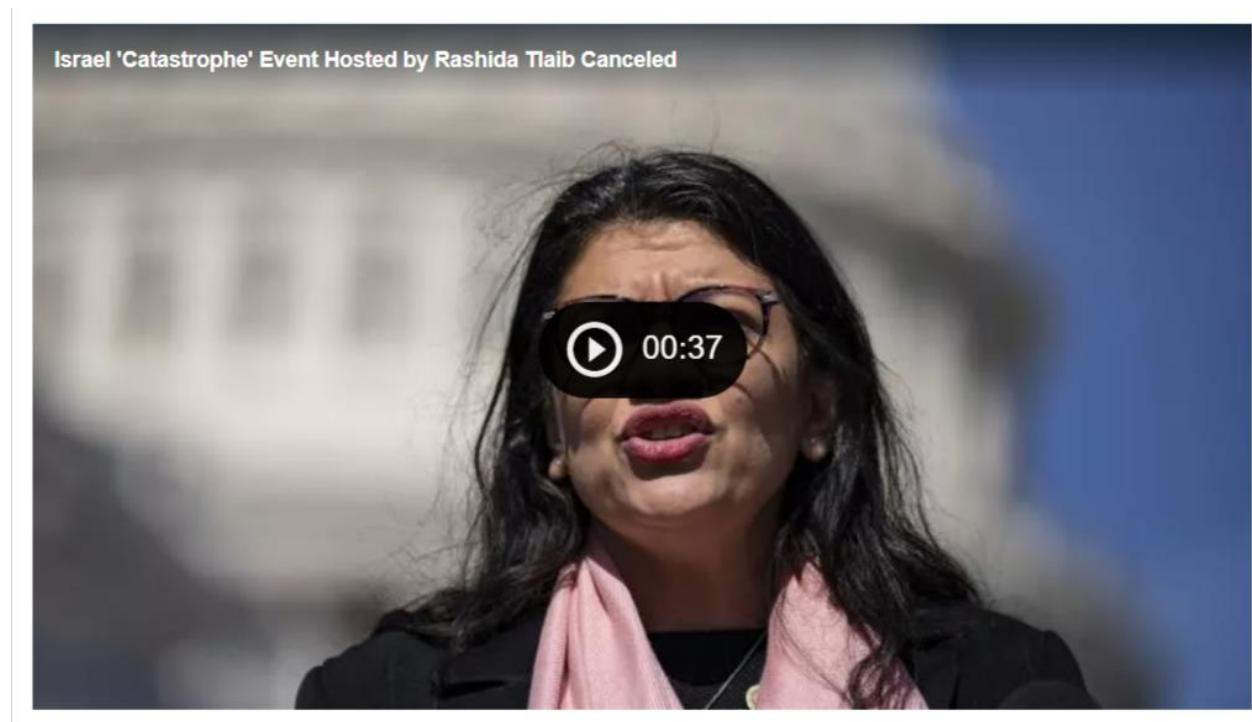


**OPINION**

# Here Are 800 More Reasons to Question the United Nations | Opinion

**KENNETH L. MARCUS**, CHAIRMAN, THE LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW ON 5/12/23



In just two days this week, Palestinian militants have [fired](#) nearly [800](#) rockets at Israel, some of which have [hit](#) populated areas. The Israeli Defense Force has [responded](#) with airstrikes against rocket-launching squads and other military sites operated by Islamic Jihad, as well as [killing](#) at least three Islamic Jihad commanders and their families.

A senior [United Nations](#) official, Tor Wennesland, immediately condemned this as "unacceptable." Wennesland could not have been more right. The firing of 800 rockets at populated areas, with no apparent effort to avoid civilian targets, could properly be categorized as a war crime under international law.

The problem is that Mr. Wennesland did not have any of those 800 rockets in mind, not even the ones that hit civilian areas.

Mr. Wennesland overlooked all 800 rockets—quite a large number to overlook—and focused his condemnation only on the people at whom the rockets were fired. In other words, he condemned only Israelis, without bothering to provide even a semblance of balance. And he did so, not as a Palestinian activist, but in his capacity as Special Coordinator for the Middle East Peace Process.



Birds fly over Israel's Iron Dome batteries in the southern city of Sderot on May 12.  
AHMAD GHARABLI/AFP VIA GETTY IMAGES

Among supporters of Israel, Wennesland's statement comes as no surprise. Wennesland had previously stoked [controversy](#) by expressing sympathy for a terrorist who attacked an Israeli police officer and stabbed him.

To be fair, there are some who will support Wennesland's position. After all, Israel's airstrikes have killed several people in Gaza. By contrast, the militants'

rockets have so far reportedly [killed](#) only a single Israeli. Some people will [argue](#), therefore, that Israel's response has been "disproportionate." And not just *some* people. Francesca Albanese, a senior United Nations colleague of Wennesland's, has made precisely this claim. Here is Albanese's [assessment](#): "Israel's last night operation in Gaza, violating the August truce, killed 14, incl. 4 children and 3 PIJ operatives. Int'l law allows force only in response to armed attacks. Bombing residential buildings at night appears disproportionate and indiscriminate."

Indeed, Albanese went further, claiming that Israel's "disproportionate" response is a "possible war crime." Albanese's words carry weight, since she is the United Nation's Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

And yet, Albanese could not be more wrong. Albanese has long been a [controversial](#) figure herself. Earlier this year, 18 members of the U.S. House of Representatives [urged](#) the United Nations to fire her, based on her perceived antisemitism and "strong bias against Israel." The members of [Congress](#) also criticized Albanese's persistent failure to condemn deadly terrorist attacks against Israel. And that was before this week's development. But that's not all that's wrong with Albanese's claim.

The problem with Albanese's assessment is not merely that she ignores the 800 rockets to which Israel was responding. Nor is it just that she ignores the Palestinian Islamic Jihad's history of violence (including the reported participation of three killed Islamic Jihad commanders in [plans](#) to kill Israelis), or the fact that the United States [classifies](#) it as a terrorist organization. It is rather that she ignores international humanitarian law.

In international humanitarian law, the principle of proportionality bans any attack which will foreseeably cause incidental civilian injury, damage, or death which would be excessive in relation to the anticipated military advantage. As the Louis D. Brandeis Center explained in a recent [white paper](#) on "International Humanitarian Law in Asymmetric Warfare," this well-established principle doesn't ban all military actions resulting in the incidental loss of civilian life, often referred to as "collateral damage." In necessary military responses, collateral damage, while tragic, is often unavoidable. Moreover, under international law, collateral damage violates the proportionality principle only if it is excessive in relation to the anticipated military advantage.

In this case, preliminary reports indicate that Israel's military objectives are concrete, direct, and substantial. The Israeli Defense Force

is reportedly targeting rocket-launching infrastructure across the Gaza strip, as well as Islamic Jihad members who have been preparing rockets to be launched. These are legitimate military targets, and the anticipated military advantage could not be greater: the IDF, if these reports are true, is foiling attacks on Israeli civilian populations.

By contrast, initial reports suggest that it is, in fact, the Palestinian Islamic Jihad that may be engaged in war crimes. The Islamic Jihad appears to be indiscriminately firing its rockets at civilian populations. This has been a longstanding practice among Gazan militants. Such attacks terrorize civilians without serving any legitimate military objective. Civilians, it should be emphasized, enjoy absolute protection from being targeted. It is Islamic Jihad's rocket attack that would be considered "disproportionate" under international law, to the extent that it lacks a clear and direct military objective.

Some reports suggest that Israel and Islamic Jihad may (or may not) be entering into a truce. Regardless, there is no truce in sight between Israel and its United Nations antagonists. At this moment of anguish, it serves no one for the United Nations, of all institutions, to fan the flames of violence by issuing one-sided condemnations. It is worse still when senior officials distort international law to make claims that are diametrically opposed to the truth.