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Arbour Must Go

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The absurdity and counterproductive nature of current international law was proven once again by a bizarre statement issued on Wednesday by Louise Arbour, The UN's High Commissioner for Human Rights and a former justice of the Canadian Supreme Court. She threatened "personal criminal responsibility" against Israeli generals and political leaders -- "those in positions of command and control" -- for the military actions they are taking to protect innocent civilians from Hezbollah and Hamas rocket and missile attacks.

Her theory of prosecution is that the shelling of cities could "constitute a foreseeable and unacceptable targeting of civilians," presumably even when the actual targets are terrorists and their rocket launchers, and when the Israeli air force takes extraordinary steps to minimize civilian casualties. She also erroneously stated that international law prohibits "the bombardment of sites with alleged military significance, but resulting invariably in the killing of innocent civilians."

Arbour's knowledge of international law is as questionable as her understanding of morality. Virtually every democratic nation has been forced to bomb cities during wartime, especially when the enemy locates crucial military targets near population centres. Under Arbour's erroneous criteria for criminal prosecution, U.S. presidents Bush, Clinton, Nixon, Johnson, Eisenhower, Truman and Roosevelt, as well as British prime ministers Blair and Churchill, and numerous French, Russian, Canadian and other heads of state would be declared war criminals for causing the "foreseeable" deaths of civilians while bombing legitimate military targets. Moreover, terrorists would be encouraged to launch their missiles from cities, so as to induce democracies to violate international law by counter-attacking terrorists.

International law is not quite as silly and one-sidedly against democracies as Arbour makes it out to be. Military targets located in cities can be attacked so long as reasonable efforts are made to minimize civilian casualties. Indiscriminate carpet bombing of cities with no military targets is prohibited, except possibly in instances of belligerent reprisal for attacks on one's own cities. In fact, the entire system of nuclear deterrence that prevented the Cold War from turning into a nuclear conflagration was based on mutual threats of belligerent reprisals -- i.e. if the Soviet Union bombs New York, The United States will bomb Moscow.

Current international law fails to answer the following questions: What is a democracy supposed to do when a terrorist enemy -- sworn to its genocidal destruction -- launches anti-personal missiles designed to maximize civilian casualties, and launches them from civilian population centres? Are they supposed to simply do nothing and let the missiles rain down on their own cities? Are they supposed to send in ground troops, as Israel did in Jenin, with considerable loss of life on both sides? May they conduct air attacks targeting the missile launchers or the terrorists and their arms depots, even though some civilians will "foreseeably" be killed?

When terrorists use civilians as human shields, it is the terrorists who are criminally responsible for the

"foreseeable" deaths of the civilian shields. Arbour may have missed the criminal law class in which this issue was considered, but Canadian law -- like the law of all civilized nations -- holds the bank robber, not the policeman guilty of murder, when the robber takes a hostage and the policeman kills the hostage in an effort to stop the robber from shooting at innocent bystanders. The same should be true of international law.

Moreover, the entire question of who is a combatant is unclear in the context of terrorist groups that use "civilians" to hide their rockets and then use them as willing human shields.

International law, and those who administer it, must understand that the old rules -- written when uniformed armies fought other uniformed armies on a battlefield far away from cities -- are now being used as shields and swords by the terrorists, who cynically manipulate the protected status of "civilians."

Arbour will surely respond that she meant to include Hezbollah and Hamas leaders among those who should be subjected to criminal prosecution along with the Israelis. But her nominally neutral comments mask the fact that there is an enormous difference between terrorists who seek to maximize civilian casualties and democracies that seek to minimize them. Moreover, as Arbour knows full well, terrorist leaders cannot realistically be subjected to criminal prosecutions because they are underground, while democratic leaders live and travel openly.

Louise Arbour is part of the problem, not part of the solution. She should be replaced as High Commissioner for Human Rights before she does even more harm to the ability of democracies to combat terrorism within the rule of law.

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