

Opinion – The West’s Approach to Gaza: A Self-Imposed Existential Crisis?

Written by Thomas Obel Hansen

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<https://www.e-ir.info/2023/11/16/opinion-the-wests-approach-to-gaza-a-self-imposed-existential-crisis/>

THOMAS OBEL HANSEN, NOV 16 2023

Israel’s military response to the atrocious attacks by Hamas on 7 October, and Western backing for it, demonstrates the core deficits in the current Western-led global order more clearly perhaps than any other contemporary conflict. US and other Western countries’ near unconditional diplomatic support to Israel, coupled with their supply of military equipment and the devastating impact of their use in Gaza, displays norms-abandonment and hypocrisy in equal measure. This posture could potentially create something of an existential crisis for the Western-led global order. The picture displayed in the case of Gaza – at least until recently – has been one where “there is no limit”, as US Senator Graham puts it, to what the US can accept in terms of civilian casualties and destruction in Gaza. The same goes for some European countries, even if they tend to use a more measured tone. A few have even more recently voiced a level of concern. All of this in context where Israeli leaders have made it clear that “creating a severe humanitarian crisis in Gaza” – to make it “a place where no human being can exist” – is an explicit campaign objective. Statements like these are, rightly, seen to normalize “ideas like the killing of civilians and mass deportations”.

The Western-led global order, best understood through the lenses of the ‘rules-based international order’ (RBO), is premised on the idea that international law applies when states subscribing to the RBO – mostly NATO countries in the West – want it to apply. When they do not, effectively the rules do not. That is to say, the system embraces *à sui generis* approach where some situations and some countries are exempt from the rules of international law – even as it seems the most fundamental ones such as those prohibiting collective punishment of the civilian population. It endorses a position where principles of accountability apply only to some. And that’s a radical difference from an international order based on the rule of law.

When international institutions and courts have sought to challenge that perspective, as happened with the International Criminal Court’s (ICC) Afghanistan and Iraq probes, they are corrected by Western States. This is evidenced most clearly by a range of US responses to the ICC’s investigation of alleged war crimes by the CIA and US armed forces and the subsequent decision of the ICC Prosecutor to “de-prioritize” these aspects of the Afghanistan investigation. In simpler terms, the lesson has been that courts like the ICC seemingly see no option but to comply, and to pull back, effectively creating an accountability vacuum for crimes orchestrated or endorsed by Western governments.

In the context of the Palestine investigation, the ICC Prosecutor talks about “our shared humanity” and says he will pursue those responsible for denying it to people in Israel and Gaza. That’s a noble aspiration, but one he could find it hard to deliver on, at least when it comes to actors backed by the West. The investigation in Palestine – opposed by key players in the West – has been open for several years, with little progress achieved. The problem is that the global accountability architecture that exists aligns with, or forms part of, the RBO – even according to court representatives’ own understandings. International courts are less than likely to have the standing and support needed to bring to account military and political leaders in Israel. As for Hamas leaders, they are just unlikely to make their way into a courtroom.

In Gaza, it is not only the prospects of accountability for international crimes that appear off the table. More profoundly, the reality is that the law that governs conduct in armed conflict – international humanitarian law – has, as

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it seems, been put effectively out of play. Is this any different, one could ask, from the wars in Iraq and Afghanistan, from the torture, rendition and drone strikes we have witnessed in anti-terror campaigns? To a certain level, yes. Western militaries and security agencies are responsible for war crimes and other serious violations on a systematic scale in other conflicts – directly or through proxies. Yet, they say that what they do is not incompatible with international law, even when it clearly is. Alternatively, or in addition, they construct international law in ways so that it does not apply. Or, they say that violations were committed by a few rotten apples, not the result of leadership decisions or systemic failures, despite clear evidence to the contrary.

In Gaza, even the pretence that humanitarian law matters is seemingly off the table. And that’s an important difference than the above examples. This attitude makes Western governments appear hypocritical, both to critics within and outside the West. It also further isolates the West from the rest of the world at a time where the West faces plenty of other challenges. As one commentator observes, “rarely has the United States, and the West in general, seemed more out of sync with the rest of the world”.

Looking deeper, governments in the West are somewhat split among themselves, with EU countries voting in all possible directions on the UN General Assembly resolution sponsored by Jordan calling for something as basic as protecting civilians and “upholding legal and humanitarian obligations.” At the same time, countries such as Turkey, aligned with the RBO, but with obvious links to states and groups outside that system, face increased internal pressure and difficulties navigating their path. There’s increased pressure too from countries outside the RBO, creating complications for US foreign policy objectives. Meanwhile, UN officials, human rights organizations, lawyers and even the ICRC (who rarely publicly states its concerns over state military action) are calling out Israel for its disregard for humanitarian law, but also states in the West who permit it.

We ‘liberals’ in the West call out our governments for providing Israel with arms. We call them out for failing to support UN Security Council or General Assembly resolutions that could add pressure on Israel to take a different, more restrictive approach. Western governments initially seemed unresponsive to this sort of pressure, yet there are growing signs it could have some impact. For example, coupled with an increased understanding that the nature of Israel’s military campaign fuels “sympathy around the world for the Palestinian cause”, US military advisors are more recently said to have strongly encouraged the Israeli military to take a more measured approach.

In recent days, there has even been some amount of critique of Israel’s lack of respect for international law from Western leaders like France’s president Macron, who says there’s “no reason” for bombing and killing “babies”, “ladies”, and “old people” in Gaza. Belgium’s prime minister, De Croo, speaks to a “disproportionate” use of force by Israel. That’s a new – and welcome – line of comments from leaders in the West. In the best event, statements like these could suggest that with enough internal and external pressure on key players in the RBO, it is possible to change the course of events – or at least limit the damage done to the people in Gaza.

For now, however, Israeli military action goes ahead apparently unconstrained, as evidenced by the recent attack on the Al-Shifa hospital. Despite the absence of proof in the public domain so far that the hospital is being used by Hamas for military purposes, the US effectively gave the ‘green light’ for this to happen. If such proof does not emerge – and patients and medical staff suffer on a massive scale as a consequence of this military operation, as they almost certainly will – this could be the moment we see a radical change in public support for Western approaches to Israel’s actions, which is already declining.

Some might suggest that what we have been witnessing is simply a temporary identity crisis for the Western-led global order, resulting from an atrocious attack on civilians by Hamas and an Israeli right-wing government’s response to it, coupled with standard US responses. Depending on how much Western players constrain Israel in the weeks ahead, it could well amount to something more, perhaps even a self-imposed existential crisis for that Western-led global order. A crisis to which there may be no obvious overcoming.

The credibility of the West, as a self-proclaimed guarantee of a global order based on fundamental principles of peace, security, and fairness was already damaged following the wars in Afghanistan and Iraq and other post-9/11 operations. Could the damage being done this time round be unrepairable? The answer will for a large part depend

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on the extent to which the West wants – and manages – to constrain Israel’s military action in the days and weeks ahead and accept that international humanitarian law offers the playbook for conduct in hostilities. If that does not happen, the question decisionmakers will have to ask themselves is how could the legitimacy of the global order they embrace be regained after a time where any reasonable person can see the hypocrisy and double standards with which governments are acting?

Meanwhile, the rest of us can keep searching for an answer to the question what an alternative global order could look like and could be enforced. The starting point for that search must be an order that is more receptive to international law, basic principles of humanity, and equal application of accountability principles to all – where basic humanitarian values are respected, even in the midst of armed conflict.

About the author:

Dr. Thomas Obel Hansen is a Senior Lecturer in the School of Law at Ulster University, a member of the Transitional Justice Institute (TJI), and the 2023–24 Maria Zambrano Distinguished Researcher with the Carlos III University in Madrid, Spain. He has previously worked with the United States International University in Nairobi and as a consultant on assignments relating to international law, human rights and transitional justice in the country and the broader region. His research has contributed to submissions to international courts, the UN Human Rights Council, parliamentary committees and ministry consultations in the UK. He serves as a senior advisor to the Danish Ministry of Foreign Affairs, the OSCE, and various civil society and professional organizations.