Was IDF’s use of force on the Gaza border legal?

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It is far too early to know exactly what was done right, wrong, legally or illegally in the IDF’s response to around 30,000 Gazan Palestinians marching on the border.

But we can already make some initial general observations, including the conclusion that this incident will generate major war-crimes allegations that Israel will need to contend with for some time.

Some lines of the debate are predictable.

Whether there were 1,400 Palestinians injured and 17 dead or some smaller numbers, the Palestinians and critics of Israel will focus on the high number of casualties.

They will focus on the complete absence of Israeli injuries.

They will try to get the world and legal bodies like the International Criminal Court to look at the many Palestinians who were nonviolently protesting or who did not present a threat – there is already one video of a Palestinian who was shot seemingly running away from the border fence.

In contrast, Israel will draw attention to Hamas members who opened fire on Israeli soldiers, attempts to plant plastic explosives on the border wall and the many Palestinians throwing rocks and Molotov cocktails.

Israel will focus its attention on Hamas being the organizer, its record of using terrorism and the idea that though Israeli soldiers were not hurt, had Israel not defended its border, Hamas would have had potentially devastating violent plans.

They will note that they issued mass warnings to stay out of a no-go zone near the wall, fired warnings shots and tear gas and tried to use non-lethal means to push off the approaching Palestinians.

Of course, Israel will highlight that it has a right to defend its border and that these were not protests by citizens, but an altercation with hostile foreigners – and that Hamas exploited its own civilians.

Some good news for Israel is that a UN representative already officially reported some of the violent actions of Hamas, including attempts to plant plastic explosives.

But overall, Israel will play the legal warfare or lawfare game from this incident at a disadvantage compared to the 2014 Gaza war, when 73 Israelis were killed, hundreds were injured and Hamas showered Israel with thousands of rockets.

Here, no civilians were in immediate danger, and, at most, the broader danger was a potential one.

That might still be enough to get Israel out of a war crimes investigation, but it will depend on the specific instances.

This incident was not really one incident, but a series of many incidents across parts of the border on one day.

In some instances, IDF soldiers may have perfectly followed the rules of engagement – including the firing of warning shots, only aimed at protesters knees and not shooting anyone using excessive force. At the same time, others may have gotten nervous seeing the multitudes and used lethal live fire in instances where the rules prohibit that.

How will the intent of such soldiers be weighed as they faced such a multitude of Palestinians? Will they be viewed as having had feelings of being in danger or not? Israel’s biggest worry is that this incident happened in a new world which is more legally dangerous for Israel.

Since January 2015, the ICC has been officially examining all Israeli uses of force. Now this incident will be added to the list.

Unfortunately, from a legal perspective, Israeli statements leading up to the incident focused on its readiness to use live fire as opposed to describing how involved its legal apparatus would be in projecting restraint.

Where things go with this incident will be determined by how comprehensively Israel investigates the Palestinian casualties and how transparent it is regarding those probes.