LOAC and Legitimacy: When Combat Becomes a Supporting Effort to Information

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<https://lieber.westpoint.edu/loac-legitimacy-combat-supporting-effort/>

Over the past two decades information was mostly conceptualized as a supporting effort to combat: information contributed to tactical and operational success. Given today’s immediately interconnected world, the character of war is changing with the blurring of the lines between conflict and peace. Moreover, it is increasingly clear the important role of information across the spectrum of conflict in military operations. Weaponizing information by our enemies, both State and non-State, is already a significant line of effort. For many of these enemies, often facing substantial tactical and operational disadvantage, information is not conceived of as a supporting effort to combat; combat is a supporting effort to their information (or, more accurately, dis-information) campaigns.

These enemies increasingly understand that the more effectively they delegitimize their adversaries, the more likely they are to achieve strategic success. This phenomenon was a central theme to a recent report we contributed to that identified important lessons from the 2021 Gaza conflict ([the Report](https://jinsa.org/wp-content/uploads/2021/10/Gaza-Assessment.v8-1.pdf)). Commissioned by the Jewish Institute of National Security for America (JINSA) and prepared by five retired U.S. general officers, the Report’s most significant conclusion was that both Israel and Hamas had justifiable claims to victory.

**Conclusions of the JINSA Report**

For Israel, the victory was operational. In a short period of time the Israel Defense Forces (IDF) achieved a range of challenging operational objectives without a ground incursion while substantially reducing military and civilian casualties when compared to the 2014 iteration of this periodic conflict. But for Hamas the victory was strategic. As in the past, when the literal and proverbial dust settled, they were still standing, having enhanced the perception of their own legitimacy while undermining that of Israel.

One need only consider the overall narrative the conflict generated to appreciate the gravity of that strategic success. While criticism of Israel is a near automatic consequence of any IDF military action, the crescendo of that criticism seemed to reach unprecedented levels in 2021. Israel was widely condemned for indiscriminate attacks, willful killings of civilians, and an overall indifference to the human suffering produced by the conflict.

Virtually no analogous condemnation was directed at Hamas despite the undeniable fact that their operations, as in the past, not only demonstrated absolutely no effort to mitigate risk to civilians and civilian property in Israel, but also seemed to deliberately exacerbate the risk to the Gazan population subject to their dominance. Hence the ultimate irony: The side that actually implemented measures to comply with the LOAC civilian risk mitigation imperative was routinely condemned as illegitimate, while the side that not only routinely ignored those obligations but often sought to *deliberately* inflict death or injury on civilians was painted as the overall victim of illegitimate violence.

**Disinformation Narratives**

There are many explanations for the currency of such disinformation narratives. One, which Professor Corn has [written about previously](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2889620), is the instinctive tendency to engage in “effects-based condemnations”; to assume that the party to the conflict that directly causes an adverse effect is *ipso facto* responsible for illegal action. Effects of an attack are certainly *probative*when assessing compliance with the LOAC, but they are rarely *dispositive.* This is especially true when confronting an enemy that often seeks to deliberately exacerbate the risk to civilians and civilian property in direct violation of what are sometimes characterized as [“passive” precautionary obligations](https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/abs/precautions-against-the-effects-of-attacks-in-urban-areas/A3737A27BC50C93DAA5A0BF084D54527).

This type of enemy tactic is often referred to as human-shielding, but in some cases it may be even more pernicious. The term “shield” suggests an effort to *prevent*attack on the place or thing shielded, but in many cases the information value of generating civilian casualties suggests a baiting tactic, where an attack on the target is actually not only anticipated but desired. In another article, Professor Corn characterized this as [indirect civilian targeting.](https://digital-commons.usnwc.edu/ils/vol96/iss1/7/) But whether the former or the latter, effects-based condemnations completely fail to account for the critically important difference between the *direct cause*of harm and the legal *responsibility*for that harm.

Of equal importance, this approach fundamentally distorts the LOAC equation for assessing attack legality, an equation that focuses on the attack *judgment*and not the attack *effect.*The law demands that those judgments be reasonable under the existing circumstances, not that they always be right. Effects-based condemnations nullify the dichotomy between reasonable and unreasonable mistakes, holding attack decision-makers to an unrealistic *post hoc* standard that amounts to strict liability.

Another explanation is the proverbial David and Goliath phenomenon: the operationally stronger party to a conflict is almost inevitably held to a different standard than the weaker enemy. It may be instinctive to sympathize with the operationally weaker party to a conflict, but that instinct produces a bigotry of disparate expectations. That bigotry is not only factually misguided, but functions to nullify the effect of equality of obligation central to the LOACs humanitarian objective.

Just consider the tendency to “tally” casualties. Isn’t it clear Israel is the wrongdoer when almost all the civilian casualties are inflicted by IDF attacks? Of course, this narrative fails to acknowledge that had Hamas attacks been effective the ratio would have been substantially different. Even more problematic is how such an approach dilutes the profoundly significant difference between the infliction of casualties as an incidental consequence of attacking a lawful target and the *deliberate*infliction of such casualties when assessing LOAC compliance.

Of course, these explanations are built to a foundation of either misunderstanding or deliberate distortion of the law that regulates the conduct of hostilities. The Report draws this as an important lesson, not because there is anything remarkable in the proposition that the law is often misunderstood or deliberately distorted, but because this reality demands legal disinformation countermeasures. Without such countermeasures to enhance *both*actual *and*perceived respect for the LOAC, the battle for strategic legitimacy will be lost from inception.

**Legitimacy and Perceived Compliance with the LOAC**

As the Report emphasizes, U.S. forces engaged in future operations are likely to confront analogous distorted (disinformation) narratives, built on a foundation of legal disinformation. This represents a profound strategic risk. Many might think this risk is limited to counter-insurgency type operations, but the authors of the Report disagree. The delegitimization playbook so effectively implemented against Israel will almost certainly be emulated and advanced by peer or near-peer enemies.

Just consider the strategic imperative of coalition unity were NATO allies called upon to engage in hostilities in Europe. With populations clearly susceptible to disinformation related to the conduct of hostilities, creating a perception of illegality and indifference for civilian casualties seems like a potentially effective strategy to sow disunity and generate strategic and operational hesitation to employ decisive combat power.

All of this points to two almost unavoidable conclusions. First, the battle for legitimacy will be central to any future conflict. And second, actual and perceived compliance with the LOAC will be the “decisive-point”[[1]](https://lieber.westpoint.edu/loac-legitimacy-combat-supporting-effort/%22%20%5Cl%20%22_ftn1) in that strategic battle.

It is therefore logical that U.S. joint operational doctrine elevated legitimacy to a principle of effective joint operations alongside nine more operationally focused and historically grounded principles of war. As noted in [*Joint Publication 3-0*](https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_0ch1.pdf?ver=2018-11-27-160457-910), which establishes U.S. joint operational doctrine, “Joint doctrine recognizes the nine principles of war. Experience gained in a variety of [irregular warfare] situations has reinforced the value of three additional principles—restraint, perseverance, and legitimacy. Together, they comprise the 12 principles of joint operations.” (I-2). According to *JP 3-0*,

Legitimacy, which can be a decisive factor in operations, is based on the actual and perceived legality, morality, and rightness of the actions from the various perspectives of interested audiences. These audiences will include our national leadership and domestic population, governments, and civilian populations in the OA [operational area], and nations and organizations around the world. (A-4).

Two aspects of this definition align almost completely with the Report. First, legitimacy turns on *both*the actual and *perceived*respect for law and morality. This suggests an important axiom for U.S. and other armed forces committed to seeking to ensure genuine commitment to respect for the LOAC: perceived legitimacy is absolutely contingent on actual legitimacy, but actual legitimacy in no way guarantees perceived legitimacy.

What this means in practice is that the first step in winning the information campaign over perceived legitimacy is to ensure forces are trained in and committed to respecting LOAC obligations. Responsibility for ensuring this foundation for actual and perceived legitimacy is vested in every level of combat leadership, from the squad leader to the most senior combatant commander. These leaders bear an immense responsibility in the context of future conflict: to ensure their subordinates are trained and ready to employ decisive combat power, but to also ensure they are trained and ready to do so in a way that ensures compliance with the LOAC.

As [recent news reports](https://www.nytimes.com/2021/11/13/us/us-airstrikes-civilian-deaths.html) about U.S. operations against ISIS indicate, failure to lay this foundation can result in catastrophic adverse strategic consequences.

Second, legitimacy “can be a decisive factor” in the achievement of strategic goals. The Report’s conclusion corroborates that both Israel and Hamas had a rightful claim to victory. But this also raises the question: what might have been done differently to enable Israel to claim victory in the battle for legitimacy? There is no easy answer to this question, whether the battle is between Israel and Hamas, NATO and Russia, or China and Taiwan. But as noted in the prior paragraph, one thing seems clear: no measure to win this battle will have meaningful effect unless it is built upon genuine respect for the LOAC. This won’t be enough, but it will be essential.

**Conclusion**

The future of conflict is unpredictable, and anyone who believes they can predict it is misguided. How many U.K. Royal Marines could have imagined at Christmas in 1981 that within six months they would be fighting the Argentinians in the brutal terrain of the Falkland Islands? How many U.S. military personnel who came of age watching the Soviets flee Afghanistan in defeat could have imagined in the early summer of 2001 that within six months they would be initiating a twenty-year war in the same place against a similar enemy? Perhaps former Secretary of Defense Robert Gates said it best during his 25 February 2011 speech at West Point, “When it comes to predicting the nature and location of our next military engagements, since Vietnam, our record has been perfect,” he said. “We have never once gotten it right, from the Mayaguez to Grenada, Panama, Somalia, the Balkans, Haiti, Kuwait, Iraq and more—we had no idea a year before any of these missions that we would be so engaged.”

So, while the future location, duration, intensity, and opponents of war will almost always come as a surprise, the expectation that forces of democracy fight in a way that indicates actual and perceived respect for international law will be a constant. How those two aspects of legitimacy are aligned is a challenge for all military and political leaders, but one that makes understanding and respecting the LOAC a constant and predictable aspect of all future conflicts.

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**Footnotes**

[[1]](https://lieber.westpoint.edu/loac-legitimacy-combat-supporting-effort/%22%20%5Cl%20%22_ftnref1) *See*Joint Publication 5-0, Joint Planning (1 Dec. 2020), at IV-32 (“A decisive point is key terrain, key event, critical factor, or function that, when acted upon, enables a commander to gain a marked advantage over an enemy or contributes materially to achieving success (e.g., creating a desired effect, achieving an objective).”).