

# MP-IDSA

## *Issue Brief*

# Israel-Hamas Conflict: Between Legitimate Combat and Inadmissible Violence

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## **S***ummary*

The laws of armed conflict seek to protect people who do not take part in hostilities. The Israel–Hamas conflict has resulted in large numbers of civilian casualties on both sides. Upholding humanitarian law in the complex and volatile environment of Gaza continues to be a formidable challenge.

The current conflict in Gaza between Israel and Palestinian armed groups, particularly Hamas—the de facto governing authority in Gaza—has given rise to significant humanitarian concerns, as the civilian population of nearly two million Palestinians living in Gaza are in a state of a siege. There have been a large number casualties of civilians, aid workers and attacks on protected facilities like hospitals, the latest one being the Al Shifa hospital.<sup>1</sup>

Humanitarian law, also known as the law of armed conflict or international humanitarian law (IHL), is a set of rules that seek to protect people who do not take part in hostilities and limit the means and methods of warfare. IHL is a product of international cooperation and agreements globally recognised and legalised in the aftermath of the World War. The 1948 Geneva Conventions along with the Universal Declaration of Human Rights were two instruments that came out of the brutality witnessed in the two World Wars.<sup>2</sup>

IHL governs the conduct of parties involved in armed conflicts, distinguishing between combatants and non-combatants. Firstly, all actions in combat should be in accordance with the principles and rules established by IHL to ensure their actions are following international law. Secondly, one of the primary objectives of IHL is the protection of civilians who are not taking part in the hostilities. All belligerents must be aware of these rules to minimise harm to civilians and ensure their safety. Thirdly, IHL is closely linked to human rights law, and requires prevention of human rights abuses and violations in conflict zones.

Adherence and awareness to IHL is mandatory even for any deployment under the aegis of United Nations operations (Chapter VI and VII). During peacekeeping operations, awareness of IHL ensures that peacekeepers are accountable for their actions and understand the legal consequences of violating IHL. It helps in preventing misconduct and maintaining the credibility of peacekeeping missions. Knowledge and adherence to IHL contributes to conflict resolution efforts by promoting respect for humanitarian principles and fostering a culture of dialogue and negotiation. United Nations Peacekeepers, often operating under the mandate of international organisations, need to work within this global legal framework.<sup>3</sup>

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<sup>1</sup> The attacks by Hamas on Israel across the Gaza Strip has resulted in the highest single day deaths in Israel’s history since the creation of the State of Israel and also the Holocaust. Since beginning of hostilities by Israel, over a hundred UNRWA staff’s members have died and several have been injured. This has been the greatest number of UN staff ever in the history of UN.

<sup>2</sup> Robert Kolb, “[The Relationship Between International Humanitarian Law and Human Rights Law: A Brief History of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions](#)”, International Committee of the Red Cross (ICRC), 30 September 1998; “[Geneva Conventions at 71: An In-depth Look from the Indian Perspective](#)”, *The Economic Times*, 13 August 2020.

<sup>3</sup> “[Observance by United Nations Forces of International Humanitarian Law](#)”, UN Secretary General’s (UNSG) Bulletin 1999/13, 6 August 1999.

For execution of IHL there must be an emphasis on training and awareness which ensures they are prepared for the challenges they may face in conflict zones. It will help in understanding the legal and ethical dimensions of armed conflict to make informed decisions in complex and dynamic situations. In summary, being aware of IHL is crucial for ensuring the legal and ethical conduct of their operations, protecting civilians, upholding human rights, and contributing to the broader goals of conflict resolution.

The primary sources of IHL<sup>4</sup> include:

1. *The Geneva Conventions*: These treaties establish the humanitarian rules to be followed in times of armed conflict. They provide protections for wounded and sick soldiers on land and at sea, prisoners of war, and civilians.
2. *The Hague Conventions*: These conventions focus on the laws and customs of war and aim to protect cultural property during armed conflicts.
3. *Additional Protocols*: Additional Protocol I and Additional Protocol II provide further clarification and expansion of the rules of IHL, particularly concerning international armed conflicts (Protocol I) and non-international armed conflicts (Protocol II).
4. *Customary International Humanitarian Law*: This includes established practices that are recognised as legally binding, even if not explicitly stated in treaties.

The key principles of IHL<sup>5</sup> include Distinction (between military targets and civilian objects), Proportionality (anticipated military advantage of an attack should not outweigh the expected harm to civilians and civilian property), Precautions (to prevent, as far as possible, harm to the civilian population) and Military Necessity (necessary to accomplish a legitimate military objective). This includes providing effective warnings and ensuring that attacks are not indiscriminate. Essentially, laws of armed conflict consist of sets of prohibitions on when and how they can kill and on who can be killed.

## **IHL and Attacks on Healthcare Facilities**

While IHL is clear in its principles, the challenges in implementing these rules in the Gaza crisis are complex. The trigger was the inhuman and dastardly attacks against Israel where a stunned nation found itself attacked by hordes and displaying medievalism and brutality in the attacks against women, children,

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<sup>4</sup> [“Sources of IHL: Treaties and Customary Law”](#), ICRC.

<sup>5</sup> [“Fundamental Principles of IHL”](#), ICRC.

elderly and the unarmed. The attacks were barbaric and defied all civilised norms of conduct by belligerents.

There is no denying the fact that Israel has taken precautions in the military campaign like warning civilians to vacate north Gaza and go towards the South of the Strip through designated routes, and other measures yet the casualties have been high.<sup>6</sup> One of the main reasons is that Gaza Strip is one of the world’s most densely populated regions and the inevitable proximity of military targets to civilians makes it difficult to ensure that attacks are proportionate and do not harm non-combatants. Israeli airstrikes and use of rockets by both sides has led to a high risk of civilian casualties and widespread destruction.

The destruction of infrastructure including hospitals and other protected areas combined with blockade and limited access has aggravated the situation by making the delivery of humanitarian assistance and access to medical care challenging. There have been blatant violations of IHL in this war, beginning with the attacks by Hamas and the reprisals on civilian targets, women, children and the elderly, indiscriminate use of force, and violations of the principle of necessity distinction and proportionality. These violations can be difficult to investigate and prosecute. Holding those responsible for violations of IHL accountable is a significant challenge, and the lack of international consensus on the situation complicates efforts to enforce humanitarian law.

The protection of hospitals during armed conflicts is primarily addressed in the Geneva Conventions, particularly Article 18 of the 1949 Fourth Geneva Convention,<sup>7</sup> which states:

*Civilian hospitals organised to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.*

This article emphasises the absolute prohibition of attacking civilian hospitals and mandates that they must be respected and protected by all parties involved in an armed conflict. The protection extends to hospitals that are providing care to the wounded, sick, infirm and maternity cases. The intention is to safeguard medical facilities that play a crucial role in providing humanitarian assistance and medical care to those in need during times of war. Any intentional attack on a civilian hospital is considered a serious violation of international humanitarian law.

However, these protections are not absolute, and certain conditions may lead to the loss of their protected status. Loss of protected status under the Geneva

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<sup>6</sup> [“Israel Drops Evacuation Leaflets in Southern Gaza, Signaling Expansion of Invasion”](#), *PBS NewsHour*, 16 November 2023.

<sup>7</sup> [“Article 18 - Wounded and Sick III. Protection of Hospitals”](#), ICRC.

Conventions<sup>8</sup> can occur under specific circumstances, typically involving the violation of the rules outlined in the Conventions which are as under:

1. When the hospital or medical facility is used for purposes that are harmful to the enemy and not related to its medical function, or
2. When weapons or soldiers are intentionally placed within or near a hospital, with the aim of using the hospital's protected status to shield those military objects, or
3. When such facilities are directly participating in hostilities, such as by providing support to combatants or engaging in military activities.

If a hospital is used to store military equipment or as a base for military operations, for instance, it could be considered a legitimate military target. If a hospital is directly participating in hostilities, such as by providing support to combatants or engaging in military activities, it may lose its protected status. The primary purpose of a hospital is to provide medical care to the wounded and sick, and any direct involvement in hostilities may compromise its protected status.

Further, when a party to the conflict intentionally places military objectives, such as weapons or soldiers, within or near a hospital, with the aim of using the hospital's protected status to shield those military objectives, the hospital may lose its protected status. This is known as the principle of "human shields", where the presence of civilians or protected objects is used to deter attacks. However, it is important to note that intentional attacks on hospitals, regardless of the circumstances, are generally considered war crimes and are strictly prohibited under international law. Even if a hospital were to lose its protected status due to misuse, it does not justify deliberate attacks on the facility or the harming of civilians within.

It is not the first time hospitals have been attacked in conflict, either deliberate or accidental, causing harm to civilians and healthcare workers. Some of the notable examples include the Syrian Civil War, the conflict in Yemen, and the conflict in Afghanistan. The list of hospitals that have been attacked in the last 20 years are compiled as under:

1. Kunduz, Afghanistan (2015): In 2015, a Médecins Sans Frontières (Doctors Without Borders) hospital in Kunduz was bombed by U.S. forces.<sup>9</sup> This incident resulted in casualties and raised significant concerns.

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<sup>8</sup> For more details, please see ICRC website which defines “In which circumstances can medical establishments and units lose their protection granted by IHL?”. The questions answered are [“The Protection of Hospitals during Armed Conflicts: What the Law Says”](#), ICRC, 2 November 2023.

<sup>9</sup> For more details on this attack, see [“Afghanistan: Marking Five Years since US Attack on MSF Hospital in Kunduz”](#), Doctors Without Borders, 5 October 2020.

2. Aleppo, Syria (2016): Several hospitals in Aleppo, including the Al-Quds Hospital, were targeted during the Syrian Civil War.<sup>10</sup>
3. Yemen (Various Instances): Hospitals and medical facilities in Yemen have been repeatedly hit during the conflict between Houthi rebels and the Saudi-led coalition.<sup>11</sup>
4. Gaza Strip (Various Instances): Hospitals in the Gaza Strip have been targeted during conflicts between Israel and Palestinian groups, including in the 2014 Gaza War.
5. Ukraine (Various Instances): Hospitals and medical facilities in eastern Ukraine have faced attacks during the conflict between Ukrainian forces and pro-Russian separatists.
6. South Sudan (Various Instances): Hospitals and clinics have been attacked during the ongoing civil conflict in South Sudan

## **Fog of War and False Flag Operations: Implications and Consequences**

Attacks on hospitals and healthcare facilities are violations of international humanitarian law and can have devastating consequences for civilian populations. These incidents are widely condemned by the international community, and efforts are made to protect healthcare facilities and workers during armed conflicts. So, whether it was Hamas that fired the rocket that caused the Al-Ahli Arab Hospital blast or an Israeli munition is difficult to conclude in the fog of war.<sup>12</sup>

Militant and terror groups are known to host false flags as a strategy in their operations. A false flag involves carrying out an attack or a blatant violation of IHL and making it appear as if it was perpetrated by the other entity. It is a part of a broader strategy to conceal the group's true objectives and intentions while portraying itself as a victim to be exploited for propaganda purposes, gaining the sympathy and support of the international community.

The group can create such incidents to create a diplomatic crisis between states taking away the lens from the activities of the group carrying out the operation. After the IDF carried out attacks on the Al-Shifa hospital, the existence of

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<sup>10</sup> [\*\*“WHO Condemns Massive Attacks on Five Hospitals in Syria”\*\*](#), World Health Organization, 16 November 2016.

<sup>11</sup> [\*\*“Yemen: Coalition Airstrikes Hit Hospital”\*\*](#), Human Rights Watch, 27 October 2015.

<sup>12</sup> There is confusion about what caused the blasts. See [\*\*“After Blast Kills Hundreds at Gaza Hospital, Hamas and Israel Trade Blame as rage Spreads in Region”\*\*](#), *The Associated Press News*, 18 October 2023.

command post and militarised tunnel networks were reported. The primary objectives of such actions can include:

1. *Deception*: Terror groups and militants may carry out attacks on civilian facilities while disguised or using deceptive tactics to create confusion about the identity of the perpetrators. This can make it appear as if the attacks were carried out by state actors or rival groups.
2. *Propaganda and Manipulation*: These groups can exploit the resulting confusion and blame states or other entities to garner sympathy, support, or international condemnation against their perceived adversaries. They may use these incidents to advance their own narrative and propaganda.
3. *Escalation of Conflict*: By falsely attributing attacks to states, terror groups may aim to provoke a stronger response from the accused state, potentially escalating the conflict and drawing in international actors.
4. *Distraction and Cover*: False flag operations can be used to divert attention from the real intentions, actions, or identity of the militants. They may seek to create distractions to avoid detection or to continue their activities under the radar.

The advantages accrued by accusations and false flag operations against a state actor like Israel are listed below:

1. *Diplomatic Isolation*: It can lead to diplomatic tensions and potential isolation. Other countries may condemn Israel, impose sanctions, or limit cooperation.
2. *International Condemnation*: Israel may face international condemnation, criticism, and pressure from international organisations, which can harm its standing on the global stage.
3. *Damage to Reputation*: Israel's international reputation could be tarnished, affecting its ability to engage in diplomatic negotiations and other international activities.
4. *Humanitarian Fallout*: It can lead to a loss of public support and trust. Humanitarian consequences could include restrictions on aid and relief efforts in conflict zones.
5. *Legal Implications*: False accusations can lead to legal challenges, including potential investigations by international bodies or courts.
6. *Escalation of Conflict*: False accusations can escalate the conflict with adversaries, increasing the risk of further violence and instability in the region.

7. *Impact on Peace Efforts*: It can undermine peace initiatives and negotiations, making it more challenging to achieve a peaceful resolution to conflicts.

It is important to note that the use of false flag tactics is not unique to one side of a conflict, and even state actors have also been accused of carrying out such operations to achieve their strategic or political objectives. Some of the famous cases include:

1. The Mukden Incident in 1931, in which the Imperial Japanese Army detonated explosives near a Japanese-owned railway in Manchuria, using it as a pretext to invade.
2. The Lavon Affair in 1954, where Israeli agents carried out bombings in Egypt while pretending to be Egyptian nationalists.
3. The Gulf of Tonkin incident in 1964, which played a role in escalating the Vietnam War.
4. Various instances in the Syrian Civil War, where different parties have been accused of carrying out false flag attacks to manipulate international opinion.

## Protected persons under the Geneva Conventions

Conventions which provide protections for individuals who are not taking part in hostilities are listed below.<sup>13</sup> Essentially, these are civilians and certain categories of wounded or sick individuals. Protected persons under the Geneva Conventions include:

1. Civilians (Geneva Convention IV): Civilians who find themselves in the hands of a party to the conflict or an occupying power of which they are not nationals.
2. Wounded and Sick (Geneva Convention I and II): Members of the armed forces who are sick, wounded, or shipwrecked, regardless of their nationality.
3. Prisoners of War (Geneva Convention III): Members of the armed forces who have fallen into the hands of the enemy, as well as certain non-combatants.
4. Medical and Religious personnel, parliamentarians; civil defence personnel; personnel assigned to the protection of cultural property.

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<sup>13</sup> The concept of “protected persons” comes under the GC I, Art. 13; GC II, Art. 13; GC III, Art. 4; GC IV, Art. 4. See “[Protected Persons](#)”, ICRC.



As for using civilians as shields, it is crucial to know how the civilians came to be in a militarily exposed position and the choices they had. In case they volunteered to stay back and join the defender or were coerced by their defenders into staying, then the responsibility lies with the defender even though they may have not killed them. On the other hand, where the civilians were permitted to evacuate an area impending an attack but willingly stay back, the onus of protecting non-combatants lies with the attacker as it does when they are prevented from fleeing the intended target by the attacker. In both these cases, the deaths that are caused are clearly attributable to the attacker.

Though no civilians can be attacked, the laws of armed conflict however are silent as to how far should a combatant go to protect a civilian life. These decisions are left to the individual soldier who are guided by their military traditions and moral upbringing. The theory of double effect is a moral and ethical concept that helps in evaluating the ethical implications of actions that may have both intended and unintended consequences in the context of Just War Theory and International Humanitarian Law.

## Moral Reality of War and Conflict

The moral reality of war has two parts—the first being the reasons that it is fought for. World sympathy stood in favour of Israel when they decided to go to war as restraint was not an option. The second relates to the means and methods that are employed for winning the war. There is much outrage with Israel accused of committing war crimes.

But this is not the first time in the history of modern warfare that civilians have been targeted. Listed below is an overview of some major conflicts and estimates of civilian casualties. These numbers can vary significantly between different sources, and accurate counts are often challenging to obtain. The actual toll of civilian casualties in these and other conflicts may be higher or lower than these estimates.<sup>14</sup>

1. Korean War (1950–1953): It is estimated that hundreds of thousands of civilians were killed during the Korean War, with estimates ranging from 1 to 3 million civilian casualties and up to 10 million families separated almost a third of the combined population.<sup>15</sup>

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<sup>14</sup> Michael Ray, “[8 Deadliest Wars of the 21st Century](#)”, Encyclopedia Britannica, 18 April 2023.

<sup>15</sup> B. C. Koh, “[The War's Impact on the Korean Peninsula](#)”, *The Journal of American-East Asian Relations*, Vol. 2, No. 1, 1993, pp. 57–76.

2. Vietnam War (1955–1975): Civilian casualty estimates vary but a figure exceeding one million deaths is acknowledged.
3. Bosnian War (1992–1995): Tens of thousands of civilians died, with some estimates suggesting around 100,000 civilian casualties.
4. Rwandan Genocide (1994): It resulted in the deaths of an estimated 800,000 to 1 million civilians.
5. Darfur Conflict (2003–Present): Estimates range from hundreds of thousands to over a million civilian casualties.
6. Iraq War (2003–2011): Estimates of civilian deaths exceed 100,000.
7. Syrian Civil War (2011–Present): Estimates range from several hundred thousand to over a million.
8. Yemeni Civil War (2015–Present): Estimates exceed tens of thousands of civilian deaths.

In times of war, the laws fall silent and it is not the so-called evil powers that defy the laws. When Britain adopted the policy of terror bombing of Germany, nearly 300,000 civilians were killed and 800,000 wounded. The British bomber commands orders for reprisal attacks were clear—targets were not to be dockyards and factories but the heart of the city and built-up areas. The justification was that it was a reprisal and the aim was to render a third of Germans homeless so that the conditions would become intolerable for the German population. Even as the war was almost won, Britain bombed the city of Dresden where nearly 135,000 civilians were killed.<sup>16</sup>

These inhuman bombings by Britain provided a precedent to US President Harry Truman who ordered the firebombing of Tokyo and the use of nuclear weapons not on one but two major cities of Japan. While it is to the credit of Japanese that they targeted only army and naval facilities in Pearl Harbor, the American attacks targeted civilians of Hiroshima and Nagasaki. The number of civilians killed by the allies number around half a million and there was nothing the civilians did that forfeited them the right to protection from harm. Though unmatched in the tally of the Axis powers and the victims of the holocaust, none the less, it was something not to be imitated and what one would expect from the powers at war with Nazism.

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<sup>16</sup> Please refer to *The Destruction of Dresden* by David Irving. He says these attacks killed 135,000 people. In the words of the author David Irving who is British, “For the first time in the history of the war, an air raid had wrecked a target so disastrously that there were not enough able-bodied survivors to bury the dead.” By comparison the American raid on Tokyo on the night of 9 March 1945, killed 83,793 people, and the atom bomb dropped on Hiroshima killed 71,379. Also see [\*\*“Overkill Over; The Destruction of Dresden. By David Irving”\*\*](#), *The New York Times*, 1 March 1964

Closer to our times, as per the American “rules of engagement” in Vietnam, it was an acceptable tactic to bomb and strafe villages with air power and artillery known to be hostile or from where American troops have been fired upon. There was also a free fire zone that permitted firing at will for anyone who stayed back by their own consent. In other words, Americans blurred not just the distinction between Combatants and Non-Combatants but also created a new distinction—between hostile/friendly and loyal /disloyal civilians.<sup>17</sup>

It is unknown to many that it was farsighted of the U.S. President Abraham Lincoln during the American civil war to task Francis Lieber to set out rules of conduct during hostilities for Union soldiers. He issued “General Orders No. 100: Instructions for the Government of the Armies of the United States in the Field,” more popularly known as the “Lieber Code” The Lieber Code was later used as a template for international efforts in the late 19th century to codify the laws and customs of war alongwith the efforts of Henry Dunant and the Red Cross movement that arose out of the Battle at Solferino<sup>18</sup>

The Lieber Code states in article 16 that:<sup>19</sup>

Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult

Truly, it is in the times of war the relevance of the old latin phrase 'inter arma enim silent leges' dawns on us. It literally means "In times of war, the law falls silent."

## Conclusion

It is important to realise that the moral reality of war is not fixed by actual activities and measures taken to prevent civilian deaths but by opinions. There can never be a consensus on what started the war and who has the onus to end it. What is needed is that peace needs to be given a chance. Just as the attacks beyond the tipping point both in Dresden by Britain and the second Atom Bomb over Japan, the continued reprisals against civilians and pressing the war beyond a certain point by Israel amounts to re-committing the crime of aggression.

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<sup>17</sup> See Michael Walzer, *Just and Unjust Wars*, pp. 188–192.

<sup>18</sup> [“The Battle of Solferino \(24 June 1859\)”](#), ICRC, 6 April 1998.

<sup>19</sup> [“Article 16”](#), International Humanitarian Law Databases, ICRC.

Upholding humanitarian law in the complex and volatile environment of Gaza is a formidable challenge. The unique combination of factors, including a dense population, the proximity of military targets to civilians, and the impact of a longstanding blockade, has made it exceptionally difficult to minimise the impact of hostilities on non-combatants. Efforts to protect civilians, ensure humanitarian access, and establish a sustainable ceasefire are ongoing.

As the situation continues to evolve, it is vital for all parties to the conflict to respect and adhere to the principles of humanitarian law. The international community must play a central role in ensuring accountability for violations and promoting a peaceful resolution to the Gaza crisis, which would bring much-needed relief to the beleaguered population. The complexity of the challenge should not deter the commitment to uphold humanitarian law and minimise the suffering of civilians in conflict zones like Gaza.

There is no doubt that war is hell not just for those who must fight it but also to those who live through it. Fighting by the rules also does not make war acceptable. In the current crisis, the argument appears to be that rules can be violated for the sake of the cause. In other words, the perceived justice or injustice allows the belligerent to justify acts that are considered inadmissible violence. True victory is not in the defeat of an enemy but that which paves a way for a better peace to prevail. The people of Gaza are owed an experiment in negotiations after having lived through the hell of war. Hopefully, the hostage swap will resolve the current crisis and pave the way for acceptance of the two-state solution by Israel and whoever inherits the mantle from Hamas as the governing authority in Gaza.

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