



## CIVILIAN HARM AND STATE RESPONSIBILITY IN THE GAZA CONFLICT UNDER INTERNATIONAL HUMANITARIAN LAW

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### INTRODUCTION

The Gaza conflict has been a long symbol of enduring political and humanitarian crises, entering an especially violent phase following the events of October 7, 2023, when Hamas launched a large-scale and unexpected attack on southern Israel. In reaction, Israel initiated a full-scale military campaign in the Gaza Strip, marking one of the most intense periods of violence in recent memory. The outcome has been devastating, according to the United Nations and international rights groups, and over 35,000 Palestinians have been killed, the majority of them civilians, including women and children.<sup>1</sup> On the Israeli side, approximately 1,200 people were killed, mostly in the initial attacks by Hamas, and thousands more were injured or displaced.

The sharp escalation has led to a focus on the principles of International Humanitarian Law, which were meant to protect civilians during armed conflict. Civilian harm was done, whether it was through airstrikes, siege tactics, or the use of human shields; it lies at the heart of International Humanitarian Law, a protective framework. The sheer scale of civilian casualties, mass displacement, and destruction of essential infrastructure in Gaza raises serious legal and ethical questions under international law.

The objective of this article is to assess whether the conduct of Israel, as a state actor, and Hamas, as a non-state armed group, aligns with the obligations imposed by International Humanitarian Law. It further aims to analyse whether the mechanisms of accountability and state responsibility in situations where civilian harm appears excessive or deliberate.

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<sup>1</sup> OCHA, "Hostilities in the Gaza Strip and Israel" (OCHA)

<https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-173> accessed June 25, 2025.

## INTERNATIONAL HUMANITARIAN LAW: A LEGAL FRAMEWORK

The International Humanitarian Law is a body of regulations that strive to reduce the humanitarian impact of armed conflict. It secures individuals who are not involved or no longer engaged in conflicts and restraints on the means and methods of warfare. International Law is a branch of public international law, and it is based on customary rules, treaties, and legal principles that are generally accepted in the principles of international law. Article 38 of the Statute of the International Court of Justice clearly outlines the sources of international law that the court shall apply when deciding disputes. These include international conventions, international customs, general principles of law recognised by civilians, and secondary sources such as judicial decisions and scholarly writings.<sup>2</sup>

Article 22 of the Hague Regulations states that “the right of belligerents to adopt means of injuring the enemy is not unlimited.”<sup>3</sup> A group of fundamental principles is central as it intends to minimise the impact of war on people and poverty:

- The principle of humanity ensures that suffering or destruction is minimised.
- The principle of distinction requires parties to distinguish between civilians and soldiers.
- The principle of proportionality stops attacks expected to take place which might cause civilian harm.

The serious breaches of International Humanitarian Law may lead to war crimes under Article 8 of the Rome Statute of the International Criminal Court, which include targeting civilians, launching disproportionate attacks, and using civilians as human shields, may lead to the responsibility of individual commanders or political leaders whether they represent state or non-state entity. The International Humanitarian Law binds both the state actors and non-state armed groups, that is, Israel and Hamas, regardless of who starts the conflict, are legally obliged to follow the rules.<sup>4</sup>

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<sup>2</sup> Statute of the International Court of Justice 1945, art 38.

<sup>3</sup> “IHL Treaties” (*IHL Database*) <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907/regulations-art-22> accessed June 25, 2025.

<sup>4</sup> International Committee of Red Cross, “What Is International Humanitarian Law?” (*International Committee of the Red Cross*, October 13, 2014) <https://www.icrc.org/en/document/what-international-humanitarian-law> accessed June 25, 2025.

## CIVILIAN HARM IN THE GAZA CONFLICT: FACTS AND ALLEGATIONS

This current Gaza conflict has amplified losses in civilian lives and households, apart from causing chaos in proper palaces and delivering an unprecedented blow to various infrastructures. As stated by the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), as of May 2024, over 35,000 Palestinians killed during the violence include the greatest number of women and children.<sup>5</sup> Intentionally targeting well-populated civilian areas, as was the case in Rafah, which saw the death of hundreds of civilians in Israeli air raids, has raised serious issues about International Humanitarian Law principles of proportionality and distinction. Strikes against healthcare facilities, such as Al-Shifa, and others on UN-run schools that are sheltering internally displaced persons<sup>5</sup> attracted accusations of war crimes. Israel justifies its actions, claiming that Hamas hides its military assets in civilian infrastructure and uses human shields in violation of Article 51(7) of the Additional Protocol I to the Geneva Conventions.<sup>6</sup> The Israel Defence Forces claims that Hamas stored weapons in mosques, schools, and civil buildings, which, according to that, makes the application of the International Humanitarian Law principle of distinction even more complicated. At the same time, human rights organisations warn of the excessive use of force and collective punishments. International bodies have been calling for independent investigations from the International Committee of the Red Cross, Amnesty International, and Human Rights Watch (HRW). According to Amnesty International, some strikes by Israel amount to disproportionate attacks and indiscriminate bombings, compromising the Rome Statute. Human Rights Watch has provided evidence that whole families have been wiped out in single airstrikes, and the plea for accountability ensues.

The humanitarian situation continues to erode further. An estimate by UNOCHA states that over 1.9 million Palestinians, that is, more than 85 per cent of the population of Gaza, have become internally displaced. A condition that creates a "public health catastrophe" as per WHO regulations, in having public potable water, sanitation, and medical infrastructure destroyed.<sup>7</sup> The Palestinian Authority, meanwhile, raised security concerns over Hamas's conduct, but the

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<sup>5</sup> UNOCHA, "Humanitarian Situation Update #237" (*OCHA*)

<https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-237-gaza-strip> accessed June 26, 2025.

<sup>6</sup> Additional Protocol I (n 3), art 51(7).

<sup>7</sup> "Gaza: 'Systematic Dismantling of Healthcare Must End' Says WHO" (*UN News*, April 6, 2024) <https://news.un.org/en/story/2024/04/1148316> accessed June 26, 2025.

proportion and manner of Israeli retaliation have amplified calls for scrutiny under International Humanitarian Law.

## **LEGAL ANALYSIS: STATE CONDUCT UNDER INTERNATIONAL HUMANITARIAN LAW**

The Gaza conflict has drawn international attention to how both state and non-state actors adhere to the rules themselves under International Humanitarian Law. The principles of proportionality, distinction, and precaution are key standards to evaluate the actions of Israel and Hamas, yet serious allegations are that they have violated them in the ongoing hostilities. Israel's military operations, especially airstrikes in crowded areas, have faced criticism. The principle of proportionality prevents attacks that are likely to cause civilian harm that is excessive compared to the expected military gain.<sup>8</sup> However, Israel's use of large munitions in places like Rafah and Jabalia, often leading to mass civilian deaths, points to possible violations. Reports from the UN and human rights organisations claim that entire residential blocks were destroyed while targeting individual combatants, raising concerns about indiscriminate force. According to UN experts, some actions might be seen as collective punishment, which is banned under Article 33 of the Fourth Geneva Convention.<sup>9</sup> Additionally, International Humanitarian Law requires attackers to take all possible precautions, which includes giving effective warnings to civilians. Israel has justified its actions by mentioning warning procedures, such as dropping leaflets and sending phone messages. However, the effectiveness and reach of these warnings have been questioned. In many instances, civilians had no safe places to escape, making the warnings practically useless. The Guardian reported that the Israel Defence Forces recently opened investigations into incidents where civilians were killed near humanitarian aid lines, recognising possible breaches. On the other side, Hamas, as a non-state armed group, is required to follow International Humanitarian Law. Its ongoing use of unguided rockets aimed at Israeli civilian areas goes against the principle of distinction. Furthermore, Hamas's practice of placing military infrastructure within civilian buildings, like hospitals and schools, puts civilians at risk and violates the duty to keep military targets away from protected sites. This behaviour is commonly viewed as using human shields, which is a war crime under customary international law and Additional Protocol I.

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<sup>8</sup> M.I, "Hostilities in the Gaza Strip and Israel - Reported Impact" (*Question of Palestine*, March 12, 2024) <https://www.un.org/unispal/document/hostilities-in-the-gaza-strip-and-israel-reported-impact-day-157-ocha-situation-report/> accessed June 26, 2025.

<sup>9</sup> Geneva Convention IV (1949), art 33.

Importantly, International Humanitarian Law is based on the idea of independent accountability. Violations by one side do not legally excuse violations by the other. Each side must follow International Humanitarian Law, no matter what the other does. As the conflict escalates, the legal responsibilities of both parties remain under examination by international bodies, with calls for inquiries by the International Criminal Court and independent fact-finding organisations.

## ACCOUNTABILITY AND ENFORCEMENT MECHANISMS

In every conflict, the toll on human life frequently surpasses the battlefield, which impacts families, residences, and communities for generations. The Gaza conflict clarifies this reality. As reports emerge detailing civilian casualties, devastated infrastructure, and purported war crimes, a pressing question arises: Who will be held accountable?

Leading to this situation, the International Criminal Court is the only permanent tribunal globally assigned to prosecute the most serious offences like genocide, war crimes, and crimes against humanity. In 2021, the International Criminal Court launched a formal investigation into suspected violations committed in the occupied Palestinian territories since 2014.<sup>10</sup> This inquiry encompasses actions taken by both the Israeli military and Palestinian armed factions, such as Hamas. Palestine is a State Party to the Rome Statute, whereas Israel is not and has categorically rejected the Court's jurisdiction.<sup>11</sup> Consequently, despite the existence of clear legal frameworks, political opposition considerably undermines the International Criminal Court's ability to deliver justice. In correspondence, United Nations fact-finding missions and human rights organisations, such as the Human Rights Council and OHCHR, have compiled in-depth reports documenting the violations committed by both parties. From the 2009 Goldstone Report to more recent investigations, they have highlighted concerns such as the use of excessive force, punitive measures against civilian populations, and the strategic use of civilians to shield military operations. However, while they serve to raise awareness, these missions lack enforcement capabilities and are frequently dismissed by states that perceive them as biased or politically driven.

Accountability becomes even more challenging among non-state actors like Hamas. Although the International Criminal Court could prosecute individuals within Hamas for conducting

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<sup>10</sup> International Criminal Court, "State of Palestine" (*International Criminal Court*) <https://www.icc-cpi.int/palestine> accessed June 26, 2025.

<sup>11</sup> Rome Statute of the International Criminal Court 1998, arts 12–13.

indiscriminate attacks or placing military assets in civilian zones, such attempts are prevented by limited access, political disunity, and Hamas's rejection of international legal authority. A particular issue in this context is the double standard evident in global responses. Influential states, especially those backed up by strong geopolitical partnerships, often avoid international scrutiny and consequences. Israel, in particular, has received unwavering support from Western powers, which escaped significant accountability in international forums. This situation has led to many Palestinians receiving international justice, as selectively accessible only to the weak, and never to the powerful. Moreover, the political of humanitarian law has eroded trust in its universality. When the application of law is inconsistent and humanitarian values are shaped by political interest, the moral integrity of the legal system begins to erode. Nevertheless, despite these profound shortcomings, international legal mechanisms remain significant. They act as a public record, a platform for advocacy, and a reminder that the world is observing, even if justice is postponed.

## CONCLUSION

The Gaza conflict shows the applicability and enforcement of International Humanitarian Law. As the article has shown that Israel's extreme use of force in civilian populated areas has led to loss and infrastructure damage, raising various questions about the principle of proportionality.<sup>12</sup> Despite Israel's claims of targeting Hamas operations, they have repeatedly struck homes, hospitals, and aid convoys, suggesting that military advantage may not have been balanced against civilian harm. Similarly, Hamas has launched eclectic rocket attacks on Israeli cities and implanted military assets in civilian zones, leading to both of which constitute clear violations of the principle of distinction.

It is robust to underscore that International Humanitarian Law does not permit violations by one party to justify violations by another. Both sides bear full independent responsibility under international law. Yet the enforcement remains limited, politicised, and inconsistent.<sup>13</sup> For International Humanitarian Law to retain its legitimacy and moral force, the international community must pursue consistent accountability, strengthen independent investigations, and resist the politicisation of humanitarian norms. Without enforcement, International

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<sup>12</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), art 51(5)(b), 1125 UNTS 3.

<sup>13</sup> ICC, "State of Palestine" (*International Criminal Court*, 2021) <https://www.icc-cpi.int/palestine> accessed June 26, 2025.

Humanitarian Law risks becoming symbolic rather than protective, leaving civilians to bear the cost of legal and moral failure.