

Israel Has No Right of Self-Defense Against Gaza

By [Norman Finkelstein](#) and [Jamie Stern-Weiner](#)

Global Research, May 06, 2019

[Jacobin](#)

Region: [Middle East & North Africa](#)

Theme: [Crimes against Humanity](#), [Police State & Civil Rights](#)

In-depth Report: [PALESTINE](#)

This article was first crossposted in July 2018.

Since the [overwhelmingly nonviolent demonstrations](#) in Gaza began on March 30, 2018, the international community has strongly condemned Israel's armed attacks. A [UN General Assembly resolution](#) "deplore[d] the use of any excessive, disproportionate and indiscriminate force by the Israeli forces against Palestinian civilians," while the UN Human Rights Council denounced Israel's "[disproportionate and indiscriminate use of force](#)." After Israeli snipers killed Razan al-Najjar, a twenty-one-year-old unarmed Palestinian paramedic, the UN special coordinator for the Middle East peace process [warned](#) Israel that it "needs to calibrate its use of force." In a devastating report, [Human Rights Watch](#) concluded that "Israeli forces' repeated use of lethal force in the Gaza Strip ... against demonstrators who posed no imminent threat to life may amount to war crimes."

Welcome as these condemnations are, the question nonetheless remains whether they go far enough. Simply put, does Israel have the right to use *any* force under *any* circumstances against the people of Gaza?

The current legal debate has focused on a pair of interrelated questions:

- Did Israeli snipers resort to "excessive" or "disproportionate" force against demonstrators (as critics allege), or was the amount of force they deployed necessary to prevent protesters from breaching the perimeter fence (as Israel alleges)?
- Is Israel's conduct toward the Gaza protests governed by human rights law (as critics allege) or by international humanitarian law (as Israel alleges)? International humanitarian law applies in situations of armed conflict, whereas human rights law regulates domestic law enforcement. The difference matters, as human rights law imposes more stringent constraints on the use of force.

All parties to both these controversies proceed from a common premise: that Israel *has* the right to use force in order to prevent Gazans from breaching the fence. The dispute comes down to: how much? Critics who allege "disproportionate" or "excessive" force tacitly legitimize Israel's use of "proportionate" or "moderate" force, while those who insist upon the applicability of human rights law acknowledge that Israel's resort to force is legitimate if demonstrators pose an "imminent threat" to a sniper's life.

This presumption holds even at the most critical pole of the debate on Gaza. The Israeli human rights group [B'Tselem](#) condemned as "illegal" Israel's resort to lethal force against unarmed persons "approaching the fence, damaging it, or attempting to cross it." But it

conceded that “[o]bviously, the military is allowed to prevent such actions, and even to detain individuals attempting to carry them out.” A senior [Human Rights Watch](#) official argued that Israel’s use of live ammunition in Gaza was “unlawful.” But she suggested that “nonlethal means, such as tear gas, skunk water, and rubber-coated steel pellets” would have passed legal muster. The [International Committee of the Red Cross](#) cautioned Israel that “lethal force only be used as a last resort and when strictly unavoidable in order to protect life.” Even the major Palestinian human rights organizations characterized Israel’s use of force as “[excessive](#),” “[indiscriminate](#),” and “[disproportionate](#)” rather than inherently illegal.

But the fact is, Israel cannot claim a right to use *any* force in Gaza — whether moderate or excessive, proportionate or disproportionate; whether protesters are unarmed or armed, don’t or do pose an imminent threat to life. If it appears otherwise, that’s because the current debate ignores critical caveats in international law and abstracts from the specific situation in Gaza.

What International Law Says

To justify its use of force in Gaza, Israel claims the right to prevent alien intrusion into its sovereign territory. An Israeli legal commentator [observes](#) that this professed concern for the sanctity of the Gaza “border” is opportunistically selective. Israel invades Gaza at will; only when Palestinians seek to cross in the other direction does the fence become sacrosanct. Setting this hypocrisy aside, Israel’s purported right to self-defense still lacks any legal basis. On the contrary, Israel’s resort to force contravenes international law.

The Palestinian people in the West Bank, including East Jerusalem, and Gaza are struggling to achieve their internationally validated “[right to self-determination](#)” (International Court of Justice). As preeminent legal scholar James Crawford notes, international law prohibits the use of military force “by an administering power to suppress widespread popular insurrection in a self-determination unit,” whereas “the use of force by a non-State entity in exercise of a right of self-determination is legally neutral, that is, not regulated by international law at all.”

Demonstrators in Gaza have chosen to use nonviolence in pursuit of their internationally validated rights — a tactic that, of course, international law also does not prohibit. But this prudential decision is not a legal requirement. Even if Gazans opted to use weapons against Israeli snipers who obstruct their right to self-determination, Israel’s resort to military force would still be legally debarred.

The allocation of rights and obligations in standard Western discourse — which effectively accords Israel the right to use violent force in self-defense against Gazans, even as it obliges the people of Gaza to wage nonviolently their self-determination struggle — upends international law.

It might be objected that inasmuch as Israel is a belligerent occupier in Gaza, it has the right, under the [Fourth Geneva Convention of 1949](#), to use force in order to maintain public order. But this objection falls on three counts.

First, the Fourth Geneva Convention obliges a belligerent occupier to provide for and ensure the welfare of the occupied population. Indeed, “Protection of Civilian Persons in Time of War” is the convention’s *raison d’être*. Israel, however, has subjected Gaza’s civilian

population to a protracted siege that amounts to illegal “[collective punishment](#),” according to the International Committee of the Red Cross, and that has rendered Gaza physically “[unlivable](#),” according to the UN. The Fourth Geneva Convention does not sustain Israel’s right to preserve order in Gaza even as it flagrantly breaches its complementary obligation to guard the welfare of Gaza’s civilian population. In fact, the disorder Israel claims the right to suppress directly springs from the criminal blockade it has imposed.

Second, even if Israel qualified as a belligerent occupier in Gaza, the right of a people to self-determination is a peremptory norm (*jus cogens*) of international law from which no derogation is permissible. If, as in this case, the law of belligerent occupation overlaps with the right to self-determination, then Gaza’s right to self-determination trumps Israel’s right to maintain order; and if, as in this case, the struggle for self-determination is being waged nonviolently, then Israel’s purported right to use armed force to maintain order is manifestly ill-founded.

Third, in point of fact, Israel’s occupation of Gaza has by now become *illegal*, and it has consequently forfeited its rights as a belligerent occupier. The International Court of Justice [ruled](#) in 1971 that since South Africa had refused to conduct good-faith negotiations to end its occupation of Namibia, that occupation had become illegal. Israel’s refusal over a full half-century to conduct good-faith negotiations on the basis of international law to withdraw from the West Bank, including East Jerusalem, and Gaza has likewise delegitimized its occupation.

There is also another critical legal dimension that has been ignored. It is a fundamental principle of international law that no state may resort to forceful measures unless “peaceful means” have been exhausted ([UN Charter, Article 2](#)). This principle is as sacred to the rule of law as the analogous Hippocratic oath, *primum non nocere* (first, do no harm), is to medicine. The impetus behind the protests at Gaza’s perimeter fence is Israel’s illegal siege, and their objective is to end it. Even Israeli prime minister Benjamin Netanyahu [conceded](#): “They’re suffocating economically, and therefore, they decided to crash into the fence.”

If Israel wants to protect its border, it need not resort to either lethal or nonlethal coercion. It merely has to lift the siege. US president Donald Trump’s A-Team on Middle East diplomacy — son-in-law Jared Kushner, former bankruptcy lawyer David Friedman, former Trump Organization legal advisor Jason Greenblatt, and former South Carolina governor Nikki Haley — [allege](#), on the contrary, that it is Hamas that “is holding the Palestinians of Gaza captive” and [bears](#) “primary responsibility ... in perpetuating the suffering of the people of Gaza.” But if they’ve tumbled down Alice’s rabbit hole, it’s not incumbent on the rest of us to follow them. “Israel, as the occupying power,” the UN Office for the Coordination of Humanitarian Affairs [authoritatively observed](#), “must lift the blockade, which contravenes ... the Fourth Geneva Convention prohibiting collective penalties and prevents the realization of a broad range of human rights.”

Hamas has also consistently offered Israel [a long-term truce](#) (*hudna*) in exchange for an end to the siege, and it reiterated this proposal throughout the current demonstrations. On May 7, a week before Israel [shot dead more than sixty protesters](#) in Gaza, *Ha’aretz* [reported](#) that “Hamas leaders” had “conveyed to Israel messages indicating their willingness to negotiate a long term cease-fire” in exchange for, among other things, “easing ... the siege.” “Hamas keeps relaying messages to the defense establishment that it’s still interested in a ‘*hudna*,’” a veteran Israeli military correspondent [revealed](#) several days later. “Hamas itself has

conveyed to Israel in the past year different versions of a restricted or wider *hudna*, which include not only Gaza but the West Bank as well.”

The Israeli military took these cease-fire offers [seriously](#): “ Hamas, according to the intelligence services, is willing to reach an agreement.” Indeed, a senior army officer [urged](#) that “now is the time to reach an agreement with Hamas” in order to “prevent further rounds of fighting.” But Israel’s government was [uninterested](#): Hamas’s “demands and conditions have never been discussed, as Israel refuses to talk to Hamas.” Israel’s rejection of this preliminary peaceful step puts it in double breach of international law: the imposition of an illegal blockade and the unlawful resort to armed force when peaceful means have not been exhausted.

A Right to Poison Children?

It is a tenet of law that no rights can be derived from illegal acts (*ex injuria non oritur jus*), and it is obvious that a right to self-defense does not obtain in all situations. A rapist cannot claim a right to self-defense if the victim pummels him. A theater owner has no right to self-defense if patrons attack him after he sets the building ablaze and impedes their flight. Israel’s conduct vis-à-vis Gaza falls in this category of acts that render null and void the right to self-defense. Were it otherwise, it would amount to the right to use military force in order to maintain an illegal occupation compounded by an illegal siege.

If it’s nonetheless widely held that Israel has the right to use force to prevent Gazans from breaching its “border fence,” that’s because learned disquisitions on the technicalities of law have obscured the human stakes at play.

What is Gaza?

The narrow coastal strip is among the most densely populated areas on the planet. More than 70 percent of its two million residents are refugees, while more than half — one million — are children under the age of eighteen. For over a decade, Israel has placed this speck of land under a devastating siege. Fifty percent of Gaza’s workforce is now unemployed, 80 percent depend on international food aid, and 96 percent of the tap water is contaminated.

In early July, Israel [tightened still further](#) its restrictions on goods allowed into Gaza and prohibited exports altogether; and subsequently it blocked the entry of fuel, causing a medical emergency as hospitals, already overwhelmed, had to shut down. According to the Israeli human rights organization [Gisha](#), this “sweeping measure of collective punishment” constituted a return to “the harshest periods of the closure” and amounted to “outright economic warfare on Gaza’s civilian population.” This was followed in mid July by Israeli aerial assaults on dozens of targets in Gaza.

Israel [justified](#) the tightened siege and aerial attacks as a response to flammable kites floated across the perimeter fence by Gazan protesters. But these so-called “[terror kites](#)” have caused property destruction [estimated at all of \\$2 million](#) and, [according to Israeli military sources](#), “do not pose an immediate or serious threat.” As an Israeli military correspondent understatedly [reported](#), “the psychological damage the fires cause along the border is worse than any actual damage done.” “All the whining about the kites drives me crazy,” a senior Israeli officer fending off the kites [groused](#). “It’s also the complete opposite of what you hear from most of the people who live here ... People say openly: We like it here, we want to live here, despite the fires.”

“We’re not terrorists,” a kite flier on the other side of the fence [pled](#). “We’re a generation with no hope and no horizon that lives under a suffocating siege, and that’s the message we’re trying to send the world. In Israel, they cry over the fields and forests that burned up. What about us, who are dying every day?” The mostly teenage kite-activists vowed to “[continue . . . until . . . the demands of the Palestinian people to remove the blockade](#)” were met.

By the end of July a [partial return](#) to the status quo ante was restored, as Israel allowed a trickle of goods to enter Gaza while Hamas reined in the kites. But there’s a strong likelihood of a replay of recent events — nonviolent Gaza protests, violent Israeli provocations, Hamas retaliation, tightened siege — culminating in another major Israeli military assault, which Israeli defense minister Avigdor Lieberman threatens will be “[more painful than Operation Protective Edge](#).”

If and when the new conflagration comes to pass, and Israel proclaims it is merely defending its border, the rhetorically correct riposte is, the fence separating Gaza from Israel is no more a “border” than Gaza is a state. Distinguished Hebrew University professor Baruch Kimmerling called Gaza a “concentration camp,” while former UK prime minister David Cameron called it an “[open-air prison](#).” The *Ha’aretz* editorial board called it a “[ghetto](#),” the *Economist* — a “[human rubbish heap](#),” the International Committee of the Red Cross — a “[sinking ship](#).” Gaza is what the UN human rights chief called a “[toxic slum](#),” in which an entire civilian population is “caged ... from birth to death.”

Does Israel have the right to use force to encage Gaza’s one million children in a “ghetto” or a “toxic slum”? Don’t the people of Gaza have the right to break free from a “concentration camp”?

Does anyone now debate whether or not Nazi Germany used “excessive” and “disproportionate” force to suppress the Warsaw Ghetto Uprising? Who now ponders whether Nazi Germany had a “right to self-defense” against the Jewish Fighting Organization — which resisted arms in hand? Are such questions even conceivable?

It might be said that Gaza is not the Warsaw Ghetto. But as an Israeli journalist who served in Gaza during the First Intifada [reflected](#), “the problem is not in the similarity ... but that there isn’t enough lack of similarity.” The World Health Organization has [stated](#) that “over 1 million people in the Gaza Strip are at risk of contracting waterborne diseases,” while an Israeli expert predicts that Gaza will soon be overrun by [typhus and cholera epidemics](#) like those that decimated Jews in the Warsaw Ghetto.

The principal objective of international humanitarian law is to protect civilians from the ravages of war. The principal objective of international human rights law is to protect the dignity of persons. How then can either of these bodies of law possibly be used to justify the use of force — *any* force — that is designed to entrap civilians in an inferno in which they are being degraded, tormented, and killed?

If, for argument’s sake, it were granted that Israel has the legal right to use force to prevent the people of Gaza from escaping their “prison,” this would simply expose the profound inadequacy of the law.

In his dissent to the 1996 International Court of Justice (ICJ) advisory opinion on the legality of the threat or use of nuclear weapons, Judge Weeramantry noted the irony that, whereas

the law condemns use of the “dum-dum” bullet, the ICJ recoiled at condemning the use of nuclear weapons. “It would seem passing strange,” he wrote, “that the expansion within the body of a single soldier of a single bullet is an excessive cruelty which international law has been unable to tolerate since 1899; and that the incineration in one second of a hundred thousand civilians is not.” Judge Weeramantry proceeded to opine:

Every branch of knowledge benefits from a process of occasionally stepping back from itself and scrutinizing itself objectively for anomalies and absurdities. If a glaring anomaly or absurdity becomes apparent and remains unquestioned, that discipline is in danger of being seen as floundering in the midst of its own technicalities.

The notion that Israel has the right to forcibly encage one million children in an unlivable space is an absurdity, and the lawyers debating whether or not Israel used “excessive” force to prevent Gazans from escaping their ghetto are floundering in the midst of technicalities.

“Innocent human beings, most of them young,” Sara Roy of Harvard University’s Center for Middle Eastern Studies has observed, “are slowly being poisoned by the water they drink, and likely by the soil in which they plant.”

The only morally sane question presented by the situation in Gaza is, *Does Israel have the right in the name of “self-defense” to poison one million children?*

It is a sad commentary that this simple question has not just been sidestepped, but is not even visible in the current debate.

The original source of this article is [Jacobin](#)

Copyright © [Norman Finkelstein](#) and [Jamie Stern-Weiner](#), [Jacobin](#), 2019

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Norman Finkelstein](#) and [Jamie Stern-Weiner](#)

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca

www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of “fair use” in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than “fair use” you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca