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Hamas-Israel War (2023) And International Humanitarian Law: A Critical Analysis

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Abstract

The 2023 Hamas-Israel conflict has triggered widespread humanitarian concerns, particularly regarding the application of International Humanitarian Law (IHL). This article critically examines the legal implications of the conflict, focusing on the classification of the war, violations of IHL, and the protection of civilians. A key gap identified is the ambiguity surrounding whether the conflict should be classified as an international or non-international armed conflict (IAC or NIAC), with significant consequences for the enforcement of IHL. The article employs a qualitative legal analysis to evaluate the current framework of IHL and its effectiveness in addressing violations by both parties. Key findings highlight the complexity of enforcing IHL due to political biases, the asymmetry of the conflict, and difficulties in gathering evidence in an active war zone. The article also reveals that the classification of the conflict directly affects the scope of civilian protections and international interventions. The research provides recommendations to strengthen IHL enforcement, such as expanding universal jurisdiction for war crimes and clarifying the proportionality principle. These suggestions aim to improve civilian protections and ensure more effective accountability in future conflicts. This study adds to the literature by offering a nuanced understanding of the challenges faced in enforcing IHL during ongoing, politically charged conflicts and the potential reforms necessary to safeguard civilians.

Keywords: International Humanitarian Law (IHL), Hamas-Israel Conflict, War Crimes Accountability, Civilian Protection, Conflict Classification

Introduction

The 2023 conflict between Hamas and Israel was one of the most violent in a long-standing and highly contentious political rivalry (Bhattacharya, 2023). The war started in October 2023, and there was a high level of violence with Hamas attacking Israel on several fronts: civilian, infrastructure, and security (Segell, 2025). They responded by launching a massive military operation that left most areas of the Gaza Strip devastated. Many people died, both from the Israeli side and the Palestinian side, and the death toll of civilians is still rising. During the hostilities, the humanitarian crisis in Gaza deepened, as many regions were



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destroyed, and the population faced a lack of food, medicine, and utilities. While the global actors watched, the international community was left with many questions on its mind, particularly concerning the principles of the International Humanitarian Law (IHL). International Humanitarian Law, also known as the law of armed conflict, aims at protecting civilian persons, controlling the conduct of the hostilities, and ensuring that the parties to conflict observe certain standards of conduct (Ali et al., 2024). It is based on the principles of humanity, neutrality, impartiality, and independence to minimize the impact of armed conflict. When it comes to the 2023 war between Hamas and Israel, the application and compliance with these principles have been highly debated. Each party has been accused of breaching IHL; the Israelis for excessive force and attacking civilian objects, and the Palestinians for acts that jeopardize the civilian population and using them as shields.

The purpose of this article is to discuss the conflict in light of IHL. Therefore, by analyzing the legal status of the conflict and its conduct, as well as the protection of civilians in conflict, the author tries to determine whether there are violations and what this could mean for IHL. Besides, this article will consider the prospects for the implementation of international law in such conditions of instability and political tension. It is through this method that one might be able to establish how international law could be applied in a similar conflict in the future to protect the innocent civilians who are affected. The goals of this article are to evaluate the existing legal regulations of IHL regarding the 2023 war between Hamas and Israel, to describe the violations of IHL by both parties, and to discuss the impact of violations on the civilian population. This work will also consider the difficulties and constraints of policing international law in the course of an ongoing war and present ideas on how the international community can more effectively bring the perpetrators to justice. This article will seek to analyze the legal issues of the 2023 Hamas-Israel conflict by identifying the cases where international humanitarian law was violated or not applied. The examination will give a better understanding of the humanitarian effects on the civilians and recommendations for the better implementation of IHL in future conflicts. The objective of this analysis is to draw attention to the importance of more effective international processes that would help protect those who are most often left without protection during armed conflicts.

Legal Classification of the Conflict

Legal Classification of the 2023 Hamas-Israel Conflict: International or Non-International?

The 2023 war between Hamas and Israel has elicited a lot of discussion among theorists, human rights activists, and politicians regarding the classification of the conflict under IHL. This question lies at the center of this controversy: whether the conflict is an IAC or a NIAC (Dinstein, 2012). This is not merely a legal difference in classification but has implications for the laws and rules that govern the war, treatment of prisoners, and civilians. It is important to understand what this classification means because it determines the rights and duties of both parties in the conflict. The two categories of IAC and NIAC are differentiated based on the parties involved. While IACs happen between two or more states, NIACs are confined to within a state's territory where the government is fighting non-state armed groups (Watts, 2012). This is the case



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with the Hamas-Israel conflict because while Hamas is a non-state actor, Israel is a state actor. Some legal scholars and international organizations believe that the conflict between Israel and Hamas is an IAC because Hamas has a political and military organization, which functions like a state in the management of the Gaza Strip (Margalit, 2020).

This perspective could be further explained by the fact that Israel has retaliated with armed forces attacks that involve the use of missiles and ground troops when responding to Hamas attacks, and this is characteristic of IAC. However, other scholars argue that this is a NIAC, mostly because Israel and Hamas have limited diplomatic relations (Kihara-Hunt, n.d.). Hamas does not fight for statehood like Israel does, and the conflict is essentially constrained to Gaza and not across borders. However, due to the absence of any declaration of war or any recognition of each other as belligerents, it is evident that the conflict outlined falls under the category of a NIAC. By some interpretations of IHL, this would mean that the conflict must be governed by the laws that apply to NIACs – including those which prohibit recourse to the use of force within the country's borders, as well as those that afford a certain level of protection to civilians.

This debate is important as different rules of IHL apply to IACs and NIACs. Civilians and combatants in IACs are both afforded certain protections. For instance, Article 3 of the Geneva Conventions, which covers NIACs, offers basic protection to civilians and combatants, but is not as stringent as when it comes to IACs (Niriella, 2025). Critics have accused the authors of the document of overlooking clarity in this respect, which creates numerous loopholes in law, especially in defining when Israel's airstrikes on Gaza's infrastructure or Hamas's bombings of Israeli civilian targets are violations of IHL. There is also the problem of interpreting it as a NIAC, or a non-international armed conflict; the rules of NIAC may not offer as much protection to civilians as the Geneva Conventions are less strict in internal conflicts. However, the classification of this conflict has significant ramifications in the political and diplomatic spheres. If a conflict is considered an IAC, this may lead to more extensive intervention by international actors, which can include actions in compliance with IHL. They are unlikely, though, mainly due to the political tension that is associated with the Israeli-Palestinian conflict, which has been a thorny issue that polarizes the international community. On the other hand, the classification of the conflict as an NIAC may prevent it from attracting large-scale international involvement, meaning both parties will act with comparatively less interference from outside forces.



Fig 1 shows the latest casualty figures in Gaza as of February 3, 2025.

Source: <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>

Moreover, the Gaza healthcare sector has been significantly affected: hospitals remain partially operational, and supplies are scarce. The reports suggested that six out of seven dialysis centers in Gaza are no longer available, with barely enough machines for the population of more than 2 million people. These questions have significant implications for the effectiveness of IHL in the present conflict, given that both parties have been charged with breaching legal principles regarding the selection of civilian objects for targeting. The contradictory positions on the nature of the 2023 conflict as an international or non-international war are tied to another principal concern of the fragmentary application of IHL. It also influences not only the structures of the law but also the attempts to alleviate the suffering of the population. In any case, as the conflict unfolds and planning for its resolution is made through legal or political channels, these legal loopholes must be closed and civilians granted the protection they are entitled to, irrespective of the classification of the conflict.

Implications of this classification on the application of IHL

This issue of categorizing the 2023 conflict between Hamas and Israel as an international or a non-international armed conflict is important in determining the status of International Humanitarian Law in the conflict. The distinction as to whether a conflict is an international or non-international conflict affects not only the legal status of Israel and Hamas but also the protection of the civilian population, the rules on conducting hostilities, and humanitarian assistance (Bidali, 2016). These implications are important since they define the degree of responsibility that both sides bear and outline the procedures for addressing violations of IHL.

To begin with, International Humanitarian Law (IHL) categorizes armed conflict under two categories, International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC) and varies the rules to be followed in these categories. When a conflict is classified as an IAC, other measures from the Geneva



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Conventions and their additional protocols are implemented. Their purpose is to safeguard people's lives, regulate the actions that parties to a conflict can undertake, and impose the requirements of distinction between military personnel and objects on the one hand, and civilians and civilian objects on the other, thereby banning unnecessary violence. IACs tend to be subjected to greater international scrutiny and may need more international control and supervision involving interventions or peacekeeping missions in cases of violation of IHL.

While NIACs, in which one party is a state and the other is one or more non-state armed groups, are regulated by the Geneva Conventions and their Additional Protocols, but afford less legal protection. For instance, while the Article 3 of the Geneva Conventions provides for the minimum standards on treatment of parties in NIACs, other aspects of warfare remain less defined and more loosely governed, hence permitting more flexible rules on engagement (Okpe, 2021). Thus, in NIACs, both state and non-state actors have a greater degree of freedom in terms of their use of force as compared to IACs.

Based on the legal implications of the 2023 Hamas-Israel war, there are valid arguments for both classifications since one side is a state (Israel), while the other is a non-state actor (Hamas). If the conflict is deemed to be an IAC, both sides – Israel and Hamas – would be bound by all the laws of IHL. This would include the obligation to make a distinction between civilian objects and military objectives, and to take precautions for avoiding, insofar as possible, any incidental loss of civilian life; it would also include the obligation to ensure that the anticipated military advantage is proportionate to the expected collateral damage. As described above, unlike IACs, the standards in IDF Operation Protective Edge were much higher, resulting in accusations of war crimes for disproportionate targeting and destroying hospitals, schools, and other essential civilian structures in Gaza. If the conflict is classified as a NIAC, there are even more restrictions on the application of IHL. While civilians are still protected, the laws regulating the conduct of hostilities remain less elaborate. While the distinction between civilians and combatants is well defined and the non-combatants are protected for example by the Geneva Conventions, the additional rules provided in regulations for IACs, such as the rule against attacks which may be of no distinction or excessive proportion to the civilian object or area in question, might not be as adequate (Gade, 2010). This means that, according to this rule, Hamas could be treated differently, for example, by resorting to force by targeting civilians in the Israeli territory, if the conflict is non-international. However, this does not mean that Hamas is exempt from accountability; it still faces allegations of committing war crimes by deliberately targeting civilians and using human shields, which are prohibited under IHL.

In international conflicts, the international actors have more bargaining power, and there are mechanisms in place for the investigation and prosecution of perpetrators of war crimes, for example, the International Criminal Court (Haider et al., 2024). However, as the case of NIAC demonstrates, there is less international control, and it is much more difficult to bring charges for IHL violations, even when one of the parties is an organization such as Hamas. This failure could give both parties a green light to perpetuate the actions that contravene IHL without much repercussions. It is challenging to hold individuals accountable since the conflict is categorized as a humanitarian violation. Also,



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the categorization of the conflict as an NIAC has widespread diplomatic implications. The international participation in NIACs is generally less, as states might not want to interfere in a conflict internal to another country. This means that the two sides can act nearly as they please, without international condemnation or help, as the latter may be interpreted as interference in a civil war. For instance, during the conflict, at least 400 dialysis patients in Gaza died for lack of medical treatment owing to the blockade and destruction of health facilities. The failure to apply international pressure regarding the cessation of such violations as norms of IHL in non-international armed conflicts remains a major difficulty in enforcing laws applicable to such conflicts. The circumstances that unfolded during the 2023 Hamas-Israel fighting provide insights into the seemingly contradictory principles and questions of IHL. It is important to note that in international conflicts, there are more legal measures available to guarantee that violators are accorded the same justice. However, when NIAC is applied, the protection of civilians tends to be less stringent, and the influence of international human rights organs may not be as commanding. This artificial legal categorization encourages the international community to solve these problems where civilian protection is a priority, while both parties should follow international legislation.

Humanitarian Impact

The blockade in the Gaza Strip has produced a humanitarian crisis that most affects civilians, including their access to basic needs for healthcare services (Kooli & Kooli, 2025). These restrictions have made it difficult for food, medicine, and fuel to enter Gaza, making the already poor living standards even worse. This study will show a brief overview of the primary effects of the blockade through a focus on Gaza's healthcare sector. Hospitals and clinics in the region are unable to provide adequate care due to a lack of essential commodities and other necessary facilities. WHO claims that there has been a significant shortage of medicines and other medical commodities like antibiotics, vaccines, and pain relievers that are crucial to managing diseases and wounds. This scarcity has rendered thousands of patients vulnerable and caused healthcare professionals to lack the ability to effectively treat both chronic diseases and everyday emergencies (Abed Alah, 2024). Apart from the shortages of medical supplies, the blockade would also limit the operational capacity of medical teams. For instance, most hospitals are receiving only limited power because of a shortage of fuel, meaning many of the patients can only receive limited treatments. For instance, the surgical operations are either performed later or not conducted at all due to the lack of electricity to power certain equipment, while the patients receiving the treatments are getting sicker. This energy crisis has led hospitals to triage more, and this has further compounded the preventable death rate.

Water supply has also not been spared, as the entire system in Gaza has been affected due to the blockade. Many of these infrastructures have been destroyed by conflicts that have raged on in the region for a long time, including water treatment facilities that are critical in providing clean water. Most of the water supply in the Gaza Strip contains than higher-than-acceptable level of chloride, and most of the water supplied by the aquifers is not safe for drinking, leading to waterborne diseases. Potable water has become scarce, and residents have no



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option but to use bottled water from charitable organizations or other risky sources. Without trenchant measures to rehabilitate the water infrastructure, the United Nations stated that Gaza may experience a full-spectrum water crisis that would jeopardize the lives of millions of people. Furthermore, it limits access to food in the Gaza Strip, thus increasing food insecurity. Most people cannot afford to buy fresh produce and other foods, and as a result, malnutrition is on the rise, especially among children.

The blockade cannot only affect the physical well-being of the population of Gaza but also hurt mental health. Due to the bombings, families have been forced out of their homes, and many of their loved ones are gone. Mental health disorders, depression, PTSD, and anxiety are rife. With few mental health resources in the region to begin with, the current closure only complicates efforts to get the help that is so desperately needed. Doctors and therapists state that they see more patients with mental issues than ever, but they have no adequate tools to help them. The blockade has also impacted the educational system, with most schools being damaged or destroyed due to the ongoing war. All schools in Gaza have been closed for 625,000 students for 6 months. According to the Ministry of Education, as of 2 April, more than 5,479 students and 261 teachers have been killed in the Gaza Strip since 7 October. As of 30 March, the Education Cluster estimates that 87.7% of all school buildings in Gaza have been damaged or destroyed. 212 school buildings have had a direct hit and could be severely damaged, and a further 282 have sustained moderate, minor, or likely damage. Previously, 503,500 children attended, and 18,900 teachers taught at the school buildings which have now had a direct hit or sustained major or moderate damage. Out of the 16 university campuses in Gaza, 4 have been destroyed, and 10 have been severely or moderately damaged (*Education under Attack in Gaza, with Nearly 90% of School Buildings Damaged or Destroyed*, 2024).

Present statistics on casualties, infrastructure damage, and shortages Casualties:

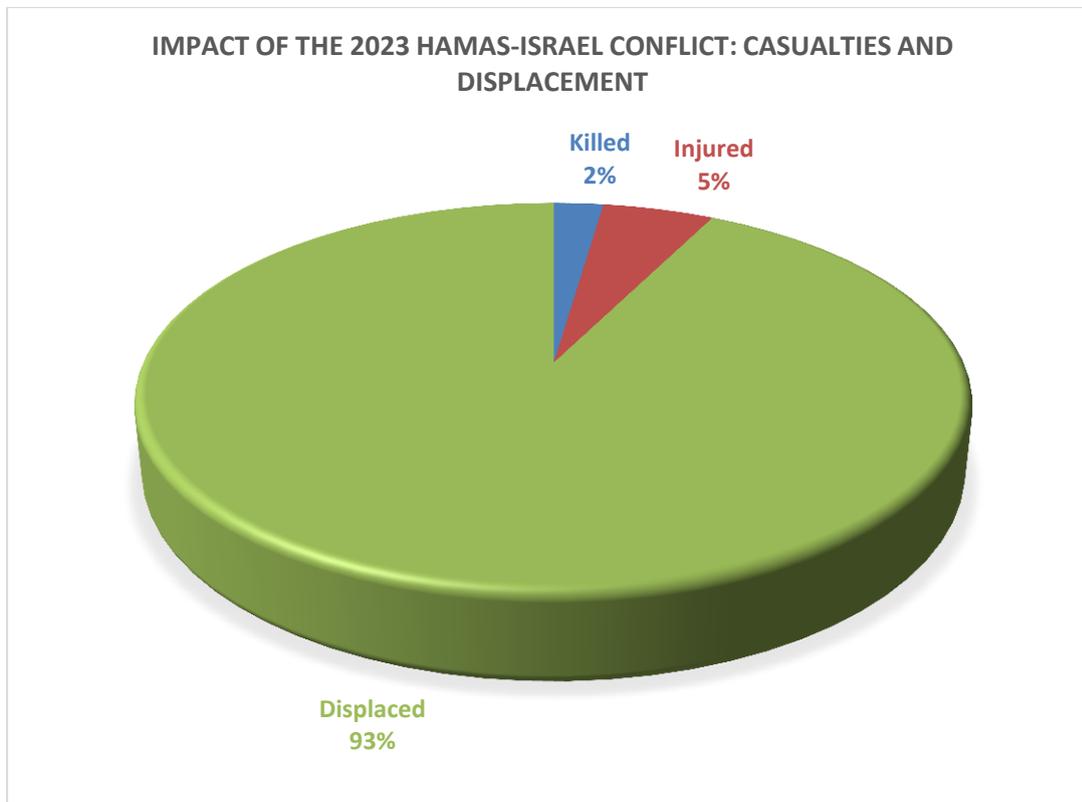


Figure 2 shows the shocking human impact of the 2023 Hamas-Israel conflict. It shows the shocking numbers of casualties, with over 51,000 Palestinians killed, more than 115,000 injured, and approximately 90% of Gaza's population displaced. These figures highlight the severe toll the conflict has taken on the civilian population, stressing the urgent need for international humanitarian intervention and support.

Sources: AP News. (2023), Gisha. (2023).

Infrastructure Damage

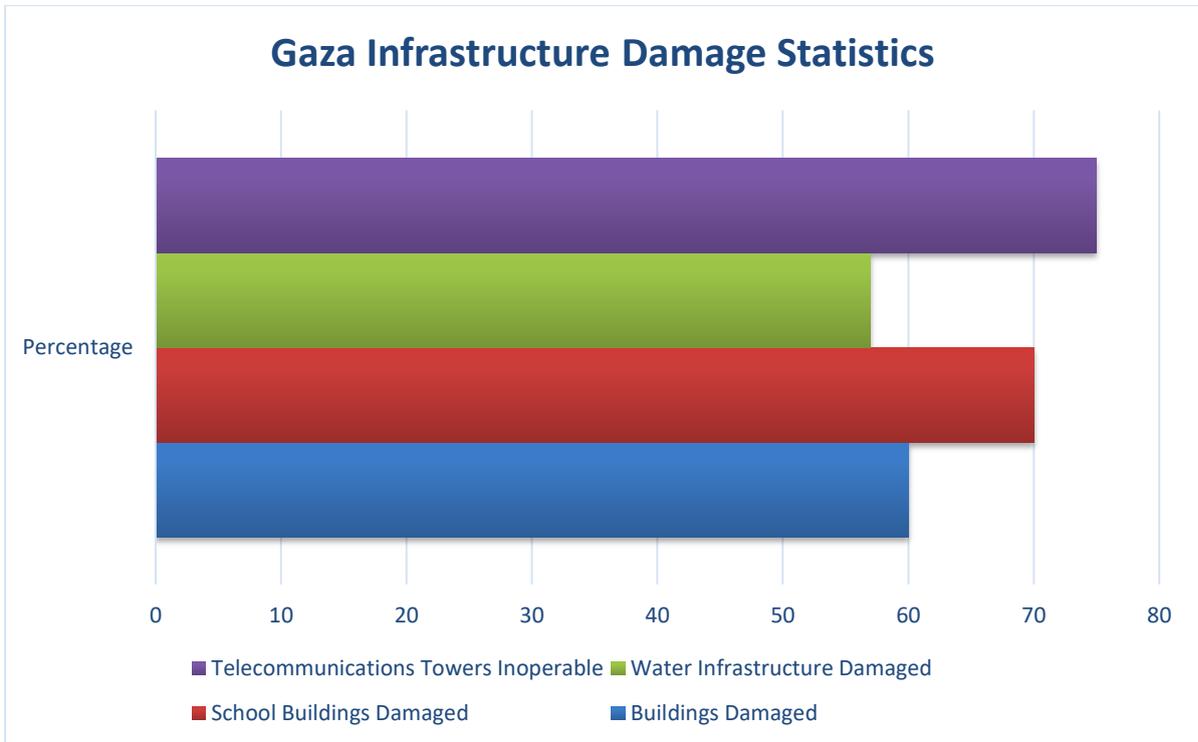
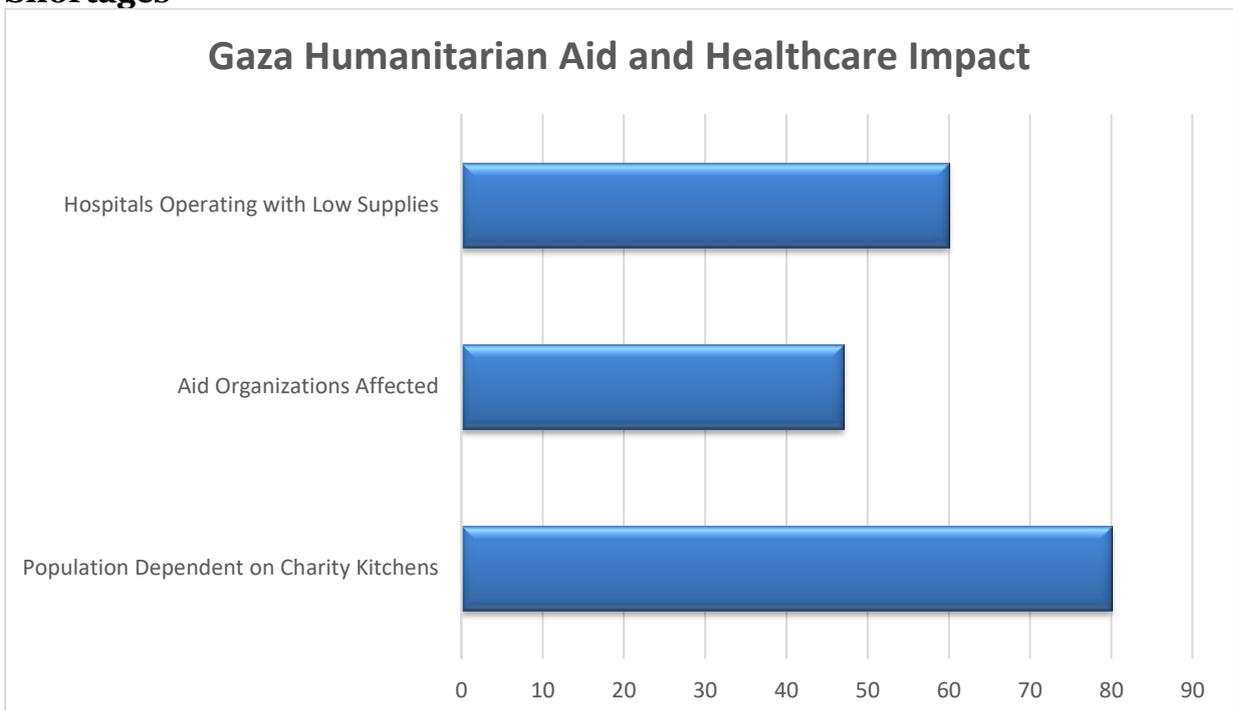


Figure 3 provides a snapshot of the severe damage to Gaza's infrastructure as a result of the 2023 conflict. The data shows significant destruction, with 60% of buildings, including homes, schools, and hospitals, affected, along with critical water and telecommunications systems. These disruptions have deeply impacted daily life, limiting access to essential services and exacerbating the humanitarian crisis.

Sources: AP News. (2023). Wikipedia. (2023).

Shortages





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Figure 4 highlights the severe impact on humanitarian aid and healthcare in Gaza during the 2023 conflict. It shows that over 80% of the population relies on charity kitchens for basic meals, while more than 47 aid organizations have been severely affected, and 60 aid workers have lost their lives. Additionally, hospitals are operating with critically low supplies, exacerbating the ongoing humanitarian crisis.

Sources: AP News. (2023). Wikipedia. (2023).

Accountability and Enforcement

Mechanisms for Holding Parties Accountable for Alleged War Crimes

The accountability of the alleged parties to the war crimes, particularly in the 2023 Hamas-Israel conflict, is not easily accomplished. On the one hand, International Humanitarian Law (IHL) defines several rules regarding accountability for such crimes, and there are key actors such as the International Criminal Court (ICC) and the United Nations (UN) that investigate and prosecute such matters. However, the effectiveness of such mechanisms is questionable, especially in politically charged issues such as the Arab-Israeli conflict. What legal processes are in place to ensure parties to the conflict are answerable for war crimes? Globally, several instruments are used to deal with war criminals. The most popular one is the International Criminal Court (ICC), which is empowered to try people for war crimes, genocide, and crimes against humanity (Funk, 2015). The UN Security Council also has the power to set up hybrid courts in situations of war crimes, such as in the former Yugoslavia and Rwanda. Also, each state has its legal regulation of punishment for war crimes, and certain states, guided by the principle of universal jurisdiction, can try individuals for war crimes regardless of the place of their actions and the nationality of the victims. In the case of the 2023 Hamas-Israel conflict, there is an additional drawback; neither Israel nor Hamas is a signatory to the Rome Statute through which the ICC acquires jurisdiction. Hamas has not signed or ratified the Rome Statute, and Israel has not ratified it either, thus, it cannot be accused of committing itself to the jurisdiction of this Court. This raises the critical question: How can the ICC effectively intervene in a situation where the main actors refuse to cooperate or are outside its jurisdiction? Why are these mechanisms difficult to apply in the Israel-Palestine conflict? The main weakness is rooted in the political dynamics of the Palestinian and Israeli relations (Ahmad et al., 2024). Cooperation by Israel and Hamas makes the implementation of international law very difficult. Israel has consistently accused the ICC of targeting it because of political bias, while Hamas cannot present a compelling legal defense in international courts since it is not a state. Therefore, while the ICC has assumed the responsibility of prosecuting crimes committed by each party, its capacity is still constrained. Furthermore, the UN Security Council, the only organ that can commit the UN to international intervention or tribunals, is always deadlocked by political rifts (Haider, 2024). For instance, Israel enjoys support from America, which is a permanent member of the Security Council and has in the past used its veto power to block any move that would see Israel being prosecuted for its offenses. Lack of political will is one of the major impediments to the implementation of IHL; the victims of war crimes cannot seek justice (Sassòli, 2007).



Challenges in Enforcing International Law in the Context of the Conflict

Challenges arise when it comes to the enforcement of international law within the context of the 2023 Hamas-Israel conflict: Political interference, Asymmetric war, and the collection of evidence in the stage of war. To what extent can political factors be attributed to the difficulties of implementing international law? The political factors involved in the conflict make it very hard to implement international law (Haider, 2023). However, it has been pointed out that due to *veto* power given to the permanent members of the UN Security Council, it often does not fulfil this function effectively. Said to be a close friend of Israel, the U.S has, over the years, employed its *veto* power to quash many resolutions that sought to bring Israel to book for perceived violations of the law (Octaviansyah, 2024). On the other hand, Hamas has support from states and other groups who share its objectives, and it being a non-state actor, its activities are not subjected to the same level of scrutiny and regime application. Thirdly, due to the political nature of the conflict, impartiality in the investigation of war crimes remains a major issue. As has been seen in many different cases, accusations made by either side are often deemed to be politically motivated or the acts of a biased organization, making it difficult to seek justice. This leads to a situation in which both parties may continue to breach IHL without the threat of severe international repercussions. The political core of these discussions challenges the relevance and efficiency of the mechanisms responsible for oversight. A further question that arises here is how the issue of asymmetry impacts the enforcement of the conflict. The conflict between Israel and Palestine is an asymmetrical conflict, which makes it very hard to implement international law. Highly equipped Israeli defense forces use technology such as drones and airstrikes in their operations. In contrast, Hamas, as a non-state actor, uses relatively simple weapons, such as rockets, and has been accused of violating IHL by targeting Israeli civilians and using human shields. This poses challenges to proportionality and distinction principles of IHL, whereby the distinction between combatants and civilians is made, and the collateral harm that is inflicted on the latter ought not to be disproportionate to the anticipated military gain. There has been a loss of lives on the side of the civilian population due to the airstrike conducted by Israel, and also due to the rocket attacks by Hamas targeting the Israeli cities. That is the reason why applying IHL is difficult, because the level of impact and openness is not equal for both sides, thus the essence of the violation is higher. In addition, the fact that the parties necessarily have qualified their actions as self-defense raises considerable uncertainties about the legal permissibility of behavior under IHL. This article aims to identify the challenges that insurgents encounter while gathering evidence in active conflict areas. A critical factor, which made it arduous to enforce international law during this conflict, is the aspect of evidence. To investigate the war crimes, one has to get to this area of conflict, and this may be hard if both parties deny access to international observers, journalists, and humanitarian agencies. The restriction of these two areas by Israel through blockade and control over the West Bank hampers the movement of independent investigative teams to the regions and therefore limits the chances of gathering evidence of the violations. Likewise, because Hamas controls the area of Gaza, independent investigation teams are denied access to the region to gather free information. Also, due to the



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elimination of tangible evidence during the bombing and the absence of safe reporting on human rights abuses, there is a limited chance that victims can testify or give evidence to prosecute the culprits. This only adds to the dilemma of guaranteeing that any alleged perpetrators of war crimes are investigated properly and independently. However, due to these barriers, the effectiveness of implementing IHL is quite low, and the civilian populace remains at the mercy of continued suffering.

Addressing the Gaps in Enforcement

We can thus easily identify loopholes and blind spots in the application of international law in the conflict between Hamas and Israel. As for independent organizations like the ICC, UN, and others, they are expected to enforce IHL, yet are limited by political and practical issues (Gwaya, 2024). To fill these gaps, it is crucial to look for other modes of accountability. One possible way is to increase the capabilities of regional organizations or rely on NGOs that can investigate such incidents and make them known to the public, although it may not lead to criminal prosecution. However, there is a severe lack of international commitment to the conflicts of power that define the situation in Israel-Palestine. Through offering protection to civilians and adherence to international law, the international community can intervene in the process of prosecuting war criminals, without regard to the existing political realities.

Recommendations for Strengthening IHL Enforcement and Protecting Civilian Populations

The recent escalation of violence between Hamas and Israel in 2023 has raised questions on the applicability of IHL and the plight of civilians in armed conflict. However, even the present legal regime does offer some measure of protection, and it can be seen that the present-day system and the existing legal tools are inadequate to deal with contemporary warfare. Therefore, based on the identified gaps and challenges of this conflict about IHL implementation, the following recommendations can be put forward to improve the protection of civilians and to enhance accountability for violations in future conflicts.

Strengthening Accountability for War Crimes

A major challenge in the implementation of IHL is the absence of sufficient measures for the prosecution of offenders of war crimes. The International Criminal Court (ICC), created by the Rome Statute, is the primary judicial body that is supposed to prosecute individuals for violations of IHL. Nonetheless, the experiences of war crimes trials about the 2023 conflict are indicative of the existing system, particularly when major players like Israel have not ratified the Rome Statute.

Recommendation:

To this end, it is important to advocate for increased universal jurisdiction for the crimes of war. The ICC has jurisdiction under Article 12 of the Rome Statute if the person charged is a national of a state party or if the crimes were committed in a state party. However, the principle of universal jurisdiction should be extended so whereby non-party states can try war criminals domestically without regard to the location. Such a mechanism would allow countries of the world to participate in the accountability process, despite the ICC's inability to prosecute



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some of the actors, like Hamas or Israel. Additionally, even if the Security Council is powerful in its decisions on the prosecution of the crimes, Article 15 of the Rome Statute empowers the Prosecutor to launch investigations on their own accord. With the permission to act on its initiative or investigate alleged war crimes in an ongoing conflict in real time, the role of the ICC Prosecutor would enable quicker responses to human rights abuses. This would enhance cooperation and put pressure on all the parties concerned to fully adhere to the principles of IHL.

Enhancing the Protection of Civilians through Clearer Rules on Proportionality

The challenges of the protection of civilians during the Hamas-Israel conflict have arisen due to the use of the proportionality principle as provided under Article 51(5) (b) of Additional Protocol I to the Geneva Conventions which prohibits an attack where the anticipated civilian collateral damage will be disproportionate to the military advantage to be gained. A major concern that has been caused by the IHL is the question of proportionality of aerial attacks, especially those by Israel on Gaza.

Recommendation:

If more stringent rules are adopted about the protection of civilians, then the principle of proportionality should be defined and articulated in more detail for application in the current warfare environment. Despite this, the general protection, which is a fundamental principle of the Geneva Conventions and Additional Protocols, lacks clear provisions for identifying the correlation between the level of civilians' harm and the military achievement. Further elaborating these rules and especially defining elements like "proportionality" and "military advantage" would improve the structure of the legal framework and provide more concrete guidelines for commanders to abide by. Specifically, IHL could also embrace processes to assess the impact of an attack in real time and bring an end to it if the harm is more than the need for the operation.

Improving Access to Humanitarian Aid and Protecting Humanitarian Workers

Due to the blockade of Gaza during the 2023 conflict, the ability to bring in food, medical supplies, and other necessary humanitarian aid became very limited. According to Article 23 of the Fourth Geneva Convention, each of the parties to a conflict has the responsibility to facilitate the free movement of humanitarian aid, especially to civilians. However, such measures as blockades and restrictions on the delivery of humanitarian aid contravene this principle.

Recommendation:

To provide more straightforward and unambiguous legal guarantees for humanitarian protection, it is suggested to amend Article 23 of the Fourth Geneva Convention in such a way that not only would humanitarian assistance be allowed in an armed conflict, but also considered a priority when it comes to the supply of medical and food items. Existing safe zones for the delivery of aid, which have been proposed in various UN resolutions, could be extended and more actively proclaimed. The international community should also establish its supervisory bodies capable of determining whether aid is being constrained or delayed, and whether any parties are preventing deliveries of the necessities.



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Also, there should be enhanced respect for the Fourth Geneva Convention, specifically Article 71, regarding the protection of humanitarian aid deliverers during warfare. I have found in real-life scenarios that humanitarian organizations and their personnel face being attacked or hindered during an armed conflict, and the punishment for such behaviors should be stipulated more explicitly in international law. Amending the laws to include severe consequences for attacking humanitarian workers or hindering the delivery of aid would help demonstrate the international community's seriousness in the protection of the civilian population.

Addressing the Use of Non-State Actors in Conflict

Hamas, as a non-state actor, complicates the application of IHL in the conflict. Non-state actors, while subject to the main provisions of IHL, are often not signatories to international treaties and conventions, limiting the enforcement of international law against them.

Recommendation

Non-state actors should not only be involved in the enforcement of IHL, but this role should also be formalized. Thus, there is some guidance in Additional Protocol II to the Geneva Conventions, which concerns non-international armed conflicts, though it is quite narrow in its applicability. Extending the scope of application of Common Article 3 to non-state actors and ensuring that they can be prosecuted for violating IHL, such as the use of human shields, targeting civilians, and disproportionate attacks, among others, would go a long way in ensuring that all actors in conflict are bound by the same rules. Non-state actors such as Hamas should also be compelled to seek membership in the International Humanitarian Actors and Organizations to ensure they uphold IHL. There should be diplomatic and legal pressure to ensure that non-state actors are legally bound in the same way as state actors, recognition of legal responsibility under IHL, even though they cannot sign treaties.

Strengthening the Role of the United Nations in Conflict Resolution

There had been criticism of the United Nations' inability to address issues of war crimes, especially in the Israel-Palestine conflict, due to the stalemate in the Security Council. Many sources claim that both parties have been involved in violations, and yet the UN has failed to address the issues adequately many times because certain countries have the power of veto.

Recommendation

Amending the UN Security Council voting system regarding veto power when it comes to humanitarian crises could do much to enhance the application of IHL. For instance, the Responsibility to Protect R2P, focused on the obligation of the international community to act when civilians are threatened with genocide, could be broadened. A permanent mechanism for starting the rapid response. As with the case of the war between Hamas and Israel, such a mechanism could prevent the worsening of the conflict once the evidence of severe war crimes or humanitarian law infringements is identified.

Conclusion



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This article has provided a critical analysis of the 2023 Hamas-Israel conflict in terms of IHL and noted that gaps exist in current legal frameworks for addressing alleged violations of IHL and ensuring the protection of civilian populations. Consequently, this analysis has given a clear picture of how the political, legal, and logistical factors, and the deficiencies in the current approach, especially in dealing with non-state actors like Hamas, and the political deadlock in the UN Security Council, affect the enforcement of IHL. The article has also provided recommendations for the enhancement of IHL enforcement, including: Universal jurisdiction for war crimes, the codification of the principle of proportionality, strengthening the humanitarian principle, and the question of non-state actors. These are meant to amend IHL in a way that it becomes more relevant to contemporary conflicts in which non-traditional warfare and political factors weaken the utility of IHL. This article is important to the existing literature by highlighting these critical issues at the center of modern warfare and the application of IHL in political conflict, which is still an active contemporary conflict between Israel and Palestine. It provides a fresh insight into how the laws of war can be made better to protect the non-combatants and establish higher standards of justice in prosecuting the violators. To readers, the article is informative because it gives insight into the strengths and weaknesses of IHL in the current conflict. It makes the reader aware of the legal hurdles impeding the protection of civilians in conflict areas, and it provides ways of surmounting these obstacles.

References

- Abed Alah, M. (2024). Echoes of conflict: The enduring mental health struggle of Gaza's healthcare workers. *Conflict and Health*, 18(1), 21. <https://doi.org/10.1186/s13031-024-00577-6>
- Ahmad, I., Haider, A., & Afzal, J. (2024). The Geopolitical and Economic Impact of BRICS on the Middle East. *FWU Journal of Social Sciences*, 18(4), 80–95.
- Ali, A., Shakoor, A., Khan, M. Z., Qureshi, A. N., Ullah, K., Shah, I. A., & Haider, A. (2024). Analysis Of India-Pakistan Conflictual Relations In The Context Of Kulboshan Jadhav Case: International Law Perspective. *Migration Letters*, 21(S11), 610–618.
- Bhattacharya, S. (2023). Economic, Social and Geopolitical Impact of Israel Hamas Conflict in 2023. *International Journal of Multidisciplinary Research and Publications (IJMRAP)*, 6(6), 330–334.
- Bidali, F. (2016). *Protection of civilian population by international humanitarian law during international armed conflict*. <https://ir.kiu.ac.ug/bitstream/20.500.12306/8932/1/img-0131.pdf>
- Dinstein, Y. (2012). Concluding remarks on non-international armed conflicts. In *Israel Yearbook on Human Rights, Volume 42 (2012)* (pp. 153–176). Brill Nijhoff. <https://brill.com/downloadpdf/display/book/edcoll/9789004242104/BP000008.pdf>
- Education under attack in Gaza, with nearly 90% of school buildings damaged or destroyed*. (2024, April 16). Save the Children International. <https://www.savethechildren.net/blog/education-under-attack-gaza-nearly-90-school-buildings-damaged-or-destroyed>



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- Funk, T. M. (2015). *Victims' rights and advocacy at the International Criminal Court*. Oxford University Press. [https://books.google.com/books?hl=en&lr=&id=b7PqBgAAQBAJ&oi=fnd&pg=PP1&dq=The+most+popular+one+is+the+International+Criminal+Court+\(ICC\),+which+is+empowered+to+try+people+for+war+crimes,+genocide,+and+crimes+against+humanity.+&ots=CUGDF2dNCy&sig=9C7eAUY4dU31xEcGcOXFl1oMJVc](https://books.google.com/books?hl=en&lr=&id=b7PqBgAAQBAJ&oi=fnd&pg=PP1&dq=The+most+popular+one+is+the+International+Criminal+Court+(ICC),+which+is+empowered+to+try+people+for+war+crimes,+genocide,+and+crimes+against+humanity.+&ots=CUGDF2dNCy&sig=9C7eAUY4dU31xEcGcOXFl1oMJVc)
- Gade, E. K. (2010). Defining the Non-Combatant: How do we Determine Who is Worthy of Protection in Violent Conflict? *Journal of Military Ethics*, 9(3), 219–242. <https://doi.org/10.1080/15027570.2010.510863>
- Gwaya, K. R. (2024). The Authority of the ICC to Institute Criminal Proceedings against Israeli and Hamas Leaders: The Gaza Conflict. *Beijing Law Review*, 15(4), 2202–2217.
- Haider, A. (2023). Beyond Borders and Bars: Exploring the Transformative Influence of the UN Convention against Transnational Organized Crime. *Pakistan JL Analysis & Wisdom*, 2, 1.
- Haider, A. (2024). Application of the United Nation Convention against Transnational Organized Crime: An Analysis. Available at SSRN 4686710. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4686710
- Haider, A., Iqbal, S., & Zeb, B. (2024). The Corfu Channel Case and the Limits of Self-Defense. *Journal of Islamic and Social Studies*, 1–9.
- Kihara-Hunt, A. (n.d.). The Gaza War from the Perspective. *Gaza Nakba 2023–2024: Background, Context, Consequences*, 165.
- Kooli, C., & Kooli, E. (2025). The humanitarian and public health crisis in Gaza: Impact, challenges, and international responses. *Avicenna*, 2025(1). <https://doi.org/10.5339/avi.2025.1>
- Margalit, A. (2020). Accounting for those in the hands of the belligerent: Security detainees, the missing and the dead in the Israeli–Hamas conflict. *Journal of Conflict and Security Law*, 25(3), 565–598.
- Niriella, M. A. D. S. J. S. (2025). REVIEW ON THE INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF WOMEN AND GIRL CHILDREN IN NON-INTERNATIONAL ARMED CONFLICTS. In M. A. Stefanelli & I. Skórzynska (Eds.), *Research in Political Sociology* (pp. 47–60). Emerald Publishing Limited. <https://doi.org/10.1108/S0895-993520250000030005>
- Octaviansyah, N. G. (2024). The Impact of Veto Power on the Enforcement of International Law: A Case Study of the Israeli-Palestinian Conflict. *Consensus: Jurnal Ilmu Hukum*, 3(2), 63–72.
- Okpe, J. E. (2021). The Threshold of Article II of Additional Protocol II to the Geneva Conventions and the Application of International Humanitarian Law to Asymmetric Conflicts: The Shortfall of Insurgency in North-East Nigeria. *IRLJ*, 3, 122.
- Sassòli, M. (2007). The implementation of international humanitarian law: Current and inherent challenges. *Yearbook of International Humanitarian Law*, 10, 45–73.
- Segell, G. (2025). Israel vs. Hamas Expands to Eight Fronts. In *Exploring the Implications of Local and Regional Conflicts* (pp. 1–26). IGI Global Scientific Publishing. <https://www.igi-global.com/chapter/israel-vs-hamas-expands-to-eight-fronts/364321>



Vol. 3 No. 4 (April) (2025)

Watts, S. (2012). Present and future conceptions of the status of government forces in non-international armed conflict. *International Law Studies*, 88(1), 9.

News and Reports

AP News. (2023). Over 51,000 Palestinians have been killed, with the majority being civilians, including women and children. Retrieved from apnews.com.

Gisha. (2023). Over 115,000 Palestinians have been injured, many of whom require urgent medical attention. Retrieved from gisha.org.

AP News. (2023). Approximately 90% of Gaza's 2.3 million residents have been displaced, seeking refuge in overcrowded shelters with limited access to necessities. Retrieved from apnews.com.

AP News. (2023). At least 60% of all buildings in Gaza have been damaged or destroyed, including homes, schools, hospitals, and mosques. Retrieved from apnews.com.

AP News. (2023). Over 70% of school buildings across Gaza have been damaged, disrupting education for hundreds of thousands of children. Retrieved from apnews.com.

Wikipedia. (2023). Approximately 57% of water infrastructure has been damaged or destroyed, leading to a severe shortage of clean drinking water. Retrieved from en.wikipedia.org.

Wikipedia. (2023). Around 75% of telecommunications towers have been rendered inoperable, hindering communication and coordination efforts. Retrieved from en.wikipedia.org.