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Title	Israeli Action in Jenin far from a Proportionate Response
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Publication Date	2002
Publication Information	Murphy, R. (2002, 2 May) 'Israeli Action in Jenin far from a Proportionate Response', 'The Irish Times'.
Publisher	The Irish Times
Item record	http://hdl.handle.net/10379/1853

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Israeli actions in Jenin far from a proportionate response

Murphy, R. (2002, 2 May) 'Israeli Action in Jenin far from a Proportionate Response', 'The Irish Times'.

Tom Cooney argued in Tuesday's Irish Times that the Israeli action at Jenin and by implication other parts of the West Bank was a "necessary and proportionate response to deal with terrorism".

His premise is that the action by the Israeli Defence Forces in the use of Apache helicopters, tanks and armoured personnel carriers was an appropriate response to a wave of suicide bombings and other attacks by Palestinian resistance groups against Israeli civilians. He also accuses the UN of being an accomplice to Palestinian terrorism.

These and other claims by him can only be described as absurd.

Operation Defensive Shield - as the recent military incursion was called - had the stated aim of dismantling the terrorist infrastructure in the Palestinian territories.

International human rights and humanitarian organisations on the ground have given us graphic accounts of the level of destruction and these are corroborated by press reports.

This is far greater in extent than a relatively small 100 metres square suggested by Mr Cooney. The targets for this destruction were the homes, workplaces, vital installations and infrastructure of the Palestinian population.

There are reports that civilians were not given an adequate opportunity to vacate the area prior to the Israeli assault on the refugee camp. There are also allegations that hundreds of Palestinians were killed, but international observers from Amnesty International and elsewhere have been more cautious in their assessments.

Despite enduring harassment and obstruction, they have sought to find out what happened. In so doing, they have consistently said that the numbers killed and injured have yet to be ascertained.

In spite of assertions to the contrary by Mr Cooney, the Israeli policy of continued settlement of lands occupied since the 1967 war is central to this conflict. After that war, when the combined Arab armies were intent on overrunning Israel, Israel seized the West Bank and east Jerusalem from Jordan and the Gaza Strip from Egypt.

Israel later instigated a programme of building settlements on what is often referred to as the occupied territories. Israel has no legal or other claim to these territories and its continued presence there is contrary to international law and in defiance of UN resolutions.

Jews may have lived in settlements on the West Bank since ancient times, but the scale of the expansion of these settlements has been a major contributing factor in the current intifada.

The Geneva Conventions of 1949 reflect the minimum guarantees that international humanitarian law provides during conflict. Israel is a party to all four Geneva Conventions, but it did not sign the two additional protocols of 1977.

Israel's refusal to accept that the Fourth Geneva Convention (Protecting Civilians) applies to the occupied territories and its administration of these territories, has been widely criticised by other states, including the US.

Furthermore, regardless of the issue of what state has a right to claim sovereignty over the West Bank, UN resolutions 242 and 338 are unequivocal in their demand for a complete Israeli withdrawal from all of the occupied territories.

One of the consequences of Israeli policy is that mechanisms within the Geneva Conventions for conducting inquiries, conciliation and the appointment of a protecting power have been excluded from consideration. This is a serious gap in the humanitarian law framework for the protection of the Palestinian population.

The UN proposal for a fact-finding mission to Jenin, which was to include three members of the Garda Síochána, was one way to overcome this obstacle. Unfortunately, Israel has decided not to co-operate with this inquiry, as it was not permitted to dictate its composition and the terms and conditions of the mission.

Claims by Mr Cooney that the ground was being prepared for a kangaroo court are patently false and reflect his own anti-UN bias.

The Israeli Defence Forces are conducting military operations in occupied areas whose population fall under the protection of the Fourth Geneva Convention. The Palestinians have no standing army (although a police force was permitted under the Oslo accords).

Despite this, the Israeli Defence Forces have conducted military operations in heavily populated civilian areas as if they were conducting hostilities against an opposing army. In this way the conduct of the operation has been contrary to a number of provisions of the Fourth Convention, most notably articles 16-23, which require parties to the conflict to ensure treatment of the sick and injured and not to hinder ambulances or other medical vehicles.

Collective punishment, especially against civilians, is expressly prohibited under Article 33 of the Fourth Convention. Human Rights Watch has documented a widespread pattern of Israeli destruction of civilian properties, including homes, shops, factories and agricultural land, which, independent observers say, exceeds any reasonable understanding of military necessity and instead represents a form of collective punishment.

Amnesty International has accused the Israeli Defence Forces of acting as though the main aim was to punish all Palestinians. Actions were taken which had no clear or obvious military necessity and there was a failure to abide by the fundamental principle of the laws of war, i.e. to distinguish between civilians and those taking an active part in hostilities.

There have been calls within Israel for senior and junior commanders of the Israeli Defence Forces to be held accountable for the behaviour of soldiers under their command; the Israeli newspaper Haaretz has called for "a vigorous and wide-scale investigation" into the vandalism and theft by Israeli soldiers which allegedly occurred outside of the course of the fighting itself.

It is not denied that anti-Semitism exists in Europe and elsewhere. Nonetheless, the dismissal of those who criticise Israeli actions as anti-Semitic is an over-simplification. The use of suicide bombers against Israel and its citizens must be condemned, but it does not give the government of Israel the right to take acts of reprisals. Israel also has obligations to respect and protect human rights under UN human rights treaties that it has ratified. In times of crises such obligations are at their most vulnerable and most important. International law is not an la carte menu for states or groups engaged in conflict.

Dr Ray Murphy is a law lecturer at the Irish Centre for Human Rights at NUI Galway. He served with the UN peacekeeping mission in Lebanon in 1981-82 and 1989