Michael Walzer's Defense of Israel's Crimes

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There is so much wrong with Michael Walzer's brief essay on the *New Republic* website, supporting Israel in its latest onslaught, while criticizing "a little uneasily" some of the excessive civilian deaths, that it is hard to know where to begin.

Walzer says he suspects Hamas "is awful and deserves all its trouble," but he is no fan of Netanyahu's.

> "One might well want to say, a plague on both their houses! But now they are at war, and choices have to be made.
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> "We should choose Israel—because Israel is a democracy where it is possible to imagine the political defeat of the rightwing nationalists who are now in charge; it is possible to imagine a government that would work toward Palestinian statehood—Israel has had governments of that sort in the past, under the leadership of Yitzhak Rabin and Ehud Olmert...."

First of all, it is the height of hypocrisy for Israel to complain about Hamas's lack of democracy. When Hamas won the democratic Palestinian legislative elections in 2006, the United States and Israel backed a failed coup attempt by Fatah to overturn the election results by force.

More generally, in most anti-colonial struggles it has often been the case that the colonial power was the more internally democratic society. Does that lead us to support France (with its Rights of Man) against the Algerians or the Vietnamese who were seeking independence? The British of the Magna Carta against India or Kenya? The democratic Belgians as they oppressed the Congolese? The Germans, with their universal male suffrage, as they committed genocide against the Herero people in Southwest Africa? The most perfect internal institutions in the world don't justify external conquest and massacre. No matter how egalitarian its kibbutzim, or gay-friendly its policies (though both of these are exaggerated), a state has no right to occupy others. And those who are occupied are pursuing a just cause as they struggle to end their occupation.

In any event, Walzer's characterizations of both Israel and Hamas are seriously flawed. Rabin, famous for ordering the breaking of Palestinian bones during the first intifada, never supported a Palestinian state. In his last Knesset speech before his assassination, he made clear that what he wanted to see was a Palestinian "entity which is less than a state," with Israel's security borders located in the Jordan Valley, with a united Jerusalem including the huge settlement blocs Ma'ale Adumim and Givat Ze'ev under Israeli sovereignty, and the inclusion of additional settlement blocs, including those yet to be built. And Olmert, who waged criminal wars against Lebanon in 2006 and Gaza in 2008-09, though going further than Rabin in his negotiations with the Palestinians, always insisted on Israel keeping the major settlement blocs, which would mean dissecting the West Bank into essentially non-contiguous cantons, cut off from East Jerusalem, and thus leaving them with no

real state at all.

Regarding Hamas, Walzer says: "Like the present Israeli government (or, better, its leading members), Hamas doesn't believe in a Palestinian state alongside Israel." "Hamas has never deviated from its absolute opposition to the existence of a Jewish state in the Middle East." But in fact Hamas's willingness to accept a two-state arrangement has been clear for some time. In Khalid Meshaal's recent interview with Charlie Rose he repeated what Hamas officials have stated many times before: that they needed to have a state "emerge on the borders of 1967," something that "all the Palestinians factions have agreed upon." "The occupation and the siege are the problem. We have to stop the occupation. We have to stop the siege and then we can have security and peace in the region." "If Gaza lives without occupation, without aggression, without blockade, without closing of the crossings, without starvation, then we — then this will be fine. And this applies actually to the West Bank as well, because Gaza and the West Bank are two parts of the Palestinian abode. And we are one nation. We want to live without occupation in the West Bank and in Gaza." And these were not just words. As Meshaal noted, Hamas had joined a unity government committed to a state on the borders of '67.

Walzer's failure to acknowledge that the Palestinian struggle to end the almost 50-year occupation is a just cause, and that the blockade of Gaza is an illegal collective punishment leads him to write that "There has to be a just, or justifiable, way of responding to indiscriminate rocket attacks." But there's an extremely just way of responding: namely, end the occupation and end the blockade. Indeed, ending the blockade alone – though short of justice, which demands the end of the occupation as well – could have stopped the rocket fire. The 2008 lull could have been extended if Israel had lifted the blockade (as it ought to have done on moral grounds in any case). The 2012 ceasefire ended with an Israeli commitment to ease the blockade, which it didn't do, and so there were periodic rocket launches (though Hamas itself fired no rockets until the Israeli rampage against Hamas on the West Bank in June 2014). In the current crisis Hamas has made clear that there would be no rocket fire if the blockade were ended.

A state engaging in an illegal occupation has no right of self-defense; it has an obligation to withdraw. A state enforcing an illegal blockade likewise has no right of self-defense, only an obligation to end its blockade. But Walzer ignores all this, wondering only how Hamas can be attacked without killing quite so many civilians.

One can argue about what the moral responsibility of individual soldiers is for killing enemy soldiers as part of an unjust war, but there is no debate among just war theorists that the leaders of a state act unjustly when they order the killing of soldiers or civilians in the pursuit of an unjust cause. So every Egyptian soldier killed in, say, the Israeli-UK-French attack on Egypt in 1956, was a crime. In the same way, since the current Israeli assault is part of an effort to maintain an unjust occupation and unjust blockade, every Palestinian death — whether armed militant or noncombatant infant — is a war crime.

However, even if we go along with Walzer and disregard the broader rights and wrongs of the occupation and the blockade, his argument is morally unsustainable. He argues that while Israel should not be bombing the homes of Hamas members, the "primary responsibility" for civilian deaths in Gaza falls on Hamas because they are fighting from homes and schools and crowded streets.

Walzer's reference to schools is a little grotesque. The Israeli government has pointed to the discovery of rockets in some school buildings, but those rockets were found stored (not being launched) from *abandoned* schools. As UN officials noted, schools that the UN relief agency UNRWA was forced to abandon were sometimes occupied by either Palestinian militants or Israeli troops. UNRWA deplored this, but it could not control the schools in which it was not physically present in

the building. But when it was present, it could assure that the building was "free of weapons" and that no one with arms was allowed in the school. The Israeli attacks that have elicited outrage were not those aimed at the abandoned buildings, but at schools converted by UNRWA into shelters for refugees — some of the 475,000 desperate Gazans who had fled their homes on instructions from the IDF — and whose exact location and humanitarian status was communicated to Israeli forces many times.

Before considering the human shielding issue, note the deaths Israel has caused that don't raise the human shielding issue at all. First, there are the deaths in homes which Walzer agrees are war crimes — though he never uses the term. Then there are attacks on civilian members of Hamas; as Human Rights Watch has noted, "Israel has wrongly claimed as a matter of policy that civilian members of Hamas or other political groups who do not have a military role are 'terrorists' and therefore valid military targets." They are no more legitimate military targets than are the civilian members of Likud or the other parties in Israel's ruling coalition. Then there are the deaths due to the use of artillery and other indiscriminate weapons in urban areas. As Amnesty International reported:

> "It is inevitable that the repeated use of artillery in densely populated civilian neighbourhoods will lead to the unlawful killing and injury of civilians and destruction and damage to civilian buildings, regardless of the intended target. Israeli forces have used such reckless tactics before, including in Operation 'Cast Lead' in 2008/9, when some 1,400 Palestinians were killed, the majority of them civilians."

And then there are the cases examined by Human Rights Watch where investigation revealed no military target at all. "Israel's rhetoric is all about precision attacks but attacks with no military target and many civilian deaths can hardly be considered precise," said Sarah Leah Whitson, Middle East director at Human Rights Watch. "Recent documented cases in Gaza sadly fit Israel's long record of unlawful airstrikes with high civilian casualties."

These deaths probably account for the bulk of the civilians killed. What then of those civilian deaths that did involve human shielding. Investigations in previous Israeli assaults have found IDF claims of human shielding to be vastly overstated (Human Rights Watch in Lebanon, 2006; Amnesty International, Gaza, 2008-09), as have investigations of the current conflict by respected journalists (Sengupta, Bowen). Human Rights Watch noted that an Israeli military spokesperson reportedly told a journalist regarding an IDF strike on a hospital, "We've seen a lot of launches of rockets that came from exactly near the hospital, 100 meters near." HRW commented: "Given the precision weapons available to the Israeli military, a target 100 meters from the hospital provides no justification to hit the hospital."

But let us assume, for the sake of argument, that there are many cases of human shielding by Hamas in Gaza. (And let us put aside the fact that Israel puts its defense ministry in downtown Tel Aviv or that runways at Ben Gurion International Airport are shared by the military and civilian traffic, etc.) What follows from that?

International humanitarian law is quite clear:

> "...the attacking party is not relieved from its obligation to take into account the risk to civilians, including the duty to avoid causing disproportionate harm to civilians, simply because it considers the defending party responsible for having located legitimate military targets within or near populated areas. That is, the presence of a Hamas commander or military facility in a populated area would not justify attacking the area without regard to the threatened civilian population."

Consider an example. If a felon fled into an apartment building, would anyone think it justified for the police to level the building, using the argument that any resulting deaths to innocents are the responsibility of the felon? Would we applaud the police who did this as "the most moral" police force in the world?

Moreover, "even if military forces misuse a medical facility to store weapons or shelter able-bodied combatants, international law specifies that the attacking force must issue a warning that sets a reasonable time limit and can attack only after such a warning has remained unheeded." But what about cases where it's not just storing or sheltering but actually firing rockets at Israeli civilian areas?

To answer this, we need to briefly discuss just war theory. Walzer explains that according to just war theory and international humanitarian law it is impermissible to intentionally target civilians, but it is permissible to kill civilians if you are aiming at a legitimate military target and if the harm caused is not disproportionate to the value of the military target. Pacifists may cringe, but there is a moral logic to this position that I think most nonpacifists would accept. Consider these examples. If you were under attack from a Nazi blitzkrieg and you realized that the only way to stop it was to call in airstrikes on the invading tanks, but that the airstrikes might kill some civilians, you might regretfully order the airstrike. The moral benefit of the strike — saving your country from a murderous Nazi conquest — would outweigh the unfortunate cost of some civilian lives. On the other hand, if an enemy soldier were hiding in a filled-to-capacity football stadium, calling in an airstrike — which would kill the soldier plus thousands of noncombatants — would clearly be disproportionate.

Walzer notes that he "along with many others" has "argued for another rule: that the attacking forces must make positive efforts, including asking their own soldiers to take risks, in order to minimize the risks they impose on enemy civilians." This is a good rule, but it is a rule that is in addition to proportionality. But when Walzer summarizes his conclusion, he omits proportionality entirely. He says, if some risk "is taken, then I think that the major responsibility for civilian deaths falls on the insurgents." That's it. No further reference to proportionality.

But notice what happens when we consider proportionality, even a proportionality that elides the fact that in an unjust war no military target in Gaza has moral benefit. If Hamas were about to take some military action that would cause major civilian loss of life in Israel, then proportionality might say that in order to prevent Hamas from taking that action Israel would be justified in acting in such a way that posed some risk to Palestinian civilians. But if all that Hamas were threatening to do was take an action that represented a tiny danger to Israeli civilians, then proportionality would rule out Israel's acting in a way that posed serious risk to Palestinian civilians. The latter hypothetical is the actual situation prevailing in Gaza. Hamas has fired thousands of rockets and yet has only killed three civilians. Whether the explanation is Iron Dome, Israel's civil defense measures, or the inaccuracy and low payload of Gazan missiles, the fact is that the chances of an Israeli civilian getting killed by one of these rockets is very small. The three civilian deaths almost prove the point. One was a civilian who intermixed himself with troops on the border (human shielding?). A second was a Bedouin, who is prohibited by Israeli law from building a bomb shelter and who, the Israeli Supreme Court has ruled, need not be provided with a bomb shelter by the state. And the third was a foreign worker who didn't go into the bomb shelter when the alarm went off. (Note incidentally, that all three Israeli civilians killed were males of military age [see here, here, and here]. Israeli apologists have argued that the civilian death toll in Gaza is being overstated because many of the alleged civilians are in fact males of military age. But women, children, and the elderly are not the only civilians. If one were permitted to target not just soldiers but all males of military age, then almost two million Israeli males would be fair game.)

So how many Palestinian civilians is it permissible to unintentionally kill in an effort to stop rocket fire that kills one civilian for every thousand rockets fired? Surely the proportionality principle would dictate that Israel's behavior in Gaza, even if every dead civilian could be attributed to a case of human shielding, is illegal, unjust, and criminal.

A war that could be avoided by ending an illegal occupation and an illegal blockade cannot be a just war. And a war that so blatantly violates the principle of proportionality cannot be a just war. It is sad that one of the world's leading expositors of just war theory can't get this right.

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