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No Good Deed Goes Unpunished

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Israel's efforts to limit collateral damage and civilian casualties go unrecognized by NGOs and human rights groups.

INTERNATIONAL HUMANITARIAN LAW WAS CREATED TO minimize the damage to civilians caused by warfare. Recent statements against Israel by the United Nations and non-governmental organizations (NGOs) like Amnesty International, however, indicate that these bodies have forgotten this goal. Amazingly, they criticized Israel for warning residents of northern Gaza to flee the area before it intensified its air raids and launched a ground invasion. This is despite the fact that Israel gave away its strategic element of surprise, provided Gazans with maps of safe corridors, and innovatively utilized cellular data to monitor the evacuation's progress. Unfortunately, these

condemnations continued a disturbing trend in which these international bodies criticize Israeli tactics to get civilians to flee dangerous areas.

To understand how deep the problem runs, it's critical to remember that contemporary military ethics are built around one central principle: keep non-combatants out of warfare as much as possible. The laws of fighting justly in war (*jus in bello*) dictate taking three major steps toward this goal: Forewarn the civilian population to flee the danger zone, discriminate targeting between combatants and non-combatants, and avoid attacking when the collateral civilian damage will be disproportionate to the potential military advantage. These three humanitarian measures—forewarning, discrimination, and proportionality—have been repeatedly utilized by Israel, in spite of the fact that it is responding to an inhumane, unprovoked attack by Hamas on October 7 in which the terrorist group killed 1,200 and took another 240 as captives.

These measures are incredibly difficult when Hamas purposely places its combatants within the civilian population. The terrorist group continually launches indiscriminate rocket attacks at Israeli cities within urban Gazan settings. Mosques, hospitals, homes, and schools are used for cover to make it more difficult for Israeli warplanes to strike back and only hit the military targets. In an incredible media interview, a member of Hamas' political bureau admitted that it had built underground tunnels to protect its fighters while expecting the UN and Israel to protect Palestinian citizens on the basis of the Geneva Conventions. In fifteen seconds, the Hamas leader asserted what Israelis have long known: Hamas uses intentional law to shield it from attack. Lawfare at its worst.

In response to Israel's leaflets and announcements of an imminent invasion, many Gazans fled the northern area. Others, however, have not left, in part because Hamas has strongly discouraged residents from leaving. At times, they've even shot at people trying to flee. Hamas prefers having more human shields in the battle zone. Indeed, in one of the earliest battles after the ground invasion began on October 27, one hundred women and children were pushed forward toward Israeli soldiers to prevent them from shooting. In the interim, there have clearly been many non-combatants tragically killed, unintentionally, by collateral

damage. Many Gazans saved themselves by fleeing southward, but more could have been spared had Hamas let them flee. Israel, in short, gives away military advantages to protect Palestinian civilians; Hamas puts its own civilians in danger knowing their deaths will strategically help public opinion of their cause.

Here we return to the disturbing statements of the UN and its NGO partners. Israel began issuing its warnings on October 12, cautioning that the ground invasion was imminent even as it ultimately waited almost two weeks before the actual ground invasions began. United Nations officials called this warning a “crime against humanity.” The International Committee of the Red Cross condemned Israel as violating international humanitarian law since there was no way for everyone to escape the warzone. Displacement is not legitimate. Amnesty International went further to assert that the IDF leaflets and statements are not considered “effective warning” given the ongoing war throughout the Gaza Strip.

This critique of Israel’s forewarning attempts is a distortion of international law, and it’s critical to understand why. The Additional Protocols I (AP/1) to the Geneva Conventions, initially promulgated in 1977, declare the following requirement:

Effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit. (Article 57(2)c).

The notion of “effective warning” helps minimize collateral damage by separating non-combatants from fighters (discrimination) and preventing disproportionate deaths of non-combatants (proportionality). Note, however, that forewarning is not required if “circumstances do not permit.” It’s understood that such measures are not always feasible. It’s further understood that “effective warning” will not always actually succeed in clearing the area of non-combatants. After all, the attacking party doesn’t have control over the area; the defending party (in this case, Hamas) controls the scene.

What, exactly, did these groups propose Israel do to minimize enemy civilian casualties while fighting a ruthless enemy? On that question, these groups remained tellingly silent. As the prominent legalist Michael Schmitt noted, there are two options here: 1) an urban assault into an area full of civilians or 2) a civilian evacuation into a place that is not fully prepared to accommodate them. The latter is clearly preferable. One would have thought that these human rights groups would have been aiding any evacuation while condemning Hamas for not doing anything to remove non-combatants from the area. After all, international law calls for all parties, including those under attack, to “endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives, and avoid locating military objectives within or near densely populated areas” (AP/1, Article 58). Hamas, in the eyes of these human rights groups, doesn't seem to bear any responsibility for maximizing the bloodshed of its own people.

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The hypocrisy of these human rights bodies continues a long pattern of not recognizing Israeli attempts to warn non-combatants to flee. In the past, when Israel would launch precision-bombing attacks against residential buildings that were being used as cover for military operations, it would call Gazans' personal cell phones and warn, in Arabic, "This is the Israeli military. We need to bomb your home and we are making every effort to minimize casualties. Please make sure that no one is nearby since in five minutes we will attack." Such personalized calls frequently got the residents to leave. Yet some residents still didn't leave.

So in the 2008 Operation Cast Lead against Hamas, the IDF innovated the so-called "roof knocking" technique. The Air Force would drop small, empty missiles over the buildings. Sometimes they would explode above the roof; other times, they blew up upon landing but caused minimal physical damage. Either way, a horrific boom would fill the air. Terrified residents would now flee the building. After waiting a few minutes and ensuring the maximum evacuation possible, the Air Force would then drop a more powerful missile. The target was destroyed, but non-combatant casualties were limited. In many cases, in fact, these warnings allowed Hamas combatants to flee, thereby limiting the strategic accomplishment of destroying military infrastructure.

Following the repeated use of this tactic in subsequent operations, US military chief Martin Dempsey asserted that Israel went to "extraordinary lengths to limit collateral damage and civilian casualties," despite their enemies not being held by that standard. Subsequently, the US Army employed the roof-knocking strategy in its own asymmetric warfare in Iraq. These types of precision warnings, of course, go well beyond the requirement of "effective" warnings. In fact, some members of the 2017 International Law Association (ILA) Study Group on the Conduct of Hostilities worried that Israeli methods were setting an "unrealistically high bar on when and how to provide warnings."

The praise, however, was not shared by many NGOs and human rights groups. They asserted that “roof knocking” actually amounts to an illegal attack! After all, it is an “act of violence” against the adversary and thus prohibited to utilize on a civilian object. The critique, of course, ignores the point that these forceful warnings are meant to save civilians’ lives. Undoubtedly, such “knocks” are scary to the apartment residents and will likely cause them to panic. But that’s precisely the point— to save their lives. Once again, what would these human rights groups prefer—that the residents stay in the buildings and die?

It would seem, however, that these human rights groups aren’t interested in the residents leaving because they don’t want Israel attacking in the first place. They are creating an unreasonable—and inaccurate—standard of international law that wants to prevent Israeli self-defense. Their claim of “war crimes,” tragically, becomes a weapon in the court of public opinion used to protect Israel’s vicious enemies. The groups that are meant to help save non-combatants are undermining their alleged humanitarian mission. In this respect, they are complicit accomplices to Hamas in turning international law into a shield against terror.

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