

Lord Verdirame

My Lords, I too thank the Minister for his wise words in opening the debate. I join others in calling on him and the Government to use their influence on Qatar to ensure the release of the hostages. We also need to record our thanks to the International Committee of the Red Cross and the Red Crescent for the very positive role they have played.

There has been a lot of talk about proportionality in the law on self-defence. I refer to the words that the noble Lord, Lord Pannick, used a few days ago on the test of proportionality. It does not mean that the defensive force has to be equal to the force used in the armed attack. Proportionality means that you can use force that is proportionate to the defensive objective, which is to stop, to repel and to prevent further attacks.

Israel has described its war aims as the destruction of Hamas's capability. From a legal perspective, these war aims are consistent with proportionality in the law of self-defence, given what Hamas says it does and what Hamas has done and continues to do.

Asking a state that is acting in self-defence to agree to a ceasefire before its lawful defensive objectives have been met is, in effect, asking that state to stop defending itself. For such calls to be reasonable and credible, they must be accompanied by a concrete proposal setting out how Israel's legitimate defensive goals against Hamas will be met through other means. It is not an answer to say that Israel has to conclude a peace treaty, because Hamas is not interested in a peace treaty.

Proportionality also applies in the law that governs the conduct of hostilities, not only in self-defence. The law of armed conflict requires that in every attack posing a risk to civilian life, that risk must not be excessive in relation to the military advantage that is anticipated. That rule does not mean, even when scrupulously observed, that civilians will not tragically lose their lives in an armed conflict. The law of armed conflict, at its best, can mitigate the horrors of war but it cannot eliminate them. The great challenge in this conflict is that Hamas is the kind of belligerent that cynically exploits these rules by putting civilians under its control at risk and even using them to seek immunity for its military operations, military equipment and military personnel. An analysis of the application of the rules on proportionality in targeting in this conflict must always begin with this fact.

There has also been some discussion about siege warfare. The UK manual of the law of armed conflict, reflecting the Government's official legal position—it is a Ministry of Defence document—says:

“Siege is a legitimate method of warfare ... It would be unlawful to besiege an undefended town since it could be occupied without resistance”.

Gaza is not an undefended town. It is true that obligations apply to the besieging forces when civilians are caught within the area that is being encircled, and those obligations include agreeing to the passage of humanitarian relief by third parties. But it is not correct to say that encircling an area with civilians in it is not permitted by the laws of war.

A further point that concerns the laws of war is also of particular relevance to the British Government's practice. It has already been mentioned that the Government have taken the view that Gaza remains under Israeli occupation, even though Israel pulled out in 2005. The traditional view until 2005 was that occupation required physical presence in the territory. That view is consistent with Article 42 of the Hague regulations of 1907, which states that a territory is occupied when it is actually placed under the authority of the occupying power. Again, it is also the view taken by the UK manual of the law of armed conflict, which reflects the UK's official legal position and states that occupation ceases as soon as the occupying

power evacuates the area. The European Court of Human Rights, in its jurisprudence, has also adopted a similar approach to occupation. So I have always been rather baffled by the British Government's position on this issue, which, as far as I know, has not changed. Yes, it is true that Israel has exercised significant control over the airspace and in the maritime areas, but even as a matter of plain geography it takes two—Israel and Egypt—to control the land access points to Gaza.

More fundamentally, it is Hamas that has been responsible for the government and administration of Gaza. I appreciate that this is a legal matter on which the Minister may not want to respond immediately but it is an important one, because the legal fiction that Israel was still the occupying power under the laws of armed conflict has been relentlessly exploited by Hamas to blame Israel for everything, while using the effective control that it has over the territory, the people and the resources to wage war.

On a final note, I would like to say something briefly on the way in which the war is being reported. When a serious allegation is made, particularly one that could constitute a war crime, the immediate response of the law-abiding belligerent will be to say, "We are investigating". The non-law-abiding belligerent, by contrast, will forthwith blame the other side and even provide surprisingly precise casualty figures. The duty to investigate is one of the most important ones in armed conflict. What happened in the way in which the strike on the hospital was reported is that the side that professes no interest whatever in complying with the laws of armed conflict was rewarded with the headlines that it was seeking.