

The pursuit of justice

Is there any truth in allegations that Israel has committed war crimes?

THE MP for Fremantle, Melissa Parke, who has worked in Gaza, has expressed her concern about Israel's bombing of Gaza. *The Australian* newspaper's headline (14/07) says: "Labor MP Melissa Parke suggests Israel is committing a war crime in Gaza". Is there anything to the suggestion?

To Parke's credit she condemns Hamas's rocket fire in the following quoted language: "The rockets from Gaza are not in any way justified and, insofar as they threaten and harm civilians, are illegal under international law."

From January 2013 through June of this year, there was an average of over 13 rockets fired every month from Gaza aimed at Israeli towns and villages. Israel warned Hamas to desist, more than once. The Hamas response? To up the intensity and frequency of the strikes, to fire at major civilian centres including Tel Aviv and Jerusalem.

Parke acknowledges that Israel uses pinpoint technologies to hit only terrorist infrastructure, but uses that fact to allege that a centre for disabled people was targeted. This may have come from the *Guardian* newspaper site whose related headline read as follows: "International pressure to curb civilian casualties is mounting as a charitable centre in Gaza is destroyed in an Israeli attack targeting a suspected militant". If the headline is accurate, Israel was targeting an enemy commander, and civilians were horribly and regrettably killed and wounded. Such casualties are avoidable and they are avoidable by Hamas. Hamas could stop hiding its fighters and weapons among women and children, in hospitals and schools, and it would appear, in a centre for disabled people. While every armed conflict entails human suffering, it does not follow that legal (or moral) responsibility for the suffering necessarily lies with the party that inflicts it.

As reported by *Newsweek*, Sami Abu Zuhri, a Hamas spokesperson, on Al Aqsa TV on July 9, encouraged civilians to stand on the roofs of houses targeted by Israel to act as human shields.

Indiscriminately firing rockets into Israel that are "not directed at a specific military target", with the intention of harming the civilian population is a clear breach of international law. The positioning of the rockets and rocket launchers in the midst of a civilian population is also unacceptable, and using civilians as a human shield can be a war crime. International law does not allow civilians to be "used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to

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shield, favour or impede military operations."

In contrast, Israel warns civilians to leave before bombing a target so as to avoid civilian casualties to the extent possible, in compliance with international law. And, not only does Israel have the right of self-defence, Israel also has a right of hot pursuit so as to invade and disarm the attacks.

Given however that many of the casualties in Gaza are civilians, there is a possibility that Israel may have breached the rules of war, but at this stage there is insufficient evidence available.

Further, a breach of the rules of war is not the same as suggesting that the breach constitutes a war crime.

The International Criminal Court says relevantly that "War crimes" include grave breaches of the Geneva Conventions such as "wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly", and other serious violations of the laws and customs applicable in international armed conflict ... when they are committed as part of a plan or policy or on a large scale."

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As far as we know today, Israel's actions are a legitimate pursuit of terrorists, taken in self-defence. International law imposes a requirement of proportionality on the use of force in self-defence. But the law does not require that the extent of the force used be equivalent in some sense to the extent of the force used in the initial attack, or that the number of civilian or other casualties on each side must be about equal.

According to Robert Ago, when he was president of the International Court of Justice: "What matters in this respect is the result to be achieved by the 'defensive' action, and not the forms, substance and strength of the action itself"

All in all, pursuit of terrorists is a necessary and legally permitted response to terrorism, but it is not a solution to the need for peace.

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