

INTERNATIONAL HUMANITARIAN LAW ON FORCED DISPLACEMENT AND HUMAN SHIELDS

Diksha *

ABSTRACT

Rule 1 of the International Humanitarian Law Database states that the parties to the conflict shall always distinguish between the civilian population and combatants, as well as between civilian objects and military objectives, and shall accordingly direct their operations only against military objectives to ensure respect for and protection of the civilian population and civilian objects.¹ Rule 6 of the International Humanitarian Law Database states that unless and until they actively participate in hostilities, civilians are shielded from harm.² Article 57(2)(a)(iii) of Additional Protocol I, lays out the obligation to take all reasonable steps to determine whether the attack may be expected to inflict excessive incidental damage.³ The primary source of these regulations is the 1949 Geneva Conventions' Additional Protocol I (API), which deals with international armed conflicts (IACs).⁴ The Fourth Geneva Convention states that the transfer or deportation of people is forbidden.⁵ According to the Fourth Geneva Convention, an occupying power conducting an evacuation "must ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety, and nutrition, and that members of the same family are not separated."

Keywords: International Humanitarian Law, Human Shield, Forced Displacement.

*BA LLB, SECOND YEAR, SYMBIOSIS LAW SCHOOL, NOIDA.

¹ 'International Humanitarian Law Databases' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>> accessed 24 November 2023

² 'International Humanitarian Law Databases' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>> accessed 24 November 2023

³ Additional Protocol I, 1977 Article 57(2)(a)(iii) (adopted by 90 votes in favour, none against and 4 abstentions) (cited in Vol. II, Ch. 5, § 325)

⁴ Beth Van Schaack, 'Human Shields in International Humanitarian Law: a guide to the legal framework' (Just Security, 7 December 2016) <<https://www.justsecurity.org/35263/human-shields-ihl-legal-framework/>> accessed on 25 November 2023

⁵ Fourth Geneva Convention 1949, Article 49, first paragraph

INTRODUCTION

The number of civilian deaths in the ongoing Israel-Hamas conflict has increased, raising concerns about what is permitted by international law when it comes to conducting warfare.⁶ For a long time, Israel repeatedly accused Hamas of using people as ‘human shields’. Human shielding is forbidden by humanitarian law and is regarded as a war crime.⁷ Even amid grief and rage over the continuing bloodshed, it is nevertheless beneficial to keep in mind that the fundamentals of humanitarian law are straightforward. People in civilian roles need to be safeguarded.⁸

Thousands of inhabitants in northern Gaza were forced to leave by Israel within a day, ostensibly in preparation for a planned ground attack.⁹ According to Jan Egeland, secretary general of the Norwegian Refugee Council, “the Israeli military demand that 1.2 million civilians in northern Gaza relocate to its south within 24 hours, absent any guarantees of safety or return, would amount to the war crime of forcible transfer.”¹⁰

According to Avichai Mandelblit, a former Israeli military attorney general and chief military advocate general, “It would not always be lawful for Israel to attack civilian targets, even if Hamas uses civilian homes for military purposes or hides fighters or weapons in tunnels beneath civilian buildings”.

HUMAN SHIELD

The use of civilians or their voluntary or involuntary movement as a means of preventing attacks on military objectives or to support, facilitate, or obstruct military operations is known as "human shields" and is outlawed by International humanitarian law (IHL). Until and until

⁶ Amanda Taub, ‘What the Laws of War says about forced displacement and Human Shields’ (*New York Times*, 19 October 2023) <<https://www.nytimes.com/2023/10/19/world/europe/interpreter-laws-human-shields-forced-displacement.html>> accessed 25 November 2023

⁷ ‘What the Laws of War Say About Forced Displacement and ‘Human Shields’ (*Dnyuz*, 19 October 2023) <<https://dnyuz.com/2023/10/19/what-the-laws-of-war-say-about-forced-displacement-and-human-shields/>> accessed 25 November 2023

⁸ Amanda Taub, ‘What the Laws of War says about forced displacement and Human Shields’ (*New York Times*, 19 October 2023) <<https://www.nytimes.com/2023/10/19/world/europe/interpreter-laws-human-shields-forced-displacement.html>> accessed 25 November 2023

⁹ ‘What the Laws of War Say About Forced Displacement and ‘Human Shields’ (*Dnyuz*, 19 October 2023) <<https://dnyuz.com/2023/10/19/what-the-laws-of-war-say-about-forced-displacement-and-human-shields/>> accessed 25 November 2023

¹⁰ ‘Israeli ultimatum to Gaza must be reversed’ (*Norwegian Refugee Council*, 13 October 2023) <<https://www.nrc.no/news/2023/october/xxxx/>> accessed 25 November 2023

they actively participate in hostilities, human shields are always safe from attack.¹¹ The law is clear, but the discursive use of human shields can distort reality.¹² It is illegal for them to be the targets of violence or to suffer disproportionately from it. And even in cases where one side has broken these duties, they nevertheless, apply to all combatants.¹³

However, experts say that even in cases where one side purposefully puts civilians in danger in this way for example, by making them stay close to military targets or by putting military targets inside or close to residential areas those who are not combatants are still entitled to full protections under humanitarian law.¹⁴ Thus, Israel still needs to consider the proportionality of any damage done to human shields and other close civilians when targeting Hamas. International law prohibits an attack if the harm done to the target is greater than the military goal.¹⁵

Further, the ICC and other international/hybrid tribunals are considering the following case: The term "war crimes" as used in this Statute refers to making some locations, military units, or other protected individuals immune to military operations by using their presence.¹⁶ Evidence that the offender relocated or otherwise exploited the position of one or more civilians or other individuals protected by international law of armed conflict is necessary for the prosecution of this crime before the ICC.¹⁷ The offender's goal was to prevent an attack on a military target or to support, facilitate, or obstruct military operations.¹⁸

¹¹ Neve Gordon and Nicola Perugini, 'Humanitarian law and policy, Proximate 'human shields' and the challenge for humanitarian organizations' (*Humanitarian Law and Policy*, November 18, 2021) <[Proximate 'human shields' and the challenge for humanitarian organizations - Humanitarian Law & Policy Blog \(icrc.org\)](#)> accessed 24 November 2023

¹² Neve Gordon and Nicola Perugini, 'Humanitarian law and policy, Proximate 'human shields' and the challenge for humanitarian organizations' (*Humanitarian Law and Policy*, November 18, 2021) <[Proximate 'human shields' and the challenge for humanitarian organizations - Humanitarian Law & Policy Blog \(icrc.org\)](#)> accessed 24 November 2023

¹³ Amanda Taub, 'What the Laws of War says about forced displacement and Human Shields' (*New York Times*, 19 October 2023) <<https://www.nytimes.com/2023/10/19/world/europe/interpreter-laws-human-shields-forced-displacement.html>> accessed 25 November 2023

¹⁴ 'What the Laws of War Say About Forced Displacement and 'Human Shields' (*Dnyuz*, 19 October 2023) <<https://dnyuz.com/2023/10/19/what-the-laws-of-war-say-about-forced-displacement-and-human-shields/>> accessed 25 November 2023

¹⁵ Amanda Taub, 'What the Laws of War says about forced displacement and Human Shields' (*New York Times*, 19 October 2023) <<https://www.nytimes.com/2023/10/19/world/europe/interpreter-laws-human-shields-forced-displacement.html>> accessed 25 November 2023

¹⁶ International Criminal Court, Article 8(2)(b)(xxiii)

¹⁷ [International Criminal Court Elements of Crimes, Article 8\(2\)\(b\)\(xxiii\)](#).

¹⁸ [International Criminal Court Elements of Crimes, Article 8\(2\)\(b\)\(xxiii\)](#).

INTERNATIONAL HUMANITARIAN LAW ON HUMAN SHIELD

Article 51(3) of Additional Protocol I states that civilians who actively participate in hostilities forfeit their protection against assault; no objections have been raised to this norm.¹⁹ further Rule 6 of the International Humanitarian Law Database states that unless and until they actively participate in hostilities, civilians are shielded from harm.²⁰ It is clearly stated in Rule 97 of the International Humanitarian Law Database that it is forbidden to utilize people as human shields.²¹

Rule 1 of the International Humanitarian Law Database states that the parties to the conflict shall always distinguish between the civilian population and combatants, as well as between civilian objects and military objectives, and shall accordingly direct their operations only against military objectives to ensure respect for and protection of the civilian population and civilian objects.²²

Article 57(2)(a)(iii) of Additional Protocol I, lays out the obligation to take all reasonable steps to determine whether the attack may be expected to inflict excessive incidental damage.²³ In the context of international armed conflicts, this rule is outlined in the Third Geneva Convention (concerning prisoners of war),²⁴ the Fourth Geneva Convention (concerning protected civilians)²⁵ and Additional Protocol I (concerning civilians in general)²⁶

Rule 18 of the International Humanitarian Law Database states that about the possibility of incidental civilian deaths, injuries, or property damage resulting from the attack, each party to the conflict shall make every effort to determine whether such consequences would be disproportionate to the anticipated direct and concrete military advantage.²⁷ Under Rule 14 of the International Humanitarian Law Database, it is forbidden to launch an attack that would be excessive in comparison to the anticipated concrete and direct military gain and that could

¹⁹ Additional Protocol I 1977, Article 51(3) (adopted by 77 votes in favour, one against and 16 abstentions) (cited in Vol. II, Ch. 1, § 755).

²⁰ 'International Humanitarian Law Databases' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>> accessed 24 November 2023

²¹ *Ibid*

²² *Ibid*

²³ Additional Protocol I, 1977 Article 57(2)(a)(iii) (adopted by 90 votes in favour, none against and 4 abstentions) (cited in Vol. II, Ch. 5, § 325)

²⁴ Third Geneva Convention 1949, Article 23 first paragraph

²⁵ Fourth Geneva Convention 1949, Article 28

²⁶ Additional Protocol I 1977, Article 51(7)

²⁷ 'International Humanitarian Law Databases' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>> accessed 24 November 2023

reasonably be expected to result in accidental civilian casualties, injuries, or property damage to people.²⁸

The European Court of Human Rights declared in *Demiray v. Turkey* that “Article 2 may... imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual for which they are responsible,” in response to the applicant's claim that her husband had been used as a human shield.²⁹ The UN Human Rights Committee and other regional human rights organizations have stated that this right includes States' obligations to take action to safeguard life in addition to the right not to be killed³⁰.

FORCED DISPLACEMENT

People who have been compelled to flee their homes due to armed conflict or other acts of violence are considered internally displaced individuals even though they are still inside their nation's boundaries. Their condition is not particularly addressed by any universally applicable, legally enforceable document that is comparable to the 1951 Refugee Convention. However, international humanitarian law (IHL), domestic law, and international human rights law all protect internally displaced persons during times of armed conflict.³¹

To stop displacement from happening in the first place, International Humanitarian Law is crucial. It forbids displacing people unless it is required for military purposes or to safeguard the safety of the civilian population. A systematic or pervasive program of displacing civilians without any valid reason is considered a crime against humanity.³² Humanitarian alerts that shield civilians from deliberate attacks fall on one end of the legal spectrum, while forced displacement a war crime that involves using threats and other forms of coercion to drive civilians from their homes and keep them from returning lies on the other.³³

²⁸ ‘International Humanitarian Law Databases’ (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>> accessed 24 November 2023

²⁹ *Demiray v Turkey* App no. 27308/95 (ECHR, 21 November 2000)

³⁰ International Covenant on Civil and Political Rights, Article 6

³¹ ‘Internally displaced persons and international humanitarian law’ (*International Committee of the Red Cross*, 20 March 2018) <<https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law>> accessed 26 November 2023

³² *Ibid*

³³ Amanda Taub, ‘What the Laws of War says about forced displacement and Human Shields’ (*New York Times*, 19 October 2023) <<https://www.nytimes.com/2023/10/19/world/europe/interpreter-laws-human-shields-forced-displacement.html>> accessed 25 November 2023

Furthermore, the UN Guiding Principles on Internal Displacement offer helpful direction on issues unique to internal displacement. Numerous States have included them in their domestic laws, and they enjoy widespread support from the international community.³⁴ Adil Haque, an expert in international law at Rutgers University, stated that recognizing the distinction between a threat and a warning about a potential lawful attack is the ideal approach to comprehend the legal concerns surrounding the evacuation order.³⁵

People who do not actively participate in hostilities are protected by International Humanitarian Law both before and throughout their displacement as civilians.³⁶ According to former top military advocate General Mandelblit, allowing people to return once hostilities stopped was one legal obligation. "Humanitarian corridors that indicate safe routes for migration should be included in the other requirements," he stated. "You must also account for the fundamental humanitarian needs of civilians."³⁷

INTERNATIONAL HUMANITARIAN LAW ON FORCED DISPLACEMENT

The primary source of these regulations is the 1949 Geneva Conventions' Additional Protocol I (API), which deals with international armed conflicts (IACs).³⁸ The Fourth Geneva Convention states that the transfer or deportation of people is forbidden.³⁹ However, international humanitarian law is in favour of evacuation where it is unsafe for civilians. As under Rule 4 of the International Humanitarian Law Database, every conflicting party shall, to the greatest degree possible, evacuate civilians and property under its jurisdiction from the area around military targets.⁴⁰

³⁴ 'Internally displaced persons and international humanitarian law' (*International Committee of the Red Cross*, 20 March 2018) <<https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law>> accessed 26 November 2023

³⁵ Amanda Taub, 'What the Laws of War says about forced displacement and Human Shields' (*New York Times*, 19 October 2023) <<https://www.nytimes.com/2023/10/19/world/europe/interpreter-laws-human-shields-forced-displacement.html>> accessed 25 November 2023

³⁶ 'Internally displaced persons and international humanitarian law' (*International Committee of the Red Cross*, 20 March 2018) <<https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law>> accessed 26 November 2023

³⁷ Amanda Taub, 'What the Laws of War says about forced displacement and Human Shields' (*New York Times*, 19 October 2023) <<https://www.nytimes.com/2023/10/19/world/europe/interpreter-laws-human-shields-forced-displacement.html>> accessed 25 November 2023

³⁸ Beth Van Schaack, 'Human Shields in International Humanitarian Law: a guide to the legal framework' (*Just Security*, 7 December 2016) <<https://www.justsecurity.org/35263/human-shields-ihl-legal-framework/>> accessed on 25 November 2023

³⁹ Fourth Geneva Convention, Article 49, first paragraph

⁴⁰ 'International Humanitarian Law Databases' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>> accessed 24 November 2023

Rule 129 of the International Humanitarian Law Database states that parties to an international armed conflict are not permitted to expel or forcibly relocate the civilian population of an occupied area, either entirely or in part unless doing so is necessary for the protection of the civilian population or vital military objectives. B. Parties to a non-international armed conflict are not permitted to mandate the complete or partial relocation of civilians for conflict-related reasons unless doing so is necessary for the security of the affected civilian population or crucial military objectives.⁴¹

Further, the International Humanitarian law provides enough provisions to protect the displaced person's interest. In reality, it is emphasized that the relevant government bears primary responsibility for providing care for internally displaced individuals.⁴² Rule 131 of the International Humanitarian Law Database states that when people are displaced, every effort should be made to ensure that they are provided with adequate accommodation, hygienic conditions, health care, safety, and sustenance and that family members are not split up.⁴³

According to the Fourth Geneva Convention, an occupying power conducting an evacuation "must ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety, and nutrition, and that members of the same family are not separated." Rule 132 of the International Humanitarian Law Database states that as soon as the circumstances leading to their displacement end, displaced people are entitled to freely and safely return to their houses or other habitual residences.⁴⁴ This is in place whether the evacuation is being carried out for the protection of the civilian population or urgent military reasons.⁴⁵

Numerous agreements, including treaties, stipulate that the parties to a conflict must take into account each individual's needs when offering safety and aid to displaced people. Therefore, consideration must be given to the unique needs of young people, especially those who are unaccompanied, expecting or nursing mothers, people with impairments, and the elderly⁴⁶.

⁴¹ 'International Humanitarian Law Databases' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>> accessed 24 November 2023

⁴² Guiding Principles on Internal Displacement, Principle 25(1)

⁴³ 'International Humanitarian Law Databases' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>> accessed 24 November 2023

⁴⁴ *Ibid*

⁴⁵ Fourth Geneva Convention, Article 49, third paragraph

⁴⁶ Additional Protocol I, Article 78

As stipulated in the Fourth Geneva Convention, an occupying power must make every effort to prevent family members from being separated during the transfer or evacuation of people.⁴⁷ The Convention on the Rights of the Child states that States Parties shall make sure a child shall not be removed from his or her parents against the choice of the child regarding family separation.⁴⁸ As soon as hostilities in the affected area end, people who have been evacuated are required by the Fourth Geneva Convention to be returned home.⁴⁹

CONCLUSION

Amid the ongoing Israel- Hamas conflict, civilian deaths are increasing day by day and there is a violation of many of the International Humanitarian law. International Humanitarian Law is clear and obvious in safeguarding civilians during war conflict and hostility. International Humanitarian law clearly states in its various conventions, treaties and protocols that the use of civilians as a human shield is prohibited, even if the opposite party has breached the same principle.

The lives of civilians need to be protected in any manner, until and unless they do not participate in the conflict. The parties to the conflict shall always distinguish between the civilian population and combatants, as well as between civilian objects and military objectives, and shall accordingly direct their operations only against military objectives to ensure respect for and protection of the civilian population and civilian objects

If the military objective is disproportionate to the other humanitarian objectives like the life of civilians etc then it is unlawful and no excuse for military objective is allowed. Further, International Humanitarian law is not in favour of the forceful displacement of the civilian, without any valid reason or necessity. Even if the civilian is forcefully displaced during the conflict, in the name of necessity, then their executing state must protect the interest of the civilian, civilian need to be safely displaced, and their basic requirement of food, water, shelter, and medical need to be fulfilled. Every effort should be made to ensure that they are provided with adequate accommodation, hygienic conditions, health care, safety, and sustenance and that family members are not split up

⁴⁷ Fourth Geneva Convention, Article 49, third paragraph

⁴⁸ Convention on the Rights of the Child, Article 9(1)

⁴⁹ Fourth Geneva Convention, Article 49, second paragraph

It is also need to ensure that their family member or children are not separated. Special care needs to be given to children, aged persons patients etc. Further, the facilities should be made for safely displacing back to the home of a civilian when the situation becomes normal.

