

COMMENT | Gaza conflict: Humanitarian law compliance

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COMMENT | Since Oct 7, we've witnessed the devastating and catastrophic sufferings of innocent civilians in Gaza.

One month after Hamas launched its attack, Israel amassed over 10,000 casualties of Palestinian civilians in Gaza with serious destruction of critical infrastructure such as hospitals.

The number includes 4,104 children and 89 people working with the United Nations Palestinian Refugee Agency (UNRWA).

Under international humanitarian law (IHL), children and humanitarian workers are protected against the atrocities of war and the attack on these groups appears to beg the question of the efficacy of IHL and whether Israel and Hamas respect it.

Does IHL protect civilians during the war?

The IHL, also known as the law of armed conflict or laws of war, contain laws and principles to lay down rules in times of war by protecting those who are not participating in the war by limiting the conduct of warfare. The aim is to preserve humanity in war.

The Geneva Conventions are the main treaties ratified by all 196 countries in the world, including Israel and Palestine. The Geneva Conventions impose obligations on the state parties.

In the event of violations, the UN issues resolutions to remind parties of their obligations or invoke ceasefire through its General Assembly (UNGA) or the Security Council (UNSC).

The UNSC can only prevent further violations through Chapter VII of the UN Charter by taking “enforcement measures to maintain or restore international peace and security”.

Yet, such interventions can be vetoed by the permanent members hampering the effort. Calls for a ceasefire were unsurprisingly vetoed by the US, Russia, and China.

Another way to bring justice for IHL violations is through the International Criminal Court (ICC). However, the ICC jurisdiction is limited through UNSC

referral and upon request from its member states – countries that ratify the Rome Statute of 2002.

Previously, the ICC held trials for crimes such as genocide, war crimes, crimes against humanity, and crimes of aggression.

In Gaza, the IHL is being severely violated with the casualties of thousands of civilians attacked by Israel within the 141-square mile piece of Palestinian land.

These deliberate attacks were aimed at civilians and civilian properties. The command responsibility lies on the shoulders of Israeli Prime Minister Benjamin Netanyahu.

However, it is highly unlikely that justice can be brought through the ICC because Israel is neither a state party to the Rome Statute nor does it recognise the ICC's jurisdiction.

At most, the ICC, through the Office of the Prosecutor, is monitoring the situation and recording developments.

Do both Hamas and Israel respect IHL?

Israel designates Hamas as a terrorist organisation, thus justifying

counterattacks as counter-terrorism measures. Despite Israel's "right to self-defence" justification, the use of force against Hamas in Gaza was excessive and was in gross violation of the IHL.

For Israel, respect for the IHL must be given to ensure that humanity is respected in the worst of times. Instead, Israel launched 299 airstrikes during its operations in October 2023, bombing over 12,000 targets across the Gaza Strip with payloads reportedly amounting to more than 25,000 tonnes of explosives.

A complete siege of cutting water, electricity, and safe passage from war zones is inhumane, causing only further suffering, perpetrating further the view that the Israeli attacks are indiscriminate and disproportionate according to the principles of IHL.

There is no excuse for Israel, with the most advanced military in the world, of being unaware of its obligation towards IHL. There is simply no justification for the high death toll caused by Israel's retaliation against Hamas.

Israel has violated IHL's fundamental principles of humanity, distinction, proportionality, and military necessity through the killings of mass civilian population.

For Hamas, the Oct 7 attack brought terror and the death of civilians, consistent

with the definition of an act of terrorism. Abduction of civilian hostages is prohibited, of which Hamas has currently around 240 civilians held hostage.

Allegations against Hamas are rampant, with alleged usage of civilians as human shields and hospitals as fronts for underground tunnelling, yet no conclusive reports or evidence surfaces, thus this article will not comment further on those two allegations.

On the positive side, the release of several hostages for humanitarian reasons signified that Hamas respected the humanity principle.

Alas, even though wars will always happen for as long as humans exist, the obligations and compliance to IHL do not seem to be a matter of utmost importance in the Hamas-Israel conflict.

The world is seeing the UN, established to “save succeeding generations from the scourge of war”, crumble into irrelevance. State alliances and rivalries have extinguished the ultimate purpose of the UN as a platform for upholding peace.

The reality remains that these issues pose the ultimate challenges for accountability towards IHL violations and justice for innocent lives. Above all, humanity must be preserved even during the most gruesome circumstances.

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