

# The Role of IHL for Civilian Protection in the Gaza Strip: Case Study of Israel-Hamas War

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*The ongoing conflict in Gaza strip has resulted in significant humanitarian crisis, with civilians often bearing the brunt of violence. This article critically examines the role of IHL in the protection of civilians affected by the armed conflict. The study focuses on key IHL principles, including distinction, proportionality, and precaution, and assesses their application by the parties involved. It employs an analytical and descriptive research methodology. The findings reveal that both Israel and Hamas have committed numerous violations of IHL, including indiscriminate attacks and failure to protect civilian populations. Despite the clear legal frameworks set by IHL, the lack of accountability and enforcement has hindered its effectiveness. The author concludes that while IHL provides a robust legal framework for civilian protection, the political complexities of the Israel-Hamas conflict severely limit its implementation, leaving civilians vulnerable. The research calls for stronger international mechanisms to ensure compliance with IHL and improve civilian protection in the region.*

## Keywords

International Humanitarian Law, civilian Protection, Israel-Hamas War, Gaza Strip, Human Rights Violations, Armed Conflict

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## I. Introduction

International Humanitarian Law (IHL) is a body of binding rules that aim to alleviate the effects of an armed conflict, whether international armed conflict (IAC) or Non-International Armed Conflict (NIAC).<sup>1</sup> It is also known as the law of war (*jus in bello*) or the law of armed conflict at times. It sets restrictions on the means and methods of warfare. In addition, it safeguards those who are not, or no longer, directly or indirectly, engaged in the hostilities. It protects the civilian population, sick and wounded, and prisoners of war.<sup>2</sup> The protection of civilians during armed conflict is a fundamental principle of IHL, which aims to minimize suffering and safeguard individuals not participating in hostilities. All persons who have ended up in the enemy's hands as a result of an armed conflict are protected under the by the Geneva Conventions and their Additional Protocols.<sup>3</sup>

On October 7, 2023, militants from the Gaza Strip under the leadership of Hamas began an offensive in southern Israel, murdering civilians on purpose and bringing hostages, including children and the elderly, back to Gaza. A few days later, Israeli forces shut off Gaza residents' access to basic utilities like power and water, as well as all but a trickle of fuel and vital humanitarian goods. Israeli airstrikes devastated Gaza nonstop, destroying significant portions of communities, schools, and hospitals, even in what appeared to be illegal attacks. In highly populated areas, Israeli soldiers also used white phosphorus illegally.<sup>4</sup> Following Israel's airstrikes, according to Gaza officials, about 18,700 Palestinians were murdered between October 7 and December 12, 2023, the majority of whom were civilians and included over 7,800 children. Based on confidential information, Israeli officials also detained 2,873 Palestinians in administrative detention without charge or trial.<sup>5</sup>

In December, South Africa submitted a case to the International Court of Justice (ICJ), arguing that Israel's military operations in Gaza violated its obligations under the 1948 Genocide Convention. South Africa called the ICJ to swiftly implement interim measures to safeguard the Palestinian population and ensure Israel's

<sup>1</sup> ICRC, What Is International Humanitarian Law? (Apr. 6, 2022), <https://www.icrc.org/en/document/what-international-humanitarian-law>.

<sup>2</sup> *Id.*

<sup>3</sup> FRITS KALSHOVEN, CONSTRAINTS ON THE WAGING OF WAR 51 (1987).

<sup>4</sup> Human Rights Watch, Israel and Palestine: Events of 2023, <https://www.hrw.org/world-report/2024/country-chapters/israel-and-palestine>.

<sup>5</sup> *Id.*

compliance with the Genocide Convention.<sup>6</sup> The latest report on the Middle East indicates that the death toll in Gaza has surpassed 40,000, according to health officials in the region, highlighting the intensity of Israel's ongoing offensive in the small coastal enclave. The number of Palestinians killed in Gaza has reached over 40,005, while approximately 1,200 people have been killed in Israel.<sup>7</sup>

Against this backdrop, this research will explore the violations against civilians during the Israel-Hamas armed conflict in Gaza, while also shedding light on the key principles of IHL that have been breached. This article is composed of five parts including a short Introduction and Conclusion. Part two will review the definition of civilians under IHL. Part three will provide an in-depth discussion on the protection of women and children during armed conflicts, while part four will address violations of fundamental principles concerning the protection of civilians.

## II. Civilians under IHL

IHL offers a definition of civilians to differentiate them from combatants during times of conflict. This distinction is crucial for protecting individuals who are not directly involved in conflict. As per IHL, civilian is someone who is not part of the military or any organized armed factions of a conflict party. This category encompasses non-combatant military members, like medical and religious personnel, as long as they are not actively engaged in combat activities. Under IHL, the term "civilian" refers to individuals who are not members of the armed forces or other organized armed groups of a party to a conflict. This definition is grounded in the principle of distinction, which mandates a clear differentiation between combatants and non-combatants to ensure the protection of the latter during armed conflicts.<sup>8</sup>

The Geneva Conventions and Additional Protocols are the primary sources for defining and expanding on the status and protection of civilians. A civilian is defined as any individual who does not fall into one of the groups described in Article 4 A 1), 2), 3) or 6) of the Third Geneva Convention, as well as Article 43 of this Protocol. If

<sup>6</sup> *South Africa files case at ICJ accusing Israel of 'genocidal acts' in Gaza*, AL JAZEERA (Dec. 29, 2023), <https://www.aljazeera.com/news/2023/12/29/south-africa-files-case-at-icj-accusing-israel-of-genocidal-acts-in-gaza>.

<sup>7</sup> Julia Frankel, *With Gaza's death toll over 40,000, here's the conflict by numbers*, AP NEWS (Aug. 15, 2024), <https://apnews.com/article/israel-hamas-gaza-war-palestinians-statistics-40000-7ebec13101f6d08fe10cedbf5e172dde>.

<sup>8</sup> Geraldine Bueren, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol No 2) 1977*, in INTERNATIONAL DOCUMENTS ON CHILDREN 396-8 (Geraldine Bueren ed., 1998).

there is any uncertainty about whether a person is a civilian, that person is assumed to be civilian.<sup>9</sup>

Rule 5 of Customary International Humanitarian Law defines “civilians” as those who are not members of the armed forces. The civilian population refers to all people who are civilians. In their comprehensive research of customary IHL, Jean-Marie Henckaerts and Louise Doswald-Beck describe “civilians” as those who are not members of the armed forces and do not directly engage in hostilities.<sup>10</sup> This distinction is crucial for implementing IHL regulations, which aim to shield civilians from the hazards of military operations and from being targeted.<sup>11</sup>

### III. The Protection of Women and Children during the Armed Conflict

The Protection of women are generally a common concern, since women are typically not recruited to fight. Nonetheless, women often remain unarmed and vulnerable, especially as traditional moral, community, and institutional protections collapse amid widespread violence. Women require specific protection from rape, coerced prostitution, and any other forms of sexual assault or abuse.<sup>12</sup> IHL seeks to protect all people from suffering during armed conflicts. However, it acknowledges that women are disproportionately affected by specific threats, such as sexual violence and health hazards, that are often intensified in wartime.<sup>13</sup>

The Geneva Conventions and their Additional Protocols form the foundation of IHL. The Fourth Geneva Convention, in particular, outlines the protection of civilians, including women, in armed conflicts. Article 27 of the Fourth Geneva Convention specifically emphasizes the protection of women, stating that “[w]omen shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.”<sup>14</sup>

During the conflict in Bosnia, widespread sexual violence against women

<sup>9</sup> Geneva Convention III, art. 4A (1)-(3) & (6); Additional Protocol I to the Geneva Conventions, art. 50.

<sup>10</sup> JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 17 (2005).

<sup>11</sup> *Id.*

<sup>12</sup> Charlotte Lindsey-Curtet et al., Addressing the Needs of Women Affected by Armed Conflict, ICRC (Mar. 2004), at 10, [https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc\\_002\\_0840\\_women\\_guidance.pdf](https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0840_women_guidance.pdf).

<sup>13</sup> Srishti Sinha, Protection of Women and Children during Armed Conflicts under International Humanitarian Law, iPleaders (Sept. 16, 2021), <https://blog.iplayers.in/protection-women-children-armed-conflicts-international-humanitarian-law>.

<sup>14</sup> Geneva Convention IV, art. 27.

was brought into international focus. The International Criminal Tribunal for the former Yugoslavia (ICTY), in the landmark case of *Prosecutor v. Kunarac*,<sup>15</sup> convicted individuals of rape as a crime against humanity, recognizing it as a tool of ethnic cleansing. Upon its establishment, the ICTY initiated investigations into reports of systematic detention and rape involving women and children. It was the first international criminal tribunal to secure convictions for rape as a form of torture and for sexual enslavement as a crime against humanity. Over one-third of those convicted by the ICTY (78 out of 161) were found guilty of crimes involving sexual violence.<sup>16</sup>

During the Rwandan Genocide, an estimated 250,000 to 500,000 women and girls were raped. Women were also subjected to sexual abuse by soldiers from the Rwandan Patriotic Front. The International Criminal Tribunal for Rwanda (ICTR), in the landmark case of *Prosecutor v. Jean-Paul Akayesu*,<sup>17</sup> acknowledge that Jean-Paul Akayesu, a former mayor, was found guilty of genocide, crimes against humanity (including rape), and incitement to genocide. The ICTR ruled that Akayesu's actions, including inciting and facilitating mass rapes, violated Articles 3 and 4 of the ICTR Statute, which address crimes against humanity.<sup>18</sup>

According to Oxfam, the current Armed Conflict between Israel and Hamas has resulted in huge female casualties. More women and children have been killed in Gaza by the Israeli military than in any other conflict in the last two decades. According to conservative estimates, over 6,000 women and 11,000 children have lost their lives in Gaza due to Israeli military actions in the past year.<sup>19</sup> On the other hand, UN Women reported in April 2024 that 10,000 Palestinian women in Gaza have been killed, including an estimated 6,000 mothers, resulting in 19,000 children being orphaned. Those women who have survived Israeli bombardments and ground operations have become displaced, widowed, and are facing severe starvation.<sup>20</sup>

<sup>15</sup> *Prosecutor v. Kunarac*, Case No. IT-96-23-T & IT-96-23/1-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia, Feb. 22, 2001).

<sup>16</sup> Kate Merry, *The ICTY, a Legacy of Justice for Female Victims of Rape: A comparative study of Bosnian war criminal cases 'Kunarac et al.' and 'Milan Lukić & Sredoje Lukić', to assess the prosecution of sexual violence by the ICTY from 1996*, at 1 (Master's thesis at Utrecht University, 2023), <https://studenttheses.uu.nl/handle/20.500.12932/45873?show=full>.

<sup>17</sup> *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4, Judgment, ¶¶ 731-734 (Int'l Crim. Trib. for Rwanda, Sept. 2, 1998).

<sup>18</sup> *Id.*

<sup>19</sup> Oxfam International, *More Women and Children Killed in Gaza by Israeli Military than Any Other Recent Conflict in a Single Year* (Sept. 2024), <https://www.oxfam.org/en/press-releases/more-women-and-children-killed-gaza-israeli-military-any-other-recent-conflict>.

<sup>20</sup> UN Women, *Six Months into the War on Gaza, Over 10,000 Women Have Been Killed, Among Them an Estimated 6,000 Mothers, Leaving 19,000 Children Orphaned* (Apr. 2024), <https://www.unwomen.org/en/news-stories/press-release/2024/04/six-months-into-the-war-on-gaza-over-10000-women-have-been-killed>.

The Razan Al-Najjar was a prominent case regarding the international killing of medical personnel. Razan Al-Najjar was a member of the Palestinian Medical Relief Society (PMRS), who was killed by the Israeli military on June 1, 2018, in Khan Yunis. Al-Najjar was attempting to reach injured individuals during protests when she was shot with live ammunition by the Israel Defense Forces (IDF).<sup>21</sup> Doctors and medical personnel are integral members of the community. IHL obligates healthcare workers to provide medical care to victims of conflict, regardless of their affiliation. Their killing, torture or any kind of mutilation are absolutely prohibited as per Articles 24 to 26, and Articles 36 of the Fourth Geneva Convention.<sup>22</sup> It is also against Articles 76 and 77 of Additional Protocol I providing special protection in times of conflict to civilians, including women, children, and medical staff. The death of Razan was widely seen as a violation of IHL and prompted widespread outrage.<sup>23</sup> In relation to the killing of medical personnel Razan Al-Najjar, the state of Israel has been found to have violated Article 26, paragraph 1 of the First Geneva Convention (1949). This article states that staff from National Red Cross Societies and other authorized voluntary aid organizations are to be regarded equally to personnel mentioned in Article 24, as long as they are subject to military laws and regulations. The Palestinian Medical Relief Society (PMRS) asserts that Israel's actions contravene the Geneva Conventions Provisions.<sup>24</sup>

On the other hand, the international community has long prioritized the protection of children, but this commitment has gained significant momentum since 1979, when the Year of the Child was designated. As new organizations dedicated exclusively to children's rights have emerged, legal instruments are being developed to enhance children's protection. Children are particularly vulnerable during and after armed conflicts. In recent years, there has been a growing focus on protecting children in these situations.<sup>25</sup> In this regard, the United Nations General Assembly adopted a declaration in 1974 that condemned attacks on civilian populations and prohibited violence against women and children during emergencies and armed conflicts.<sup>26</sup> This

21 Farah Yasmine & Irham Maulidi, *The Case of Razan Al-Najjar: The International Humanitarian Law Perspective 1* (Undergraduate thesis at Universiti Sultan Zainal Abidin, 2021), [https://www.researchgate.net/publication/376489026\\_The\\_Case\\_of\\_Razan\\_Al-Najjar\\_The\\_International\\_Humanitarian\\_Law\\_Perspective?channel=doi&linkId=657aca7b6610947889c85e6f&showFulltext=true](https://www.researchgate.net/publication/376489026_The_Case_of_Razan_Al-Najjar_The_International_Humanitarian_Law_Perspective?channel=doi&linkId=657aca7b6610947889c85e6f&showFulltext=true).

22 Geneva Convention IV, arts. 24-26 & 36.

23 *Id.* art. 27. Additional Protocol I to the Geneva Conventions, arts. 76-77.

24 Geneva Convention I, art. 26(1).

25 Sandra Singer, *The Protection of Children During Armed Conflict Situations*, 26(252) INT'L REV. RED CROSS 133-68 (1986).

26 Declaration on the Protection of Women and Children in Emergency and Armed Conflict, G.A. Res. 3318 (XXIX), U.N. Doc. A/RES/3318 (Dec. 14, 1974).

declaration specifically outlawed persecution, imprisonment, torture, and all forms of degrading treatment.<sup>27</sup>

Children are especially vulnerable in armed conflicts. Despite legal protections, they are still recruited by armed forces and groups. Many are separated from their families, forcibly displaced, killed, injured, sexually abused, or exploited in multiple ways.<sup>28</sup> The Hague Conventions of 1899 and 1907 included provisions that offered specific protections to children as part of the civilian population.<sup>29</sup> Although provisions in the Geneva Convention IV grant special care to children, there is no article therein which provides a legal basis. However, Article 77(1) of Additional Protocol I reinforces the principle of special protection for children, stating: “Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict must provide them with the care and aid they need, whether due to their age or for any other reason.”<sup>30</sup>

Protection during non-international conflicts is also ensured under Article 4(3) of

Additional Protocol II which stipulates that “Children shall be provided with the care and aid they require.”<sup>31</sup> According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Israeli military actions in the ongoing conflict have resulted in the deaths of 4,104 children in Gaza. In addition, these deaths have been reported over one month of violence. That is comfortably more than 100 children killed every day on average.<sup>32</sup> According to a report by the United Nations Human Rights Council (UNOHRC) on May 6, 2024, the total death toll of Palestinians in Gaza has reached 34,488, with 14,500 of those being children and 9,500 being women.<sup>33</sup> Al Jazeera reported that, since October 7, Israeli attacks have resulted in the deaths of at least 10,000 children, according to Palestinian officials. This equates to the tragic loss of one Palestinian child every 15 minutes, which represents approximately one in every 100 children in the Gaza Strip.<sup>34</sup> In particular, Article 38 of the Convention on the Rights of the Child 1989 requires the protection of children in armed conflicts

<sup>27</sup> Singer, *supra* note 25.

<sup>28</sup> Sinha, *supra* note 13.

<sup>29</sup> Singer, *supra* note 25, at 142.

<sup>30</sup> Additional Protocol I to the Geneva Conventions, art. 7(1).

<sup>31</sup> Additional Protocol II to the Geneva Conventions, art. 4(3).

<sup>32</sup> OCHA, Hostilities in the Gaza Strip and Israel - Reported Impact (Nov. 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-31>.

<sup>33</sup> UNOHRC, Onslaught of Violence Against Women and Children in Gaza Unacceptable: UN Experts (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.

<sup>34</sup> See *Know Their Names: Palestinian Children Killed in Israeli Attacks on Gaza*, AL JAZEERA (Jan. 2024), <https://interactive.aljazeera.com/aje/2024/israel-war-on-gaza-10000-children-killed>.

and respect for applicable international humanitarian law, and Article 39 obligates states to promote the recovery and reintegration of child victims of armed conflict.<sup>35</sup>

## IV. The Violation of Fundamental Principles for the Protection of the Civilian Personals

IHL refers to a number of guiding principles which restrict the means and methods of warfare. The parties to a conflict are obligated, among other things, to respect the fundamental principles of IHL that regulate the manner in which warfare is conducted.<sup>36</sup> Given the prevalence of sophisticated weaponry in today's wars, civilian populations are now more susceptible to being targeted by hostile forces.<sup>37</sup>

These principles were referred to by the ICJ in its advisory opinion in the *Nuclear Weapon* case as "cardinal principles."<sup>38</sup> It means that these principles are fundamental and backbone of IHL which cannot be violated.<sup>39</sup> Rule 139 of Customary International Humanitarian Law established that, each party to an armed conflict has an obligation to respect the following principles.<sup>40</sup>

### A. Principle of Proportionality

The principle of proportionality as codified in Article 51(5)(b) of Additional Protocol I and Rule 14 of Customary International Humanitarian Law shows that military operations cannot be carried out against targets that pose a risk of "incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."<sup>41</sup> Therefore, by imposing stringent regulations that emphasize the following equation, the principle of proportionality seeks to minimize the harm that military activities may do. The impact of the tactics and weaponry employed in

<sup>35</sup> Conventions of Rights of the Children, art. 38.

<sup>36</sup> Marco Velásquez-Ruiz, *The Principles of Distinction and Proportionality under the Framework of International Criminal Responsibility-Content and Issues*, 14(1) INT'L L. REV. COLOMB. DERECHO INT'L 15-42 (2009).

<sup>37</sup> Anita Nwotite, *Protecting Civilians in the Russia-Ukraine War: The Obligation to Respect Basic Principles of International Humanitarian Law*, 2(2) UCC L. J. 109-36 (2022).

<sup>38</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶¶ 78-79 (July 8).

<sup>39</sup> MOHAMMAD JAN, INTERNATIONAL HUMANITARIAN LAW 60 (2015).

<sup>40</sup> Nwotite, *supra* note 37.

<sup>41</sup> Additional Protocol I to the Geneva Conventions, art. 51 (5) (b); ICRC, Rule 14: Proportionality in Attack, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule14>.



warfare must not outweigh the objective of achieving military success.<sup>42</sup> The principle of proportionality is applicable when military objectives are attacked. This basically acknowledges that for people and civilian property are inevitably harmed during wars. On the other hand, it outlines how military need and human decency must be balanced in such circumstances, so setting a limit on the amount of accidental civilian injury that is acceptable.<sup>43</sup>

According to several experts, protecting civilians from such harm as enemy assaults that target them specifically or carry no particular target is an important factor to take into account when determining the military advantage in accordance with the principle of proportionality.<sup>44</sup> First of all, shielding civilians from direct enemy strikes may be the primary goal or perhaps the only goal of a particular military operation or military campaign. Similarly, the obligation to protect civilians is expressly included in the mandate that the UN Security Council granted some forces. Therefore, to ignore it as a significant military advantage would be inconsistent.<sup>45</sup>

On November 8, 2006, meanwhile, the IDF heavily attacked the village of Beit Hanoun in the northern Gaza Strip. There were several civilian casualties from the attack on a residential area in Beit Hanoun, and there were worries that the principle of proportionality under IHL may have been violated.<sup>46</sup> Families were sleeping in their houses in the area where the shelling took place. Over fifty Palestinian citizens were injured or dead as a consequence of the attack, most of whom were women and children. In the process, several homes suffered major damage or were completely destroyed.<sup>47</sup>

After the incident, even the Israeli government expressed regret for the incident, saying that the military targeting system's technical error had resulted in a terrible error.<sup>48</sup> Even if the shelling was accidental, the use of heavy artillery in a heavily

<sup>42</sup> Anthony Nakhle, *International Humanitarian Law: The Principle of Proportionality and Military Operations* (2021), at 1-13, [https://www.researchgate.net/profile/Anthony\\_Nakhle2/publication/350581081\\_International\\_Humanitarian\\_Law\\_The\\_Principle\\_of\\_Proportionality\\_and\\_Military\\_Operations/links/6066f3b1a6fdccad3f66d309/International-Humanitarian-Law-The-Principle-of-Proportionality-and-Military-Operations.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Anthony_Nakhle2/publication/350581081_International_Humanitarian_Law_The_Principle_of_Proportionality_and_Military_Operations/links/6066f3b1a6fdccad3f66d309/International-Humanitarian-Law-The-Principle-of-Proportionality-and-Military-Operations.pdf?origin=publication_detail).

<sup>43</sup> Laurent Gisel, *The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law 1-86* (ICRC International Expert Meeting, June 2016), [https://www.icrc.org/sites/default/files/document/file\\_list/4358\\_002\\_expert\\_meeting\\_report\\_web\\_1\\_0.pdf](https://www.icrc.org/sites/default/files/document/file_list/4358_002_expert_meeting_report_web_1_0.pdf).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 29.

<sup>46</sup> Human Rights Council [HRC], *Human Rights Situation in Palestine and Other Occupied Arab Territories: Report of the High-Level Fact-Finding Mission to Beit Hanoun*, U.N. Doc. A/HRC/9/26 (Sept. 1, 2008), at ¶¶ 1-42, [https://www.wikiwand.com/en/articles/November\\_2006\\_Beit\\_Hanoun\\_incident#google\\_vignette](https://www.wikiwand.com/en/articles/November_2006_Beit_Hanoun_incident#google_vignette).

<sup>47</sup> *Id.*

<sup>48</sup> Isaac Chotiner, *Why Israel's Approach to Civilian Casualties May Not Affect U.S. Support*, *NEW YORKER* (Apr. 8, 2024), <https://www.newyorker.com/news/q-and-a/why-israels-approach-to-civilian-casualties-may-not-affect-us-support>.

populated civilian area was unethical and violated the principles of distinction and proportionality. International observers were not satisfied with this explanation.<sup>49</sup> This case is a clear example against the principle of proportionality. IHL needs to be strictly adhered, especially when military operations are being carried out in areas with high population densities. The challenges of establishing a balance between military goals and civilian safety in war areas are still often highlighted by this case.<sup>50</sup>

Israel has frequently violated human rights and aggressively engages in armed conflicts with its surroundings, including Palestinian groups and, most notably, the Gaza Strip. Israel signed the Rome Statute of the International Criminal Court, but did not ratify it presumably because Israel does not want to be under investigation and punishment for crimes against humanity, crimes of aggression, genocide, and war crimes.<sup>51</sup>

## B. The Principle of Distinction

The principle of distinction is one of the earliest and most fundamental ideas of IHL. The ICJ regarded it as a ‘cardinal’ and ‘intransgressible’ principle that is part of the ‘fabric’ of IHL. It forbids launching attacks against civilians and civilian objects, and only applies during the time of armed conflict.<sup>52</sup> According to the principle of distinction, combatants not only have to set themselves apart from civilians, but are also prohibited from indiscriminately or disproportionately harming civilians, or from purposefully targeting them. The meaning of the term “civilian” may be defined as contra-distinction to combatants, i.e., civilians are those who are not combatants. In essence, a person is regarded a civilian if they cannot fulfill the requirements to be a fighter.<sup>53</sup>

The principle of distinction requires to distinguish the parties to an armed conflict distinguish at all times between civilian and civilian objects on the one hand, and combatants and military objectives on the other. In this vein, attacks should only be directed against combatants and military objectives. It is the basis for a number of specific rules intended to protect civilians, including the prohibition on intentional or direct attacks against civilians or civilian objects, a prohibition of indiscriminate

<sup>49</sup> HRC, *supra* note 46, at ¶ 6.

<sup>50</sup> *Id.*

<sup>51</sup> Nakhle, *supra* note 42, at 8.

<sup>52</sup> ICRC, *Cyber Operations During Armed Conflict: The Principle of Proportionality* (2023), at 1-3, [https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/04\\_proportionality-0.pdf](https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/04_proportionality-0.pdf).

<sup>53</sup> Noëlle Quéniwet, *The War on Terror and the Principle of Distinction in International Humanitarian Law*, 3(1) ANUARIO COLOMBIANO DE DERECHO INTERNACIONAL 155-86 (2010).

attacks and the use of “human shields,” and other rules related to the conduct of hostilities that are intended to spare civilians and civilian objects from the effects of hostilities. IHL also prohibits hostage-taking, whether of civilians or of people who are not taking part in the hostilities.<sup>54</sup>

The protection of individual civilians, civilian property, and civilian population at large is the purpose of this principle. Direct attacks on civilians or civilian objects, as well as indiscriminate strikes, which target both military objectives and civilians or civilian objects without distinction, are prohibited.<sup>55</sup> The principle of distinction establishes a duty to distinguish between combatants, and noncombatants or civilians who should not be targets of war.<sup>56</sup> For example, the situation in Palestine and Israel is violation of international law principles. The destruction caused by Israel during the current war is a response to similar acts carried out by Israel during the past 75 years. More than 600 Palestinian towns and villages were destroyed as a result of these attacks, and a million Palestinians were systematically cleansed after being driven out from their houses and properties.<sup>57</sup>

The concept of being a combatant is the main one that the principle of distinction protects. More often than not, the distinction is expressed as one between civilians and non-civilian, or as combatants and non-combatants. If the latter presentation had been used instead of the former, any explanation of its meaning would still clarify the term “civilian” which refers to anybody not a member of the armed forces, especially the military.<sup>58</sup>

### C. Prohibition of Indiscriminate Attacks

IHL prohibits attacks designed to strike civilian objectives as well as military objectives without making any distinctions. Additional Protocol I specifies three categories of indiscriminate attacks.<sup>59</sup> The first attack are not directed at a specific military objective: this category is based more on how a weapon is used than on the weapon itself. The second employ a method or means of combat which cannot be directed at a specific military objective. This prohibits the use of weapons that strike

<sup>54</sup> Braden Allenby, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, in *THE APPLIED ETHICS OF EMERGING MILITARY AND SECURITY TECHNOLOGIES* 111-62 (Braden Allenby ed., 2015).

<sup>55</sup> Kerrie Holloway, *International Humanitarianism*, in *THE BLOOMSBURY HANDBOOK OF THE SPANISH CIVIL WAR 185-98* (Antonio Cazorla-Sánchez et al. eds., 2023).

<sup>56</sup> Asa Kasher, *The Principle of Distinction*, 6(2) *J. MIL. ETHICS* 152-67 (2007).

<sup>57</sup> Hamdan Taha, *Destruction of Cultural Heritage in Gaza 1-22* (Institute for Palestine Studies, 2024), <https://www.palestine-studies.org/en/node/1655123>.

<sup>58</sup> Kasher, *supra* note 56, at 159.

<sup>59</sup> Additional Protocol I to the Geneva Conventions, art. 51(4).

blindly or are not accurate enough to target a specified military objective, depending on the circumstances and method of use. The third refer to a method or means of combat the effects of which cannot be limited by Additional Protocol I. In addition, Article 51(5)(a) prohibits indiscriminate attacks, including area bombing - an attack that treats a number of clearly separated and distinct military objectives in a populous area as if they were all the same.<sup>60</sup>

The use of weapons that violate the prohibition against indiscriminate attacks must be evaluated on a case-by-case basis, taking into account the type of weapon, the location of the attack, the expected military advantage, and the potential for civilian casualties and damage. The ICRC has said that in the context of explosive weapons, a “circumstance that could make the use of a certain weapon indiscriminate is certainly its use in a densely populated area.”<sup>61</sup> Article 25 of The Hague Regulations establishes the rules and customs of ground war, which prohibit attacks on cities and villages without adequate warning to local authorities to arrange for emergency measures.<sup>62</sup> According to Article 53 of the Fourth Geneva Convention, occupying forces are prohibited from damaging or destroying private property unless their actions are justified and there is no way to avoid the damage. Also, according to Article 8 (2) (a) (IV) of the Rome Statute, destroying property without reason on a large scale constitutes a war crime.<sup>63</sup>

As defined by Article 51 of Additional Protocol I, Israel is guilty of committing numerous indiscriminate attacks on (village of Beit Hanoun) Gaza during the attack on the village of Beit Hanoun. These principles are now regarded as fundamental elements of international law. Israel violated the “principle of distinction” between civilians and military actors, as well as Articles 48, 51, and 52 of the Geneva Conventions by conducting indiscriminate attacks.<sup>64</sup> For example, Jabalia, a town of 120,000 people, lies four kilometers north of Gaza City. There is a refugee camp in the north of the city which one of the most densely inhabited areas on Earth, taking up only 1.4 square kilometers of space. Israeli arms were aimed squarely at the camp during the attack. Almost 300 people were injured, 100 of them were children, and 74 people died, 23 of them were children. Over 50 homes were entirely destroyed, while

<sup>60</sup> Sahr Muhammedally, *Minimizing Civilian Harm in Populated Areas: Lessons from Examining ISAF and AMISOM Policies*, 98(301) INT'L REV. RED CROSS 225-48 (2016).

<sup>61</sup> *Id.* at 228.

<sup>62</sup> Convention (IV) with Respect to the Laws and Customs of War on Land, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>.

<sup>63</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31.

<sup>64</sup> Bueren, *supra* note 8.

dozens more were damaged.<sup>65</sup> These violations are categorized as war crimes under Article 8b (4) of the Rome Statute. Additionally, Israeli action is against Article 33 of the Fourth Geneva Convention, which prohibits reprisal, intimidation, and other types of collective punishment.<sup>66</sup>

## V. Conclusion

The protection of civilians during armed conflicts is a key element of IHL. In the context of the Israeli-Hamas conflict, however, this principle is frequently violated. In this article, the author has examined important concepts of IHL, focusing on the legal concept of civilians, the distinction between civilians and combatants, and the protection offered to civilian persons, especially women and children, and civilian objects. Israel has violated key provisions of IHL during the Israeli-Hamas conflict, particularly concerning the protection of civilians including Fourth Geneva Convention, Additional Protocol I 1977, and Rome Statutes. Analyzing violations of fundamental IHL principles, such as distinction, proportionality, and the prohibition on indiscriminate attacks, this research has found that both civilians and civilian objects in Gaza have frequently been subjected to illegal harm. The Israel-Hamas armed conflict has exposed ongoing violations of these protections. While IHL provides a complete framework for civilian protection, its enforcement in real-world conflicts, as showed in the Israel-Hamas conflict, is uneven and filled with challenges. This highlights the critical need for stronger systems to guarantee responsibility and the prevention of future crimes, ultimately protecting civilians throughout armed conflicts. IHL plays a crucial role in protecting civilians during armed conflicts by establishing clear legal frameworks that define the rights of civilians and the obligations of combatants. It promotes the principles of distinction and proportionality, which require parties to differentiate between military targets and civilians, thereby minimizing harm to non-combatants. There is no time to lose. The international community should attempt to lead Israel to comply with IHL for civilian protection in the Gaza strip.

<sup>65</sup> Euro-Med Observer, *Indiscriminate Attack and Deliberate Killing: Israel Takes Revenge on Gaza by Killing Civilians* (2014), at 4, [https://euromedmonitor.org/uploads/reports/Killing\\_EN.pdf](https://euromedmonitor.org/uploads/reports/Killing_EN.pdf).

<sup>66</sup> Geneva Convention IV, art. 33.

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