

From Knives to Kites: Developments and Dilemmas around the Use of Force in the Israeli-Palestinian Conflict since "Protective Edge"

Authors : Hilly Moodrick-Even Khen

Abstract : This study analyzes the legal regulation of the use of force in international law in the context of three emerging Palestinian forms of struggle against Israeli occupation: the Knife Intifada, Gaza border disturbances, and the launching of incendiary kites. It discusses what legal paradigms or concepts should regulate the type and level of force used in each situation—a question that is complicated by various dilemmas—and appraises the Israel Defence Forces policies tailored in response. Methodologically, the study is based on analysis of scholarship on the conceptual legal issues as well as dicta of the courts. It evaluates the applicability of two legal paradigms regulating the use of force in military operations—(i) the conduct of hostilities and (ii) law enforcement—as well as the concept of self-defense in international law and the escalation of force procedure. While the “Knife Intifada” clearly falls under the law enforcement paradigm, the disturbances at the border and the launching of incendiary kites raise more difficult questions, as applying law enforcement, especially in the latter case, can have undesirable ramifications for safeguarding humanitarian interests. The use of force in the cases of the border disturbances and the incendiary kites should thus be regulated, *mutatis mutandis*, by the concept of self-defense and escalation of force procedures; and in the latter case, the hostilities paradigm can also be applied. The study provides a factual description and analysis of the background and nature of the forms of struggle in Gaza and the West Bank—in each case surveying the geo-political developments since operation Protective Edge, contextualizing how the organized and unorganized violent activities evolved, and analyzing them in terms of level of organization and intensity. It then presents the two paradigms of the use of force—law enforcement and conduct of hostilities—and the concept of self-defense. Lastly, it uses the factual findings as the basis for legally analyzing which paradigm or concept regulating the use of force applies for each form of struggle. The study concludes that in most cases, the concept of self-defense is preferable to the hostilities or the law enforcement paradigms, as it best safeguards humanitarian interests and ensures the least loss of civilian lives.

Keywords : Israeli-Palestinian conflict, self defense, terrorism, use of force

Conference Title : ICSRIHL 2019 : International Conference on Substantive Rights and International Humanitarian Law

Conference Location : Paris, France

Conference Dates : April 18-19, 2019