



Israel Must Confront the Jihadist Desire for Immortality

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“An immortal person is a contradiction in terms.”

Emmanuel Levinas, *God, Death and Time* (2000)

EXECUTIVE SUMMARY: Israel’s security policy decision-makers must take into account the desire of Israel’s terrorist adversaries to achieve immortality through violence. Israel must be cautious about projecting conventional human rationality upon Hamas, Palestinian Islamic Jihad, Hezbollah, and others of their ilk if it is to combat them effectively.

Effective counter-terrorism is never just about strategy, tactics or doctrine. Whatever an insurgency’s operational specifics, this area of national security planning should always remain starkly analytic and logic-centered. For Israel in the Islamic Middle East, this means a heightened conceptual awareness of death and “last things” as embraced by its jihadist foes. It means, *inter alia*, that Israel’s counter-terrorism planners should continuously bear in mind the primacy of one consistently overlooked and underestimated form of power: the desire for immortality, or “power over death.”

Any promise of immortality is of course densely problematic. By definition, it lies beyond the boundaries of science and logic. How, then, should the desire of Israel’s

terrorist adversaries for immortality be assessed by Israeli planners during the Gaza War?

Any such inquiry should begin with certain core questions. The principal query is this: *How can one human being meaningfully offer eternal life to another?* Reciprocally, it must also be asked: *How can any terrorism-opposing state construct components of its national security program upon a determined enemy's "hunger for immortality?"*¹

Though these questions are difficult, they have answers. Even in our age of incessant quantification and verification, there is something in our unreflective species that yearns not for reason-based clarity but for mystery and faith. In facing jihadist terrorist ideologies that promise the faithful eternal life, Israel must remain wary of projecting ordinary human rationality upon Hamas, Palestinian Islamic Jihad, Hezbollah, and others like them.

Projections of decision-making rationality usually make sense in world politics, but there are enough major exceptions to temper hopeful generalities. If Israel's national decision-makers were to survey the current configuration of global jihadist terrorist organizations (both Sunni and Shiite) from an analytic standpoint, the nexus between "martyrdom operations" and "life everlasting" would be conspicuous. At that point, Israel's security planners would be in a much better position to deter murderous hostage-takers and suicide-bombers, both in microcosm (individual human terrorists) and in macrocosm (enemy states that support terrorists).

In such time-urgent matters, there are corresponding and converging elements of law. Jihadist insurgents who seek to justify gratuitously violent attacks on civilians in the name of "martyrdom" are acting contrary to international law. All insurgents, even those who claim "just cause," must still satisfy longstanding jurisprudential limits on permissible targets and on law-based levels of violence.

As a matter of binding law, such humane limits can never be tempered by claims of religious faith. Faith is never legally exculpatory.

According to authoritative jurisprudence, the relevant legal matters are not inherently complicated or bewildering. Under longstanding rules, even the allegedly "sacred" rights of insurgency must always exclude any deliberate targeting of civilians or any use of force to intentionally inflict unnecessary suffering.

Law and strategy are interrelated; but at the same time, they are analytically distinct. Regarding the Gaza War and effective counter-terrorism, the legal bottom line is clear: Violence becomes terrorism whenever politically animated insurgents murder (intentionally kill) or maim noncombatants, whether with guns, knives, bombs, automobiles, or anything else. It is irrelevant whether the expressed cause of terror-violence is presumptively just or unjust. In the Law of Nations, unjust means used to achieve allegedly just ends are always violations of the law.

Sometimes, martyrdom-seeking terrorist foes such as Hamas advance a supposedly legal argument known as *tu quoque*. This historically discredited argument stipulates that because "the other side" is guilty of similar, equivalent or greater criminality, "our" side is necessarily innocent of any wrongdoing. Jurisprudentially, any such disingenuous argument is always wrong and invalid, especially after the landmark postwar judgments of the Nuremberg (Germany) and Far East (Japan) tribunals.

For conventional armies and insurgent forces, the right to use military force can never supplant the rules of humanitarian international law. Such primary or *jus cogens* rules (rules that permit "no derogation") are referenced as the *law of armed conflict*, *humanitarian international law* or the *law of war*. Significantly, these terms apply to both state and sub-state participants in any armed conflict.

Repeatedly, however, and without a scintilla of law-based evidence, supporters of Hamas terror-violence against Israeli noncombatants insist that "the ends justify the means." Leaving aside the ethical standards by which any such argument should be dismissed on its face, ends can never justify means in the law of armed conflict. There can be no defensible ambiguity regarding such a conclusion.

The witless banalities of politics ought never be taken to accurately represent the expectations of binding law. In such universal law, whether codified or customary, one person's terrorist can never be another's "freedom-fighter." Though it is correct that certain insurgencies can sometimes be judged lawful or even law-enforcing, allowable resorts to force must always conform to humanitarian international law.

Whenever an insurgent group resorts to unjust means, its actions constitute terrorism. Even if adversarial claims of a hostile controlling power were plausible or acceptable (e.g., relentless Palestinian claims concerning an Israeli "occupation"), corollary claims of entitlement to "any means necessary" would still remain false.

Recalling *Hague Convention No. IV*: “The right of belligerents to adopt means of injuring the enemy is not unlimited.”

What about Israeli attacks on Gaza? Though Israel’s ongoing bombardments of Gaza are producing many Palestinian casualties, the legal responsibility for these harms lies entirely with Hamas “perfidy,” or what is more colloquially called Hamas’s use of “human shields.” It is also noteworthy that while Palestinian casualties are unwanted, inadvertent and unintentional, Israeli civilian deaths and injuries are always the result of Palestinian terrorist criminal intent or “*mens rea*.” In law, there is a great difference between deliberately murdering innocent celebrants at an Israeli music festival and the lethal consequences of indispensable Israeli counter-terrorist operations in Gaza.

International law is not an intuitive or subjective set of standards. Such law always has determinable form and content. It cannot be casually invented and reinvented by terror groups to justify their interests. This is especially true when their inhumane terror-violence intentionally targets a designated victim state’s most fragile and vulnerable civilians.

National liberation movements that fail to meet the test of *just means* can never be protected as lawful or legitimate. Even if the law were to accept the questionable argument that relevant terror groups had fulfilled all valid criteria of "national liberation" (e.g., Iran-supported Hamas or Hezbollah), these groups would still not satisfy the equally significant legal standards of *distinction*, *proportionality*, and *military necessity*. These enduring critical standards were specifically applied to insurgent or sub-state organizations by Article 3 of the four *Geneva Conventions* of 1949 and by the two 1977 *Protocols* to these *Conventions*.

Standards of humanity remain binding upon all combatants by virtue of the broader norms of customary and conventional international law, including Article 1 of the *Preamble* to the *Fourth Hague Convention* of 1907. This rule, commonly called the "*Martens Clause*," makes “all persons” responsible for the "laws of humanity" and for associated "dictates of public conscience." There can be no exceptions to this universal responsibility based upon a presumptively “just cause.”

Under international law, terrorist crimes mandate universal cooperation in both apprehension and punishment. As punishers of grave breaches under international

law, all states are expected to search out and prosecute or extradite terrorists. Under no circumstances are states permitted to regard terrorists as law-abiding "freedom fighters." This ought to be kept in mind by states that routinely place their own presumed religious and geopolitical obligations above the common interests of binding law.

The United States incorporates international law as the supreme law of the land in Article 6 of the Constitution, and Israel is guided by the immutable principles of a Higher Law. Fundamental legal authority for the American republic was derived largely from William Blackstone's *Commentaries*, which in turn owe much of their clarifying content to *jus cogens* principles of Torah.

Ex injuria jus non oritur. "Rights can never stem from wrongs." The labeling by jihadist adversaries of Israel of their most violent insurgents as "martyrs" should have no exculpatory or mitigating effect on their terrorist crimes. As a practical problem, of course, these faith-driven foes are animated by the most compelling form of power imaginable. This is the power of immortality or "power over death."

For Israel, a primary orientation of law-based engagement in counter-terrorism should always take close account of enemy attraction to "last things." Philosopher Emmanuel Levinas's observation that "an immortal person is a contradiction in terms" lies beyond intellectual challenge, but jihadist promises of "power over death" still remain supremely attractive to terrorists. It follows that Israeli counter-terrorist planners ought to focus more directly on the eschatology of its Gaza War terrorist adversaries.

For the foreseeable future, Hamas "martyrs" will present an incrementally existential threat to Israel. If these barbarous criminals should ever get their hands on fissile materials, however, this threat could become more immediately existential. Hamas would not require a chain-reaction nuclear explosive but only the much more accessible ingredients for a radiation dispersal device.

In a worst-case scenario, the use of a primitive nuclear device by Hamas or Hezbollah could spur Iran to enter into direct military conflict with Israel. At that point, Israeli policy considerations of "last things" could become all-important and determinative. For Israel, the primary battlefield will always be intellectual, not

territorial. A jihadist enemy that links terror-violence against the innocent to delusionary promises of immortality poses a potentially irremediable threat.

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¹ This phrase is taken from Spanish (Basque) philosopher Miguel de Unamuno's classic treatise *The Tragic Sense of Life (Del Sentimiento Tragico De La Vida; 1921)*. Unamuno would never, however, have been sympathetic to the twisted idea of a murderous faith-based "martyrdom."