GREG ROSE & DAVID KNOLL

In Gaza tragedy, Hamas terrorists are the only war criminals

By **GREG ROSE & DAVID KNOLL**
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It is impossible not to feel sympathy and compassion in response to the images and reports coming out of Gaza. They are heartbreaking and we must recognise the pain and anguish of those who have been injured and lost loved ones.

However, a great deal of misinformation has been spread regarding both the causes of that suffering and the legality of the actions leading to it. In particular, there have been many ill-informed claims that Israel is committing war crimes and is the party responsible for everything that is happening. Not only are those allegations false, their perpetuation could have harmful implications beyond the current conflict.

In the words of Geoffrey Corn, at the Centre for Military Law and Policy at Texas Tech University School of Law: "When every attack is a war crime, when every measure taken to weaken Hamas is a war crime, when nothing Israel does is

considered consistent with its rights and obligations under international law, the very notion of war crime loses meaning."

On October 7, Hamas engaged in a rampage, murdering more than 1200 innocent civilians in Israel – including babies and young children, elderly people, Jews and non-Jews alike – as well as extensive torture, mutilation and sexual violence, and took approximately 240 people hostage, most of whom were civilians. Such attacks, directed purposefully against civilians, are war crimes.

Under the laws of war, use of civilians by Hamas or captured enemy personnel – and in this case civilian hostages of many nationalities – to shield a military objective from attack is forbidden. The prohibition is codified in Article 51(7) of the Protocol Additional to the Geneva Conventions to which the "state of Palestine" is a signatory.

As emeritus Harvard Law professor Alan Dershowitz wrote back in 2009: "When a murderer takes a hostage and fires from behind his human shield, and a policeman, in an effort to stop the shooting, accidentally kills the hostage, the law of every country holds the hostage-taker guilty of murder – even though the policeman fired the fatal shot. The same is true of the law of war."

Israel has exercised its right to defend itself to ensure Hamas does not repeat the atrocities it has promised to recommit. Israel has been explicit in adhering to the laws of armed conflict, requiring her to distinguish military targets from civilian objects, to implement precautions and to ensure that damage caused is not excessive or disproportional to the military necessity.

For Israel's actions to be proportional, they must include the prior assessment of collateral damage and the prior implementation of measures to minimise such damage. Israel has been doing just that. For example, on November 9, the IDF released a video of its officers aborting an airstrike on a terrorist target after spotting Palestinian children playing nearby. Israel routinely gives warnings to civilians of an impending strike to allow them to evacuate, despite the obvious benefit this gives Israel's adversaries.

It would be wrong to assess adherence to the principle of proportionality based solely on pictures or from social media, or from the number of deaths stated by the Hamas-run Gaza Department of Health. US President Joe Biden, among others, has expressed strong scepticism concerning Hamas-issued casualty numbers.

Another mistaken allegation relates to the targeting of hospitals. While hospitals are not generally permitted to be targets, Article 19 of Geneva Convention I states a hospital loses its protected status if it is being used to commit acts harmful to the enemy after appropriate warnings have been given.

There is hard evidence Hamas had a militant commandcentre beneath al-Shifa hospital in Gaza. The IDF has released videos of a complex of airconditioned tunnels that were drawing power and water from the hospital, as well as weapons caches and military equipment found in rooms inside the hospital itself. CCTV footage from the hospital shows an apparently healthy hostage, who was kidnapped on October 7, being frogmarched through the hallways. The bodies of two other hostages, who had been murdered while in captivity, were found nearby.

Another terrorist tunnel was found near Rantisi Hospital, and arms were found in the hospital basement from which Hamas operatives had fled.

This is the ISIL/ISIS model. Back in 2016, Mosul Hospital was a base of operations and command and control headquarters. The US-led coalition targeted the hospital with airstrikes. In contrast, Israel has conducted careful military operations in the vicinity of al-Shifa in order to avoid damage to it or injury to those inside.

Israel was quickly but wrongly blamed for bombing the Al-Ahli Arab Hospital on October 10, with reports attributing some 500 deaths to Israeli action. This was wrong because the damage was to an adjacent carpark, not the hospital, the number of dead was heavily inflated and the objective evidence points to the cause being an Islamic Jihad rocket misfiring and causing the damage.

To point out the above matters is not to diminish the suffering of those affected by the conflict. We mourn the loss of every innocent life. We pray that the death and violence ends soon, and that the families who have been torn apart by the atrocities of October 7 and by the ensuing war are speedily reunited.

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