

# The End of Proportionality

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The 2006 Israel-Lebanon war generated the first large-scale and systemic references to a heretofore mostly ignored law of war concept, the doctrine of proportionality. Occasional references to proportionality are found in accounts of the Iraq War and in histories or scholarly works of the last century. In general, prior to Israel's 2006 campaign the proportionality doctrine received little scholarly interest and even less attention among the governing classes and international media.<sup>1</sup> In all likelihood, critics of American action in Iraq or Afghanistan would have more thoroughly employed this doctrine in their efforts to end or limit US military involvement had they simply thought of it. But by 2006, when the doctrine was widely known, the major battles in Iraq and Afghanistan were finished.

Israel's December 2008 to January 2009 campaign in Gaza renewed drumbeat accusations in the media and from much of the international community that the Israel Defense Force (IDF) used disproportionate force against Palestinian terrorists and guerrillas. The George W. Bush Administration expressed concern for innocent civilians caught in the crossfire but resisted labeling Israeli actions as disproportionate. President Bush generally defended Israeli actions and declined to join the European Union and even close allies such as the United Kingdom in labeling Israel's tactics as disproportionate.<sup>2</sup> A year before the Gaza offensive, in February 2008, then-Secretary of State Condoleezza Rice declined a reporter's invitation to label Israeli retaliatory action as "disproportionate."<sup>3</sup>

This is a sound policy that the Obama Administration would be well advised to follow. Though American military action in Afghanistan or Iraq

has not yet received comparable condemnation (at least on grounds of “disproportion”), it is only a matter of time before this occurs, as soon as a fight is significant enough to warrant it. There is little difference in the operational practices used by the Israeli and American militaries, which not only share many weapon systems but also elements of tactics and training.<sup>4</sup>

American doctrine does acknowledge the concept of proportionality. Field Manual (FM) 27-10, *The Law of Land Warfare*, specifies, “Those who plan or decide upon an attack, therefore, must take all reasonable steps to ensure that the objectives are identified as military objectives or defended places within the meaning of the preceding paragraph but also that these objectives may be attacked without probable losses in lives and damage to property disproportionate to the military advantage gained.”<sup>5</sup> The reference to the manual’s preceding paragraph (Chapter 2, Paragraph 40) is noteworthy. There the list of acceptable targets is rather broad, including defended cities and towns, factories, warehouses, ports, railroads, and other places that offer an enemy a military advantage or accommodation, all venues that by their very nature could have large civilian populations.<sup>6</sup> The proportionality rule does not negate attacks on such facilities so long as a reasonable military necessity exists and that necessity can be reasonably balanced against anticipated civilian casualties.

The problem with the proportionality rule is its frequent and remarkable misinterpretation. The extent of this confusion is so great as to severely limit the utility of this law of war concept as presently structured. As both the Lebanon and Gaza campaigns illustrate, the doctrine is subject to distortion to the degree that applying it is actually harmful to the conduct of lawful and legitimate military campaigns.<sup>7</sup> As a practical matter, invoking the doctrine confuses important issues and undermines respect for the law of war. Michael Walzer, one of the most prominent ethicists of war and its consequences, notes that false claims of disproportion typically have the effect of justifying excessive violence, which he characterizes as a “dangerous idea.”<sup>8</sup> This article will propose the elimination of proportionality as a law of war concept, at least by the American military. Existing doctrine, standards, proscriptions, and ethical guidelines are more than sufficient to govern proper conduct in combat without descending into the semantic, legal, and ethical miasma of proportionality.

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### *Proportionality and the International Community*

On 12 July 2006, Lebanon-based Hezbollah guerrillas raided Israel, killing several soldiers and kidnapping two others. Israel had withdrawn from Lebanon six years earlier and in the intervening years had absorbed many other attacks without delivering a substantial or effective riposte. The 2006 assault, which came under cover of an artillery barrage along Israel's northern border, was a classic *causis belli*, entitling Israel to the status of a belligerent and granting the right to wage war. Israel's government launched a broad air campaign against Hezbollah facilities and positions, and to a lesser extent against Lebanese infrastructure.

Almost immediately Israel was accused of violating the doctrine of proportionality. The European Union Presidency accused Israel of a "disproportionate" response on 13 July 2006.<sup>9</sup> French President Jacques Chirac echoed this, calling Israel's response "disproportionate" in a Bastille Day speech.<sup>10</sup> Then-United Nations Secretary General Kofi Annan joined in accusing Israel of "disproportionate use of force."<sup>11</sup> Amnesty International promptly accused Israel of "war crimes," including, among other things, "disproportionate attacks."<sup>12</sup>

It is likely that the "disproportionate force" reaction arose when and how it did because governments, organizations, and people that reflexively find fault with Israeli military operations had little else to criticize in July 2006. Israel was clearly a victim of an act of war. Because Israeli forces had withdrawn from Lebanon to the United Nations-sanctioned international border, the usual Arab militant claims of "resistance to occupation" did not hold. The IDF, while using significant firepower, was not using it indiscriminately. Indeed, the Israelis used up some types of guided munitions, so intent were they on limiting civilian losses. Lebanese civilians were inadvertently and mistakenly killed and injured, but not excessively by historical standards. The number of losses reported by Lebanese authorities is subject to considerable doubt, as casualties suffered by Hezbollah fighters and active supporters were not distinguished in the total from actual civilians; all Hezbollah losses were classified as civilian deaths.<sup>13</sup>

For Israel's critics or those suspicious of western military operations in general, these were uncomfortable facts. Israel's operational response in Lebanon appeared, *prima facie*, fully justified. Rather than allowing themselves to be stymied, critics took up the claim of disproportion with alacrity and little regard to traditional concepts of international law or logic. In general, the more extreme critics argued that upon the death of the first Lebanese civilian, Israel's response had become disproportionate as only IDF soldiers

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fell in the Hezbollah attack, or that Israel’s loss (eight dead, two captured) entitled it only to a limited counterattack. More measured opponents of the operation claimed that Israel’s campaign was insufficiently calibrated to the limited strength of its opponent, considering the IDF’s apparently overwhelming advantages in personnel, weapons, and technology.

Israel’s recent Gaza campaign immediately brought renewed calls of disproportionate Israeli action, allegedly in violation of international law. These claims gained much traction in the international media and especially within transnational nongovernmental organizations, including the United Nations. Many of those groups are suspicious of, or overtly hostile to, any Israeli military action. As with the Lebanon war, Israel had a clear *causis belli*, and indeed had acted with considerable—and some might say unprecedented—restraint in response to constant and indiscriminate cross-border rocket and mortar fire, openly and deliberately orchestrated by the Hamas regime in Gaza.<sup>14</sup> Moreover, though Gaza is densely populated, improvements in Israeli guidance systems, intelligence collection, and munitions, including small-diameter bombs, sharply reduced the legitimacy of claims that the IDF acted without discrimination.<sup>15</sup>

“Disproportion” can be seen as the leading edge of an effort to delegitimize any action by powerful western nations against weaker developing countries or nonstate actors. It is in the interest of the United States to generally reject these claims, for should they gain further acceptance, American military action and doctrines might be seriously hindered in the future, with potentially grave repercussions.

### ***The Law of War and Proportionality***

The problem with proportionality as a law of war concept is twofold: It is subject to misinterpretation by the international media, nongovernmental organizations, and governments; and some of the most restrictive and logically twisted interpretations of the doctrine have a legitimate grounding in existing—albeit damaging—international law.

What the doctrine of proportionality does not do, contrary to its more misinformed proponents, is reduce warfare to a series of tit-for-tat attacks.

Israel was castigated for responding to indiscriminate rocket fire with precision air attacks, as if a “proportional” response—indiscriminate Israeli rocket fire—would be preferable and legal. After the assassination of Archduke Ferdinand in 1914 the doctrine of proportionality did not limit Austria-Hungary to counterregicide in response. The United States was not limited to striking a Japanese naval base in response to the attack on Pearl Harbor. In sum, the doctrine of proportionality has little relevance to *causis belli* or *ius ad bellum* (the justice of the cause under traditional just war theory). Nor does the doctrine limit in a legal sense the legitimate military objectives a belligerent may choose to pursue; it regulates in part, to the extent it limits anything, the manner in which military objectives are pursued, and this is certainly the sense in which it is used in modern treaties.<sup>16</sup>

The modern doctrine of proportionality appears as a law of war concept in the 1907 Hague Conventions wherein belligerents are forbidden to seize or destroy enemy property unless “imperatively demanded by the necessities of war.”<sup>17</sup> Proportionality is thus implied, but not delineated. The Geneva Conventions of 1949, although they prohibit destruction of enemy property by an occupying power except where destruction is “absolutely necessary for military operations,” do not specifically discuss proportionality either.<sup>18</sup> As noted, the Army’s *Law of Land Warfare* manual, FM 27-10, interprets these provisions in Chapter 2, Paragraph 41, distilling the prohibitions into an order not to attack objectives unless it will not cause “probable losses in lives and damage disproportionate to the military advantages anticipated.” This elaborated formulation is in accordance with the 1977 Protocols to the Geneva Conventions, to which neither the United States nor Israel is a contracting party. The Protocols define as “indiscriminate” and “prohibited” an attack “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”<sup>19</sup>

The changes specified in the 1977 Protocols are subtle but important. Disproportionate attacks are defined as indiscriminate, so that even a belligerent who uses discriminating but “excessive” force will have violated the provision. Losses which are merely “incidental” are defined as a war crime, and the list of incidentals is spelled out and by implication broadened. But a 1987 commentary on the Protocols published by the International Committee of the Red Cross was the first to link proportionality with the 1977 provisions. The commentary notes that “the disproportion between losses and damages caused and the military advantages anticipated raises a delicate problem; in some situations there will be no room for doubt

while in other situations there may be reason for hesitation. In such situation the interests of the civilian population should prevail . . . .”<sup>20</sup> Thus, the benefit of the doubt may never go to the belligerent who is seeking a military advantage. But the commentary then takes this formulation one step further, specifying that “the Protocol does not provide any justification for attacks which cause extensive civilian losses or damages. Incidental losses and damages should never be extensive” even if “the military advantage at stake is of great importance.”<sup>21</sup>

Loosely interpreted, the 1977 Protocols effectively ban any attack that may cause extensive civilian losses or damages, even if the attacker uses discrimination and the enemy hides its forces and assets within a civilian population. Thus, a group like Hamas, simply by taking cover among civilians, might render itself immune from attack under the rules of proportionality as defined by the Protocols.

To be sure, serious scholars and jurists do not necessarily interpret the concept so broadly, and as previously noted, neither the United States nor Israel signed the 1977 Protocols (though both nations basically seek to abide by them). The standard interpretation requires simply that a belligerent use only the amount of force necessary to achieve a military objective, or use only that amount of force required within the bounds of military necessity—which is basically what the Hague and 1949 Geneva Conventions provide. Furthermore, no reasonable interpretation of the doctrine says that a nation, having been given just cause to go to war, has to limit its objectives to the same level as the provocation. Such an approach does not attempt to define military necessity; presumably the leadership of the belligerent nations will reasonably set a level of necessity. Still, the fact that broad and limiting interpretations of the doctrine can be broached within the 1977 Protocols is cause for serious concern.

### ***Proportionality as a Military Doctrine***

It does not make sense to waste military effort by applying more force than appears necessary to reach military objectives at an acceptable cost. Given that caveat, the doctrine of proportionality is sensible, but it is also close to self-regulating. Rational and effective military organizations recognize proportionality not only as part of the laws of war, but also as part of their own combat doctrine—except it is called economy of force. The idea surely began in antiquity but was articulated by Clausewitz in modern times as sensibly limiting a military operation to as few principal undertakings as possible.<sup>22</sup> Economy of force is defined in US Army Field Manual

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3-0, *Operations*, and requires that commanders “allocate minimum essential combat power to secondary efforts . . . . Commanders allocate only the minimum combat power necessary to shaping and sustaining operations so they can mass combat power for the decisive operations.”<sup>23</sup>

The British and Commonwealth armies call this principle economy of effort. The Soviet Union defined it as adapting the end to the means. However identified, the principle holds that military forces should concentrate effort in the most rational, economic, and limited way, to free up resources for other undertakings. As such, it makes little military sense to use force or effort out of proportion to the objective sought, or beyond military necessity. This holds true with or without the prescriptions of the laws of war. Rather, economy of force can be seen as a real-life application of utilitarian ethics as defined by the nineteenth-century philosopher Henry Sidgwick, who described the modern principle of proportionality as fighting “with as little mischief as is likely to be effective.”<sup>24</sup>

Armies occasionally violate this principle, but do so to their own disadvantage. When they do it is usually in efforts that turn out to be mistakes. For example, the Allied carpet-bombing of Caen during the Normandy campaign was largely counterproductive. This air attack did little damage to the Germans, while creating a rubble-clogged defensive obstacle that Allied units had to overcome once they entered the bombed zone. The Allied air effort devoted to destroying Caen lacked discrimination and might have been more effectively and economically applied elsewhere. Given the technology available, the strength and tenacity of the German forces, and the necessity to enlarge a dangerously shallow bridgehead, the bombing was morally and militarily justifiable, if in fact wasteful and unfortunate. But was it legally disproportionate? Is such an inquiry even useful?

Raising questions regarding the utility of proportionality doctrine does not let nations that do act criminally off the hook. The Luftwaffe carpet-bombed Stalingrad in a similar manner and faced similar consequences, but the German bombing was deliberately indiscriminate and designed to terrorize, as well as being wasteful of German air resources. It is true that for the victims of such bombings, the intention of the attackers makes little difference, but in terms of determining the legality of actions, intention—the

mental state of the actor—is fundamental. A mistaken allocation of force is not a crime. A deliberate effort to terrorize the innocent is.

### ***Proportionality in Lebanon, Kosovo, Cassino, and Gaza***

In Lebanon in 2006 and Gaza in 2008-09, the IDF pursued modern air warfare tactics and targeting similar to that used by US and NATO forces during their earlier operations in Kosovo, Afghanistan, and Iraq. Indeed, some commentators at the time opined that the Israelis were attempting to duplicate the 1999 Kosovo campaign—where there were few if any claims of disproportionate use of force despite the Serbian military’s limited power and the infliction of hundreds of civilian casualties.<sup>25</sup> At Cassino in 1944, massive Allied airpower was employed for little tactical or operational gain. It is worthwhile to examine these historical examples to determine whether any determination of “proportionality” is truly accurate.

Israeli air attacks early in the Lebanon war, which drew almost immediate condemnation as disproportionate, can be roughly divided into two categories: attacks on Hezbollah rocket launchers and command centers and attacks against Lebanese civilian infrastructure targets. The direct attacks against Hezbollah, even where civilian casualties occurred, were fully justified militarily and not indiscriminate. Nor by any reasonable understanding of the term could they be regarded as disproportionate. There were occasional Israeli targeting errors, and some civilian losses were suffered due to the placement of rocket launchers in populated areas. In contrast, Hezbollah’s rocket attacks were exclusively directed against civilian Israeli targets. The IDF response is a clear example of justifiable and reasonable military force used in self-defense.

Israel’s strikes against Lebanese infrastructure targets are more problematic. These attacks likely violated the military principle of economy of force because they diverted resources from the main effort against Hezbollah, just as the Allied bombardment of Caen drew air assets away from more useful targets. Israel justified its attacks on the Beirut airport, bridges, and transport hubs as attempts to prevent Hezbollah from spiriting the captured Israeli soldiers out of Lebanon. Israeli attacks on communication hubs and the Hezbollah television facilities also had military justification in that they weakened the enemy to some degree. But Israel’s secondary motive in these infrastructure attacks was to pressure the Lebanese government into bringing Hezbollah to heel. Because the attacks actually had little prospect of preventing the removal of the soldiers, and the Lebanese government had little ability to control Hezbollah, the IDF wasted considerable resources on the infrastructure campaign with little or nothing to show for it.

Did the infrastructure attacks violate the principle of proportionality? They were certainly destructive and wasteful. But the fact that an attack wastes military effort does not mean that it is disproportionate as a matter of law. Military history is replete with examples of armies bringing overwhelming and disproportionate force against enemies, and that approach constituted a popular American post-Vietnam War doctrine closely identified with General Colin Powell when he was Chairman of the Joint Chiefs of Staff. After all, employing disproportionate force against an enemy is one of the best ways to win a battle.

The Israeli bombing campaign in Lebanon closely mirrored NATO's action in Kosovo, which was not generally criticized as disproportionate. At its outset the Kosovo campaign had no greater likelihood of success than the IDF campaign. The force used was greater than the opponent could muster, infrastructure was intensively targeted, civilian casualties were equal to or greater than in Lebanon, and the duration of the campaign was much longer (78 days as compared to 30). Indeed, there is little to distinguish the two campaigns, except that Kosovo ended in a NATO victory, while Lebanon may be characterized as an Israeli defeat.

Arguably, the Israeli campaign in Lebanon saw the disproportionate use of force, but not in the way commonly discussed. If Israel's use of force in Lebanon was disproportionate in a military sense, it was disproportionately weak. That is, considering the terrain, Hezbollah's prepared fortifications, and the overall quality of Hezbollah guerrillas and equipment, the IDF committed far too little force and firepower to have much hope of success.

Several recent studies bear out this thesis.<sup>26</sup> The IDF underestimated the extent and sophistication of Hezbollah fortifications, command and control capabilities, logistics, and weaponry.<sup>27</sup> In particular, Hezbollah's advanced and diverse antitank missile arsenal, combined with elaborate fortifications and tunnels, presented the IDF with a significant tactical problem which it did not remedy throughout the course of the campaign. Hezbollah's tactics were more similar to a conventional military defense than—as commonly believed—an insurgency. The IDF, accustomed to years of low-level counterinsurgency action against poorly armed and organized Palestinian militias, found itself facing instead a dug-in and determined enemy trained, equipped, and deployed to frustrate predictable Israeli tactics.<sup>28</sup>

A historical example that closely models the problems Israel faced in Lebanon is the Allied air-raid on the Monte Cassino Abbey in February 1944. Like the Israelis in Lebanon, the Allies faced a difficult struggle against a skilled and determined enemy entrenched in a mountain fastness. The ancient abbey was a religious and historical structure protected under

international law and off-limits to attack, unless a belligerent used it for military purposes. Allied officers convinced themselves that the Germans were using the mountaintop monastery as an observation post. Such a purpose made military sense and also seemed to be indicated by the fact that the Germans ferociously defended the abbey's approaches. In reality, the Germans did not put soldiers in the abbey. On 28 February, hundreds of Allied bombers pulverized the complex, killing or injuring many civilians. After the attack, German forces burrowed into the rubble, strengthening their position.

The Allied attack violated the principle of economy of effort. It wasted considerable resources on a target that did not contain enemy forces, weakened the Allies' moral standing, and physically strengthened the German position. Likewise, IDF attacks on Lebanon's infrastructure wasted effort, killed or injured few enemy forces, and damaged Israel's moral case. The overall result was a stronger Hezbollah.

In the 2008-09 Gaza campaign the IDF performed better, thanks to intensive training for the operation and the availability of more sophisticated weaponry. This success inevitably drew even more criticism that the campaign was disproportionate. But the relationship between Israeli tactical successes, including a dramatic reduction in casualties, would argue that the IDF's use of force in Gaza bore a clear correlation to military necessities. Under a proper analysis, Israel's level of force was hardly disproportionate, but instead a textbook example of measured application of force to achieve legitimate military benefits. That Israel failed in its declared objective to stop Hamas rocket fire into southern Israel is the product of a political decision to halt the offensive before it achieved a decisive result.

In fact, none of the four historical examples discussed involved the use of disproportionate force as a matter of law. Even when the Allies or the Israelis made mistakes, as in Lebanon or Cassino, they reasonably believed that their attacks abided by the principles of economy of effort and proportionality. The force directed against the abbey at Cassino was tremendous but not out of the ordinary according to the extremely violent standards of World War II. If the bombing of Monte Cassino was disproportionate, so were the Allied bombings of Caen, St. Lo, and countless other Axis targets. Indeed, practically the entire Allied war effort would have to be regarded as criminal. Israel's attacks on Lebanon's infrastructure were substantial, but not worse than NATO's strikes against Serbia during the Kosovo conflict in 1999. The only thing wrong with Israel's strikes in Lebanon or various Allied bombings in World War II was their lack of success. But we do not determine criminality based on outcome, but intent. In these cases the Allies and Israelis made mistakes but did not violate the law of proportionality.

## *Conclusion*

The theory of proportionality is ambiguous, lacks useful precedent, and as a practical matter, is nearly impossible to interpret and enforce. Effective military organizations as a matter of course limit their use of force under the doctrine of economy of force, meaning that a disproportionate attack on an enemy is likely to be as harmful to the attacker as the victim. The international community and media have a responsibility to use terminology and principles correctly, not just because they seem to be convenient. In the case of declaring military actions disproportionate, this has simply not been the case.

Accusations of “disproportion,” like those against the IDF, will almost certainly be applied to American forces when domestic and international opposition to US actions can find no other complaint. Yet it is apparent that proportionality is not a useful yardstick for determining appropriate levels of force. The principle of proportionality is so vague and difficult to apply with any consistency, and so widely misunderstood, that the US military should discard it. Instead, American authorities should simply take the position that US doctrine proscribes use of force that is indiscriminate, wasteful, excessive, or not necessary to achieving military objectives. America’s armed forces should openly acknowledge that they do not abide by the principle of proportionality because it is so problematic.

Taking that position would not be a violation of existing law, as neither the Hague Conventions nor the 1949 Geneva Conventions specifically refer to “proportionality.” The United States is not a signatory to the 1977 Geneva Protocols, which do use the term (at least in the commentary). With respect to customary international law or traditional just war theory, simply declining to define American military action as “proportionate” would not violate the spirit of law or theory. Because the prescriptions of each are not specific in a statutory sense, the recommended doctrinal stance should suffice. Proportionality as a law of war concept for good reason has had limited applicability and usefulness during the last century. It deserves to be disposed of entirely.

### NOTES

1. Examples in the media of claims of disproportionate force in Iraq can be found in Tony Kevin, “Falluja—All the Makings of a War Crime,” *Sidney Morning Herald*, 9 November 2004; and David DeCosse, “Lost in the ‘Logic of War,’” Santa Clara University, Markkula Center for Applied Ethics, <http://www.scu.edu/ethics/publications/ethicalperspectives/logic.html>.

2. Terence Hunt, “Bush Defends Israel’s Attacks in Lebanon,” *Associated Press*, 13 July 2006; Ned Temko, Conal Urquhart, and Peter Beaumont, “British Split with Bush as Israeli Tanks Roll in,” *The Observer*, 23 July 2006.

3. Arshad Mohammed, “Rice Tells Olmert She Is Concerned About Gaza Civilians,” *Reuters*, 27 February

2008.

4. Jonathan F. Keiler, "Who Won the Battle of Fallujah?" *Proceedings*, January 2005.
5. Department of the Army, Field Manual 27-10, *The Law of Land Warfare* (Washington: Headquarters Department of the Army, 1956), Chapter 2, Paragraph 41.
6. *Ibid.*, Chapter 2, Paragraph 40.
7. See, e.g., Eugene Robinson, "It's Disproportionate . . ." *The Washington Post*, 25 July 2006, for a typical example of how the doctrine is mangled—the ellipses in the title say it all. Robinson is critical of the IDF for what he sees as disproportionate use of force. See also Ruth R. Wisse, "Now, About that 'Proportionality,'" *Commentary*, March 2009, wherein the author, a Harvard professor, also misapplies the doctrine in defending IDF actions.
8. Michael Walzer, "On Proportionality," *The New Republic*, 8 January 2009.
9. "EU: Israel Uses 'Disproportionate Force' in Lebanon," *Deutsche Welle*, 14 July 2006.
10. "Chirac: Israeli Strikes in Lebanon Disproportionate," *Voice of America*, 14 July 2006, <http://www.voanews.com/english/archive/2006-07/2006-07-14-voa19.cfm>.
11. Warren Hoge, "Annun Urges Immediate Halt to the Fighting in Lebanon," *The New York Times*, 21 July 2006, A9.
12. David Fickling, "Amnesty Report Accuses Israel of War Crimes," *Guardian.co.uk*, 23 August 2006.
13. Anthony H. Cordesman, *Lessons of the 2006 Israeli-Hezbollah War* (Washington: CSIS Press, 2007), 87.
14. No historical precedent comes readily to mind where a sovereign nation, overwhelmingly more powerful and capable than its belligerent neighbor, indefinitely absorbed such assaults without a military response.
15. Steven Erlanger, "A Gaza War Full of Traps and Trickery," *The New York Times*, 11 January 2009, A1.
16. Under traditional just war theory, one of the elements of *jus ad bellum* (governing the justice as opposed to the conduct of war) is probability of success, of which proportionality is arguably one element. Traditional just war theory dating back to philosophers such as St. Thomas Aquinas, Francisco Suarez, and Hugo Grotius generally stresses that war should be waged in moderation and good faith.
17. *Regulations Concerning the Laws and Customs of War on Land* (The Hague: 18 October 1907), Article 23.
18. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: 12 August 1949), Article 53.
19. *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts* (Geneva: 8 June 1977), Article 51.
20. Claude Pilloud, Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: Martinus Nijhoff Publishers, 1987), 624.
21. *Ibid.*
22. Carl von Clausewitz, *On War*, Michael Howard and Peter Paret, eds. and trans. (Princeton, N.J.: Princeton Univ. Press, 1976).
23. Department of the Army, Field Manual 3-0, *Operations* (Washington: Headquarters Department of the Army, 2008), A-2.
24. Henry Sidgwick, *The Elements of Politics*, <http://www.laits.utexas.edu/poltheory/sidgwick/elempol/index.html>, Chapter XVI, Section 2; see also Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 130, wherein Walzer proposes that Sidgwick effectively intended to impose a principle of economy of force in relation to waging proportional war.
25. For a discussion see Nick Fotion and Bruno Coppieters, eds., *Moral Constraints on War: Principles and Cases* (New York: Rowman and Littlefield, 2008), 209-11. Interestingly, although European governments and media now almost reflexively call most Israeli air action disproportionate, they did not claim that almost identical tactics in Kosovo were disproportionate. This disparity not only reflects the fact that in Kosovo the air forces of European Union nations were (with the United States) doing the bombing, but also that the idea of proportionality had not yet come into vogue.
26. See Cordesman; Stephen D. Biddle and Jeffrey A. Friedman, *The 2006 Lebanon Campaign and the Future of Warfare: Implications for Army and Defense Policy* (Carlisle, Pa.: US Army War College, Strategic Studies Institute, 2008); and Matt M. Matthews, *We Were Caught Unprepared: The 2006 Hezbollah-Israeli War* (Fort Leavenworth, Kans.: Combat Studies Institute Press, 2008).
27. Matthews, 19-21.
28. *Ibid.*