

Law professor: Hamas is a war crimes 'case study'

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Haviv Rettig Gur, THE JERUSALEM POST

The fighting tactics and ideology of Hamas are a "case study par excellence" of a systematic violation of international humanitarian law, according to a leading expert in international law who visited the Gaza periphery region on Tuesday.

There is "almost no comparable example" anywhere in today's world of a group that so systematically violates international agreements related to armed conflict, Irwin Cotler - a former Canadian justice minister, MP and law professor at Montreal's McGill University - told *The Jerusalem Post* on Tuesday.

Hamas is committing at least six violations of international law, Cotler explained.

"First, the deliberate targeting of civilians is in and of itself a war crime," he noted, referring to the Hamas rockets fired at southern towns for eight years.

"A second war crime is when Hamas attacks [from within] civilian areas and civilian structures, whether it be an apartment building, a mosque or a hospital, in order to be immune from a response from Israel," he went on. "Civilians are protected persons, and civilian areas are protected areas. Any use of a civilian infrastructure to launch bombs is itself a war crime."

That Hamas bears legal responsibility for the harm to civilians in areas from which it fires is enshrined throughout international law, he said: "In the general principles of customs binding on nations, in the specific international law of armed conflict [also called] international humanitarian law, in the Fourth Geneva Convention, in decisions of the International Court of Justice and the international criminal tribunals for the former Yugoslavia and Rwanda - it's all set out there."

Third, he explained, "the misuse and abuse of humanitarian symbols for purposes of launching attacks is called the perfidy principle. For example, using an ambulance to transport fighters or weapons or disguising oneself as a doctor in a hospital, or using a UN logo or flag, are war crimes."

The fourth violation, "of which little has been made, is the prohibition in the Fourth Geneva Convention and international jurisprudence against the direct and public incitement to genocide. The Hamas covenant itself is a standing incitement to genocide. [Similarly,] just before this fighting started, I saw Hamas leaders on television referring to Israel and Jews as the sons of apes and pigs."

The fifth crime relates to the scope of the attack on civilians, which upgrades the violation to a crime against humanity. According to Cotler, "when you deliberately hit civilians not infrequently but in a systematic, widespread attack, that's defined in the treaty of the International Criminal Court and international humanitarian law as a crime against humanity."

The final war crime for which Hamas is responsible is the recruitment of children into armed conflict.

"Hamas is a case study of each of these six categories of war crime," said Cotler. Unfortunately, the international community "has been minimizing the manner in which Hamas has engaged in consistent mass-violation of international humanitarian law."

Cotler said specifically delineating Hamas's violations was important in that it would place the onus of responsibility for the civilian tragedy in Gaza on the proper party.

"The consequences [of the fighting] are tragic in human terms," he said. "Clearly what is happening in Gaza is a tragedy. But there has to be moral and legal clarity as to responsibility. When Israel responds and civilians are killed because Israel is targeting an area from which rockets were launched, then it is Hamas which bears responsibility for the deaths, and not Israel, according to international law."

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