions.

When MacArthur learned of the massive use of firepower by the 37th Infantry Division, he ordered Griswold to restrict use of weapons of caliber greater than 37mm—which were clearly inadequate to penetrate the reinforced concrete structures in the city. The commander of the 37th Infantry Division, Maj. Gen. Robert Beightler, refused to obey, telling Griswold he would have to relieve him of command instead. MacArthur sent his chief of staff, Lt. Gen. Richard Sutherland, to investigate. When Sutherland validated the need for the use of heavy guns, MacArthur relented. The civilian population, caught between a rapacious and cruel occupying force and liberators who were all too willing to use massive amounts of artillery, mortar, tank, and tank destroyer fire to reduce their losses, suffered the most.

The Buckeyes hammered away at heavily defended buildings as columns of refugees streamed out of the city. The 37th Infantry Division used heavy artillery and mortar concentrations, along with direct fire from self-propelled cannon, tanks, and tank destroyers, to blast the Japanese positions in City Hall, the Philippine General Hospital, and the University of the Philippines. Not unlike the exhortations by Hamas leaders for Palestinian civilians to remain in place, the Japanese had taken several hundred Filipinos in the hospital hostage, using them as human shields to discourage the use of heavy firepower against the buildings. The tactic significantly increased the noncombatant death toll.

Japanese use of the Philippine General Hospital as a defensive position was a war crime under the Geneva and Hague Conventions, which prohibited the militarization or wanton destruction of medical facilities.¹ The Americans limited use of artillery and heavy caliber fire on the buildings for fear of injuring the civilians in the area, but had to assault them nonetheless. After difficult fighting, American infantry seized the buildings, leading to the release of several thousand civilians who sought the safety of American lines.

American forces next assaulted the University of the Philippines. The usual preparation from tanks, tank destroyers, and self-propelled guns sent the Japanese underground. GIs resorted to pouring a mixture of oil and gasoline into various openings and igniting the mixture with white phosphorous grenades, incinerating those caught below.

After two weeks of fighting the Japanese perimeter shrank inside the old city of Intramuros and a few modern government buildings nearby. Under Intramuros the Japanese had built a tunnel system not unlike that constructed by Hamas underneath Gaza. Rooting them out of these positions would be difficult, so Beightler requested to use dive bombers and napalm strikes to level the area, significantly reducing the potential for friendly casualties. But thousands of noncombatant Filipinos were trapped inside the walled city. XIV Corps

broadcast a message in Japanese granting safe passage for these innocents, but Japanese commanders ignored it.² Worse yet, Japanese soldiers were committing atrocities that would claim the lives of thousands of civilians.

MacArthur was adamant; air strikes would inevitably kill large numbers of civilians, and while they might speed the conclusion of operations and save the lives of some soldiers, he would not allow their use in Manila. The decision angered Griswold, who wrote in his diary, "I fear that [MacArthur's] refusal to let me have bombing will result in more casualties to my men. However, I understand how he feels about bombing people—but it is being done all over the world—Poland, China, England, Germany, Italy—then why not here! War is never pretty. I am frank to say I would sacrifice civilian Filipino [sic] lives under such circumstances to save the lives of my men. I feel quite bitter about this tonight."³

The 37th Infantry Division instead planned an amphibious crossing of the Pasig River in conjunction with an assault on the eastern walls of Intramuros. Nine battalions of artillery hammered away at the walls of Intramuros for a week using nearly 185 tons of ammunition. Crossing the Pasig River on February 23, infantry penetrated the breaches created by the artillery and began the usual building-by-building clearance. At one point the Japanese released more than two thousand Filipinos being held in the San Agustín Church and the Del Monico Hotel to interrupt the attack. The battle halted for a time as the GIs shepherded the non-combatants to safety. Nevertheless, American bombs and shells coupled with Japanese atrocities resulted in the slaughter of much of the Filipino population of Intramuros.

Supported by tanks, tank destroyers, and artillery, infantrymen reduced strongpoints with grenades, demolition charges, bazookas, and flame throwers. They sealed the tunnels under the old city with demolitions or by pouring gasoline into the entrances and igniting it with white phosphorous grenades. During the fighting soldiers stumbled upon scenes of horror as the full scale of Japanese atrocities against Filipino civilians became clear. In the dungeons of Fort Santiago, GIs discovered the grisly remains of upwards of three thousand Filipino men who had been doused with gasoline and incinerated by their Japanese captors. At least four hundred men and one woman were found in three other rooms, where they had died from gunshots, bayonet wounds, and starvation.

The final Japanese holdouts fortified themselves in three modern governmental buildings. Faced with a difficult tactical problem, American commanders resorted to what had worked so well for them to this point in the battle: massive firepower. By March 3 the buildings—or rather the rubble created by their destruction—were under American control.

Manila, or what was left of it, had been liberated, but the battle destroyed much of the city. Amid the ruins lay the dead bodies of seventeen thousand Japanese soldiers, nearly the entire garrison, along with one hundred thousand Filipinos, victims of American firepower and Japanese atrocities.

Japanese commanders were fully responsible for this slaughter. They refused to allow civilians safe passage outside the battle zone, even when American commanders offered cease-fires for that purpose. Furthermore, Japanese commanders lost control of their soldiers, who murdered, mutilated, and raped thousands of Filipino civilians. After the war several Japanese leaders were convicted of war crimes for their soldiers' mistreatment of Filipino civilians. American commanders, whose decisions also cost tens of thousands of civilian lives, received a pass as the carnage was viewed as a sad but necessary cost of waging war to liberate the Philippines.

Does a similar future await Gaza? Perhaps. Despite Israeli use of guided munitions, bombs are bombs, and they wreak severe damage on urban infrastructure. To complete the destruction of Hamas, the Israeli Defense Forces will need to clear southern Gaza, where roughly 1.5 million Palestinians are sheltered with nowhere to go. As with MacArthur and his commanders in Manila in 1945, Israeli leaders will need to make hard choices regarding the level of destruction and the number of noncombatant casualties they are willing to inflict to achieve their stated goal of destroying Hamas.

Unlike the Philippines, Gaza is not a friendly country waiting to be liberated. Instead, Hamas will use noncombatant deaths as a bludgeon to accuse Israel of committing genocide and war crimes against the Palestinian people. As the history of the Battle of Manila teaches, the death toll in urban combat will be high unless the population evacuates—or is forced to evacuate—the battle zone ahead of the fighting.

- 1 Japan was not a signatory to the convention, so technically its use of the hospital as a military fortification did not violate a treaty obligation but was merely an uncivilized act of war.
- 2 XIV Corps, After Action Report, M-1 Operation, July 29, 1945, <https://cgsc.contentdm.oclc.org/digital/collection/p4013coll8/id/4680/>, 114.
- 3 Diary of Lieutenant General O. W. Griswold, USA, February 7, 1945, Oscar W. Griswold Papers, USAHEC, February 17, 1945.



PETER R. MANSOOR, colonel, U.S. Army (retired), is the General Raymond E. Mason Jr. Chair of Military History at The Ohio State University. A 1982 distinguished graduate of the United States Military Academy at West Point, he earned his doctorate from Ohio State. He assumed his current position after a twenty-six-year career in the U.S. Army that included two combat tours, the first as a brigade commander in Baghdad and his final duty as executive officer to General David Petraeus, commander of Multi-National Force–Iraq. His latest works are *Surge: My Journey with General David Petraeus and the Remaking of the Iraq War* (Yale University Press, 2013), a history of the surge in Iraq in 2007–8; and *Grand Strategy and Military Alliances* (Cambridge University Press, 2016) and *The Culture of Military Organizations* (Cambridge University Press, 2019), both co-edited with Williamson Murray.

Urban Warfare: Old and New

By Josef Joffe

The evidence from Israel's Gaza campaign, which is also a proxy war stage-managed by Iran, shows that states aren't necessarily at a disadvantage in asymmetric encounters.

One of the oldest dramas of urban warfare unfolded circa 1500 BCE. As the song has it, "Joshua fit the battle of Jericho, and the wall come tumbling down." Alas, there was no such city at the time, archeological research reveals. But the biblical account limns one pattern for the next three thousand years.

It is siege, capture, and bloodshed inside. A second "model" emerged in the 20th century. Bombers, not Joshua's trumpets, leveled cities either in part or in toto. In World War II, recall the deadly fate of Warsaw, Coventry, London, then Dresden, Berlin, and Tokyo (where the firestorm killed more people than did "Little Man" in Hiroshima). The third type pertains to our days. It is mano-a-mano in places like Beirut, Grozny, Gaza, Fallujah, and Mosul. These battles were rendered more deadly by an order of magnitude with the help of tanks, 1000-pound bombs, and missiles.

Asymmetric warfare between states and nonstate actors has not been a winner for the former in the post-World War II era. With the exception of the British in Malaya, the much-maligned "White Man" lost the decolonization wars from Kenya to Algeria. Israel ultimately pulled out of Southern Lebanon after 18 years. Prior to "10/7," it would fight to a labile draw in the four prior assaults on Gaza, an emblematic urban venue. Israel's strategy was to "mow the grass" regularly, which quickly grew back.

So, is this less-than-sterling record destiny? Asymmetric, usually proxy war supported by outside powers, favors the defender who exploits the natural advantages of his urban setting. He knows the layout. He can hide in the warrens of the city. His small autonomous units ambush the intruder. As in Gaza, the locals can stash materiel and supplies in a vast network of tunnels, which enables them to move quickly, while the attacker runs into traps. Above, combatants deploy snipers and rocket-propelled grenades against tanks that cannot maneuver in the labyrinth. Nor is the battlefield limited to the city. Hamas has fired piles of cheap missiles into the Israeli hinterland all the way to Tel Aviv. Iran has delivered arms and guidance—let our proxies die.

So, the invader is literally stuck? Not quite, as the Israelis have shown in the latest round against the Qassam troopers. After years of preparation not detected by Israel's vaunted agencies, Hamas had raised its tactical IQ. The surprise was stunning. But note the dialectics of warfare. Apart from missing the signs, the IDF had learned from previous engagements. The army had practiced in city mockups at home. It sent in latest-model Merkava tanks, protected by infantry and sophisticated reactive armor. The IDF has acquired low-yield munitions that take out a sniper on the top floor without leveling the entire building. To save the lives of their own in the maze, the Army used explosive quickly jelling chemicals to seal tunnels. Robotic devices sniffed out traps and enemy fighters. Armored bulldozers destroyed IEDs in the streets above.



Image credit: Poster Collection, US 1768.A, Hoover Institution Archives.

Nor is it just a matter of hardware. Israel has also profited from indirect means that tilt the balance against Hamas. Their fuel supplies controlled by Israel, the Qassam Brigades lost mobility. Blocking telephony, electricity, and the Internet rendered them deaf and blind. Meanwhile, the IDF wasn't exactly "Eyeless in Gaza," as the title of Aldous Huxley's novel had it.

Asymmetry often favors the locals, especially when aided by outsiders as they invariably are. But as Israel's tactics demonstrated, both can play this game, though with different chips. Take force-exchange ratios. Hamas lobbed hundreds of unguided missiles into Israel costing 500 dollars apiece, while the country's Iron Dome projectiles go for 50,000 per shot. That ratio is one hundred to one. Meanwhile, Israel has fielded Iron Sting, a mobile laser beam technology that operates on electricity costing a pittance. This force-exchange ratio clearly favored Israel. So does the tally of Israeli vs. Palestinian casualties. Low hundreds (not counting the murder spree on 10/7) vs. thousands in Gaza.

Military academies round the world will study this war, and for all of Israel's sophistication, they will note an irreducible asymmetry faced by democracies—and not by Russia, which simply rubbed out Chechnya in the Nineties. The Kremlin did not have to care about world-wide condemnation. Israel does. The core of Hamas's strategy was to mobilize opinion and diplomacy against Jerusalem, humiliate the United States, and rupture the Abraham Accords. This was precisely Iran's purpose as well. In essence, the U.S. and Israel were the real targets, though at one step removed to enjoy "plausible deniability" and avoid retaliation. This is the essence of all proxy warfare.

The overarching *political* war was about legitimacy. And, as for Hezbollah in Lebanon in 2006, the most critical duel was the "battle of images." Cynically put, the civilian corpses in Gaza and Lebanon, both armed by Tehran, were worth more than Israel's. Hiding behind human shields in hospitals and high-rises was the name of the deadly game, which placed the onus on Israel and unleashed hundreds of demonstrations against the Jewish state—especially in the West.

So, for Israel as for any democracy, successful intervention has a short sell-by date. To borrow from Shakespeare's *Macbeth* (Act 1, Scene 7), "If it were done when 'tis done, then 'twere well it were done quickly." Time is the worst enemy of intruders and the best friend of those hit. Hardly had Israel's assault begun when Western and UN pressure began to escalate. Israel's *military* triumph as a mini-superpower in the Middle East was virtually foreordained. But peace remains elusive, and the political price of urban warfare is enormous—not to speak of thousands of lives lost on both sides. Iran, the sponsor of this proxy war, applauded from the sidelines.



JOSEF JOFFE is a distinguished visiting fellow at the Hoover Institution and professor of practice—international affairs at Johns Hopkins SAIS. He also serves on the editorial council of the German weekly *Die Zeit*. His areas of interest are U.S. foreign policy, international security, European—American relations, Europe and Germany, and the Middle East. He has been affiliated with Stanford since 1999 when he was appointed Payne Lecturer, and he has also taught at Harvard. A cofounder of *American Purpose* and previously the *American Interest*, his latest book is *The Myth of America's Decline*. His essays and op-eds have appeared in all the major papers of the U.S. and Britain.

The Laws of War and Their Application in Israel's Fight Against Hamas

By John Yoo and Jeremy Rabkin

Even as Israel has paused its offensive in the Gaza strip, the most difficult phase of its campaign is yet to come. The Israel Defense Forces (IDF) have spent weeks using artillery and airpower to bomb Hamas terrorist fighters and facilities, followed by tanks and ground troops. But, as the IDF announced in its warning to civilians to leave the northern Gaza strip, "Hamas terrorists are hiding in Gaza City inside tunnels underneath houses and inside buildings populated with innocent Gazan civilians." Once Israel decides to resume its offensive, it will have to face the difficult operational and tactical challenges of urban warfare in a political environment where critics and even some allies are demanding a cease-fire to protect civilians.

Before turning to the legal and policy issues surrounding urban combat in Gaza, we should make clear that Israel has the right to use force. While scholars and governments may argue over whether the Gaza strip amounts to an independent territory (unoccupied by Israel) and Hamas constitutes the legitimate government there, Hamas undeniably launched an attack on Israel on October 7, 2023. Hamas's systematic murder of unprotected civilians violated the core principle of the laws of war, which prohibit intentional attacks on non-combatants. Israel has the legal and moral right to act in its self-defense to stop Hamas's campaign and to prevent future assaults.

Israel's right to use military force in Gaza (*ius ad bellum*), however, does not relieve it of the obligation to obey the laws of war as it executes its operations (*ius in bello*). Israel has an obligation to target only military personnel and assets, and the productive capacity that supports them (the principle of distinction), and to use force—especially that which harms civilians incidentally—only in proportion to the gains presented by the military objective (the principle of proportionality). It is one of the great achievements of Western civilization that, over the millennia, nations at war have sought to limit hostilities to protect innocent life. Whereas Thucydides reports in his history of the Peloponnesian War that victorious city-states would execute the men and sell women and children into slavery after sieges, the twenty-first century's Western professional armed forces seek to avoid striking civilian buildings, such as churches, hospitals, and apartment buildings; and deliberately shooting innocents.

This is not to say that legitimate military operations can only fight other militaries in a sanitized environment—a strike on a military target may incidentally harm civilians nearby—or that even armies today do not deliberately violate the rules (such as Russia in Ukraine, ISIS and the resistance in Iraq and Syria in its civil war), but only to recognize that Western militaries have given much more weight to considerations of humanity in battlefield operations.



Image credit: Poster Collection, PL 186, Hoover Institution Archives.

Urban warfare places these principles under stress. Distinction becomes more difficult due to the close quarters between combatants and civilians, risking both people and buildings. Proportionality proves more challenging as striking military targets in dense population areas increases collateral harm to civilians. Israel sought to reduce these costs on civilians by issuing a warning to Palestinians to leave Gaza City and the northern half of Gaza before it began ground operations. Despite the condemnation by the International Committee of the Red Cross, United Nations officials, and foreign governments, Israel's warning prompted a caravan of civilians to flee to south Gaza, which somewhat reduced the proportion of the civilian population exposed to IDF strikes.

But now these same authorities, as well as an American anti-war left, are demanding a cease-fire because urban warfare in Gaza City will involve too many civilian casualties. Israel, however, is not bound by the idea that there is a fixed ratio of harm between military targets and incidental civilian deaths beyond which Israel may not go, or that international law requires Israel to refrain from operations in a city.

Those who claim Israel has "clearly" violated international law seem to assume the law of armed conflict (LOAC) is as clear as the U.S. tax code. The main treaty setting out permissible tactics in armed conflict, Additional Protocol I (1977) (AP I) to the (1949) Geneva Conventions, was negotiated in the wake of the Vietnam conflict. It is full of general phrases, papering over differences between Western and Third World delegates to the drafting conference. It has never been ratified by Israel, nor by the United States and a number of other countries.

Israeli and American military lawyers acknowledge that their armed forces should conform with the main tenets of AP I, as a statement of customary law. But they are not obligated to conform to interpretations made by the International Red Cross or other advocacy groups, since these bystanders have no actual experience in combat operations, and "custom" under international law is determined by the relevant practice of actual states. While the U.S. tax code can be clarified by the IRS and innumerable federal court rulings, there is no accepted administrative authority on the law of armed conflict, and scarcely any authoritative court rulings on AP I. Many AP I provisions were incorporated into the Statute of the International Criminal Court (1998) but neither Israel nor the United States has ratified that treaty.

In no international conflict since the completion of AP I did both sides adhere to all of its strictures, especially in the strict understanding advanced by the Red Cross. In many conflicts, neither side did. And it is a recognized principle of treaty interpretation that subsequent practice is a relevant indication of what parties to a treaty understand it to mean. Actual state "practice" is even more significant to interpreting customary law—the unwritten norms which still govern much of the laws of war (the United States, for example, takes the position that many parts of AP I merely express customary law, and so will follow its terms, even as it remains a non-signatory). Given how much more experience the U.S. military has in actual combat operations over the past three decades than have other Western states, the only ones with any serious scruples about LOAC, it should count for a great deal that U.S. military specialists in the law of armed conflict have not found fault with Israel's tactics.

Critics claim that Israel has committed a "war crime" by suspending previous deliveries of water, food, fuel, and electric power to Gaza. Siege warfare has always been an accepted tactic in war. The Union army cut off food supplies to Vicksburg in 1863, just as the Prussian Army did to Paris in 1871. The Nuremberg tribunal acquitted the commander of the German U-boat force for trying to cut off Britain from food supplies. It held that the practice could not be contrary to international law because the Allies had imposed their own food blockades in both world wars. For the same reason, a German general was acquitted in a subsequent war crimes trial for imposing a food blockade of Leningrad and shooting at civilians trying to escape it.

What the text of AP I actually says is that within the battle space, an attacking force should not attack sources of food and water on which civilians depend. What it does not say is that an attacker must provide food, water, and fuel to civilians while conducting military operations. The historic justification for denying all provisions

to a besieged enemy was that there was no way to assure supplies would be delivered to civilians rather than diverted to the military. Hamas has been relentless about supplying its own forces from past humanitarian aid: for example, pipes intended to expand water delivery were used to make rockets, and cement for civilian housing was diverted to tunnel construction.

The same considerations apply to charges that Israeli targeting of bombing attacks in Gaza have been “indiscriminate” and “disproportionate.” AP I prohibits deliberate attacks on civilians and “civilian objects” such as schools and hospitals. But it does not make such sites immune from attack if known to be used for military purposes. Hamas is notorious for hiding its weapons and fighters amid civilian facilities. AP I does have a provision against attacks which cause incidental (that is, unintended) injury to civilians and civilian infrastructure that is “excessive in relation to the concrete and direct military advantage anticipated.”

But there are so many uncertainties packed into this test that no international tribunal (neither the ICC nor its predecessor, criminal tribunal for the former Yugoslavia, has ever attempted a prosecution for violating this limitation. It is particularly hard to apply here, when casualty reports are based on notoriously unreliable claims by Hamas-controlled public health authorities in Gaza. No outsiders can judge all the considerations which Israeli commanders had in view when authorizing attacks on particular targets in the heat of the conflict.

Applying the rules of war developed for combat between Western militaries becomes even more problematic given the nature of Hamas. Hamas is a terrorist organization that refuses to obey the rules of war, as it did by attacking a large music festival and undefended villages on Oct. 7. Its fighters neither wear visible uniforms nor operate in open, clear military formations, but instead seek to blend into the general population, as Hamas hides its personnel and assets among civilians.

Indeed, Hamas succeeds precisely by violating the laws of war and blurring the line between combatants and non-combatants, both on its own part and that of its victims. Extending unwarranted legal protections to Hamas only multiplies its incentive to continue disregarding the principles of humanity on the battlefield.

But Hamas’s activities are even more pernicious. Not only does it target the innocent and use civilians as shields to limit its own losses, but it deliberately invites attacks on its own population as a means of political and legal warfare. Widely transmitted images of civilian deaths generate sympathy for Hamas within the Arab world, and raise the political pressure on Israel from the United States, which provides Israel crucial military supplies, intelligence support, and financial backing. Hamas’s strategy became clear when it sought to prevent Gazans from complying with the Israeli warnings to evacuate the northern strip. For Hamas, the

POLL: How should political and military leaders treat the presence of civilians when planning operations in an urban setting?

- “Collective punishment” is necessary sometimes to remind civilians of the wages of their government’s aggression.
- There is no real collateral damage—since civilians either are used as shields or fuel the war machine.
- Collateral damage is inevitable but must be kept to a minimum.
- Any civilians killed in urban operations are a war crime.
- Cities and urban areas should be off limits in war.

more Gazan civilians killed by Israeli strikes, the better. The laws of war do not easily apply to an enemy that seeks victory by deliberately increasing its own civilian casualties.

The ultimate issue is not a technical question of treaty law or customary law. If the law of armed conflict makes it impossible for a modern Western army to defeat terrorist warlords hiding behind civilians, that version of LOAC is a threat to civilization itself.



JOHN YOO is Heller Professor of Law at the University of California at Berkeley. His latest book is *Defender in Chief: Donald Trump's Fight for Presidential Power* (St. Martin's, 2020). Recent works include *Striking Power: How Cyber, Robots, and Space Weapons Change the Rules for War* (2017) and *Point of Attack: Preventive War, International Law, and Global Welfare* (2014). Professor Yoo was deputy assistant attorney general in the U.S. Department of Justice from 2001 to 2003; general counsel of the U.S. Senate Judiciary Committee from 1995 to 1996; and a law clerk for Supreme Court Justice Clarence Thomas from 1994 to 1995. He graduated from Yale Law School and summa cum laude from Harvard College.



JEREMY A. RABKIN is currently a professor of law at George Mason University (GMU), where he teaches courses including ones on international law and the law of war. He holds a PhD in political science from Harvard University. Before coming to GMU in 2007, he taught for many years in the Department of Government at Cornell University. His most recent book is *Law without Nations?* (Princeton University Press).

Discussion Questions

1. Does the American experience in Iraq offer any insight to the Israel Defense Forces regarding the war in Gaza?
2. Was the American firebombing of German and Japanese cities in World War II justified?
3. Has any military force entered an urban environment and defeated the enemy?
4. Do laws of war prohibit fighting inside cities?

Suggestions for Further Reading

- Geoffrey Best, *War and Law since 1945* (Oxford: Clarendon Press, 1994), <https://global.oup.com/academic/product/war-and-law-since-1945-9780198206996?cc=us&lang=en&>.
- Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 3rd ed. (Cambridge: Cambridge University Press, 2016), <https://www.cambridge.org/core/books/conduct-of-hostilities-under-the-law-of-international-armed-conflict/6F968AB75832E7A46CD4FEE7CA86BB8F>.
- Jeremy Rabkin and John Yoo, *Striking Power: How Cyber, Robots, and Space Weapons Change the Rules for War* (New York: Encounter Books, 2017), <https://www.encounterbooks.com/books/striking-power/>.
- Abraham D. Sofaer, "Terrorism, the Law, and the National Defense," *Military Law Review* 126 (Fall 1989): 89, 120.
- U.S. Department of Defense, *Law of War Manual* (2015), <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf>.
- Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th ed. (New York: Basic Books, 2015), <https://www.hachettebookgroup.com/titles/michael-walzer/just-and-unjust-wars/9780465052707/?!lens=basic-books>.

IN THE NEXT ISSUE
Iranian Proxies



Military History in Contemporary Conflict

As the very name of Hoover Institution attests, military history lies at the very core of our dedication to the study of “War, Revolution, and Peace.” Indeed, the precise mission statement of the Hoover Institution includes the following promise: “The overall mission of this Institution is, from its records, to recall the voice of experience against the making of war, and by the study of these records and their publication, to recall man’s endeavors to make and preserve peace, and to sustain for America the safeguards of the American way of life.” From its origins as a library and archive, the Hoover Institution has evolved into one of the foremost research centers in the world for policy formation and pragmatic analysis. It is with this tradition in mind, that the “Working Group on the Role of Military History in Contemporary Conflict” has set its agenda—reaffirming the Hoover Institution’s dedication to historical research in light of contemporary challenges, and in particular, reinvigorating the national study of military history as an asset to foster and enhance our national security. By bringing together a diverse group of distinguished military historians, security analysts, and military veterans and practitioners, the working group seeks to examine the conflicts of the past as critical lessons for the present.

Working Group on the Role of Military History in Contemporary Conflict

The Working Group on the Role of Military History in Contemporary Conflict examines how knowledge of past military operations can influence contemporary public policy decisions concerning current conflicts. The careful study of military history offers a way of analyzing modern war and peace that is often underappreciated in this age of technological determinism. Yet the result leads to a more in-depth and dispassionate understanding of contemporary wars, one that explains how particular military successes and failures of the past can be often germane, sometimes misunderstood, or occasionally irrelevant in the context of the present.

Strategika

Strategika is a journal that analyzes ongoing issues of national security in light of conflicts of the past—the efforts of the Military History Working Group of historians, analysts, and military personnel focusing on military history and contemporary conflict. Our board of scholars shares no ideological consensus other than a general acknowledgment that human nature is largely unchanging. Consequently, the study of past wars can offer us tragic guidance about present conflicts—a preferable approach to the more popular therapeutic assumption that contemporary efforts to ensure the perfectibility of mankind eventually will lead to eternal peace. New technologies, methodologies, and protocols come and go; the larger tactical and strategic assumptions that guide them remain mostly the same—a fact discernable only through the study of history.



The publisher has made this work available under a Creative Commons Attribution-NonCommercial license 4.0.

To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc/4.0>.

Efforts have been made to locate the original sources, determine the current rights holders, and, if needed, obtain reproduction permissions. On verification of any such claims to rights in the articles or images reproduced in this publication, any required corrections or clarifications will be made in subsequent printings/editions. The views expressed in this publication are entirely those of the authors and do not necessarily reflect the views of the staff, officers, or Board of Overseers of the Hoover Institution.

Copyright © 2024 by the Board of Trustees of the Leland Stanford Junior University

Hoover Institution, Stanford University
434 Galvez Mall
Stanford, CA 94305-6003
650-723-1754

Hoover Institution in Washington
1399 New York Avenue NW, Suite 500
Washington, DC 20005
202-760-3200

