**‘It is time to change anachronistic laws of war,’ says Israeli counter-terrorism expert**

By: Yaakov Lappin

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(March 16, 2021 / JNS) The decision by the International Criminal Court (ICC) in The Hague to launch an investigation into Israeli actions warrants an urgent response that should include a push to reform the existing laws of war, a leading counter-terrorism expert told JNS.

Professor Boaz Ganor, founder and executive director of the International Institute for Counter-Terrorism in Herzliya, said, “The response to this dangerous step by the court is to urgently change the anachronistic laws of war and to adjust them to the challenges of war in the face of hybrid terror organizations.”

Ganor defined hybrid terror organizations as those entities that control territories and populations, such as Hamas in Gaza, Hezbollah and Lebanon, and until 2019, ISIS in Syria and Iraq. “They embed themselves in civilian populations and use civilians, even children, as living shields,” he said.

Terror organizations are on an evolutionary path, able to adapt themselves and to cynically exploit “every opportunity they encounter,” he continued. This means that “enlightened states must unite, through professional experts, jurists and others to formulate fair laws of war that will allow states to defend themselves against these terror organizations while maintaining a maximum protection of the lives of citizens.”

The new laws of war should “place the blame on harm to civilians first and foremost on those who use them cynically as living shields,” he argued.

Part of that adaptation involves taking advantage of the constraints placed on liberal democracies by humanitarian international law—particularly, the obligation by states to avoid harming civilians in line with the principles of discernment and proportionality, according to Ganor.

“In order to challenge these states, modern terror organizations, especially hybrid organizations, place weapons storehouses and rocket launchers in underground sites underneath residential homes and under-protected facilities like hospitals, medical clinics, schools and others,” he said. “These organizations do not see themselves as being obligated to humanitarian international law, and they use civilian hiding places to conduct random attacks on civilian areas and facilities in the territory of an enemy state. From this perspective, the states dealing with such terrorists find themselves being Gulliver, with their hands and legs bound by morality and by modern combat principles, fighting dwarfs that attack without pause and in violation of every legal or moral principle.”

‘Our enemies are acting in an immoral manner’

As the only liberal democratic state in the Middle East, Israel finds itself in the middle of this trap, but the Israel Defense Forces has developed an array of means to strike the balance between its obligation to protect Israeli civilians from harm and its commitments to act within the framework of international law.

Ganor outlined those measures as including issuing alerts to civilians in combat zones, including leafleting, placing calls, and sending warning text messages, as well as the “knock-on-the-roof” measure involving the dropping of an empty munition on rooftops, in order to allow civilians the opportunity to evacuate before an airstrike or artillery strike take place.

“The nature of large-scale armed conflict in crowded civilian areas means that mistakes occur, but the IDF always investigates these errors, and where necessary, places soldiers or officers who were negligent on trial,” said Ganor.

“Despite all of the above, the ICC in The Hague decided that it would be right to investigate the IDF’s activities in Gaza. Out of all of the militaries in the Middle East who are in combat situations, such as the Syrian, Iraqi, Turkish or Lebanese militaries, or the various militaries in Africa, and even Western militaries that have fought in Afghanistan, Libya, Iraq and other areas, the ICC hose to investigate the IDF. This decision teaches more about the ICC’s bias, its double-standard policy, and, more than anything, the lack of relevancy of this court,” he stated.

“The problem is not that of Israel, but of the entire enlightened world,” continued Ganor. “The ICC’s decision has created a precedented that will in future prevent every democratic sovereign country from protecting itself against terror organizations that will act to defend themselves against their terrorist enemies.”

Last week, Defense Minister Benny Gantz described the decision by outgoing ICC prosecutor Fatou Bensouda as “a prize to terrorism and to terrorist organizations. The Palestinians must internalize—the conflict between us will be resolved only through negotiations in Jerusalem and Ramallah. No court will help, even in The Hague.”

Gantz added that “our enemies are acting in an immoral manner that endangers their residents—Hamas and Hezbollah hide missiles in the basements and yards of homes and use the civilians of Gaza and Lebanon as human shields. While our enemies run over human rights and while in the entire world terrible crimes are committed, the ICC prosecutor in The Hague decided to investigate Israel.”

Israel has strong independent investigation and judicial systems, said Gantz, “and one of the highest moral standards in the world … we will continue to fight to safeguard the citizens of Israel wherever necessary, and at the same time, we will fight the legal and political battle against this scandalous, bad decision.”

Gantz said the state would provide full backing to the IDF’s commanders and officers, who will “continue to fulfill their missions with dedication and morality.”