

A Tragic Mistake? Yes. A War Crime? No

written by Arsen Ostrovsky | 22.04.2025

On March 23, the Israel Defense Forces made a tragic error in Gaza, resulting in the deaths of nine humanitarian aid workers, along with six Hamas terrorists who were embedded among them. An investigation into the incident was immediately undertaken, and officers found to have been responsible were disciplined soon after.

But while all war is a tragedy, not all tragedies are war crimes.

What happened that night was an operational error in a combat zone—not a war crime. And the investigation that resulted in that conclusion wasn't reached in a vacuum. It came after a comprehensive, independent fact-finding process led by senior experts outside the chain of command, reviewed by the chief of the General Staff, and subject to further legal scrutiny.

Outrage—along with misleading or outright false images—has overtaken social media. A global mob mentality has formed. Fortunately, the manipulations of social media are not a substitute for international law. Calling something a war crime doesn't make it so. War crimes require specific evidence of intent—not viral videos, emotional overlays, or instant judgment by influencers or pundits acting as judge and jury.

International humanitarian law clearly defines war crimes as intentionally directing attacks against personnel, installations, material, units, or vehicles involved in humanitarian assistance, provided they retain protected civilian status.

In other words, for an act to constitute a war crime, there must be intent to commit the violation—an element entirely absent in this case.

The IDF's internal investigation concluded that the killings resulted from a series of operational errors and professional failures. IDF elements were operating in a "hostile and dangerous combat zone" and believed there to be a "tangible threat." Soldiers misidentified the convoy of vehicles, assessing that they were being used

by Hamas insurgents—a tactic the group has systematically employed since Oct. 7, 2023.

Hamas has made a practice of blurring the lines between combatant and civilian, systematically exploiting ambulances, hospitals, and humanitarian symbols for military purposes. This tactic forces troops into impossible split-second decisions under fire—precisely the kind of dilemma that international law accounts for, but online critics ignore.

International humanitarian law also recognizes that tragic mistakes can happen during active combat, especially when insurgents like Hamas use protected facilities and vehicles to launch or shield attacks. Such conduct undermines the protections that civilians and humanitarian actors are entitled to.

No army—American, British, or Israeli—is immune to errors in war. What matters is what follows: transparency, investigation, disciplinary action, and institutional learning. That is the measure of a professional military in a democratic society.

In the IDF incident, surveillance indicated that five vehicles approached rapidly and stopped near IDF troops, with passengers quickly disembarking. The deputy battalion commander assessed the situation as a credible Hamas threat and ordered fire. Though that judgment proved incorrect, the belief was reasonable under the circumstances, including poor nighttime visibility, and which only underscored that the IDF complied with the rule of distinction under law of armed conflict.

The examination into the incident was conducted by the IDF General Staff Fact Finding Mechanism, a professional team outside the operational chain of command. Their findings were presented to the chief of the General Staff, Lieutenant General Eyal Zamir, and included operational breaches, failures to follow orders, and reporting deficiencies. As a result, the deputy commander of the Golani Brigade was dismissed, and the commander of the 14th Brigade was severely reprimanded. The case is also being reviewed by the IDF Military Advocate General's Office for potential legal proceedings.

The IDF expressed deep regret for the civilian harm and emphasized that the investigation is part of an ongoing commitment to learn from operational failures and reduce the risk of recurrence.

In short, the IDF acted exactly as a military in a democracy should: it investigated, acknowledged fault, and held individuals accountable.

There must also be a clear distinction between errors made in the course of legitimate military operations and intentionally directing attacks against civilians, which is Hamas' standard practice and a blatant war crime.

Israel mourns every innocent life lost. Hamas counts every innocent death as a victory. That is not just a moral difference—it is the difference between law and lawlessness, between a tragedy and a crime.

The article was written by Arsen Ostrovsky in collaboration with John Spencer, and Brian Cox.

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