

# Gaza and international law: The global obligation to protect life and health

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International humanitarian law can be described as the mother of human rights in conflict situations. It applies to both combatants in the conflict and civilians who are not participating, but bear the gravest consequences and loss in these conflicts. Much of international humanitarian law is contained in the four Geneva Conventions (1949) and their Additional Protocols adopted by nations worldwide.<sup>[1]</sup> On 7 October 2023, Israel was attacked by the HAMAS militant group, who also took Israeli citizens hostage. Israel responded by unleashing an attack of unprecedented proportions, amounting to 18 000 tonnes of bombs in Gaza. In contrast, this is 1.5 times more force than the bomb that was dropped on Hiroshima in World War II.<sup>[2]</sup> The destruction has resulted in the deaths of thousands of civilians, which currently exceeds 20 000 people, of which more than 8 000 are children. This statistic led the Secretary-General of the United Nations, Antonio Guterres, to describe Gaza as 'a graveyard for children'.<sup>[3]</sup> The conflict has displaced more than 1,7 million people, and more than 59 000 homes have been destroyed. It has also resulted in more than 67 journalists killed, 266 schools destroyed, 124 healthcare facilities destroyed and the death of more than 446 healthcare staff.<sup>[4]</sup>

Israel has justified its response as self-defence, which is a right under international law in the Charter of the United Nations. This view is supported by several nations, such as the United States, Canada, and the United Kingdom; however, this approach has several flaws. The International Court of Justice has confirmed that for a state to invoke the right to self-defence under international law, the responsive use of force must be proportional and not excessive in relation to the need to bring the attack to an end. Physical and economic consequences must also not be excessive in the exercise of self-defence. The destruction of civilian infrastructure and loss of civilian life do not indicate a proportional response. Gaza is also a territory occupied by Israel, so the legitimacy of Israel's defence is in itself questionable. Israel's actions can be articulated as the collective punishment of Palestinian civilians. In the past few weeks, we have seen the deliberate targeting of civilians and the indiscriminate bombing of civilian infrastructure such as hospitals. Civilian populations and detainees in occupied territories; women and children; wounded and sick persons; relief, humanitarian and medical personnel; installations and means of transportation must all be respected and able to carry out their work despite any hostilities. Pregnant women, newborn infants and infirm persons are included in the humanitarian law definition of 'wounded and sick' in order to ensure that they are particularly protected.<sup>[5]</sup> Yet, we have seen Israel cut off the supply of fuel, water, electricity, food and aid to Gaza, and targeted medical personnel, hospitals, schools and clinics. Even

when Israel agreed to a four-day 'humanitarian pause', where it would permit aid to flow into Gaza and release Palestinians in detention in exchange for Israeli civilians taken hostages by HAMAS militants on 7 October, Israel (to date) has effected new civilian arrests above the number of detained Palestinians were released. In terms of the Geneva Conventions, all these acts are war crimes. Together, they form what is called 'collective punishment', prohibited in international humanitarian law as the aggressor state singularly unleashes its wrath on an innocent civilian population as a means of punishing its actual opponent, HAMAS. Hospitals and schools are protected under international law. Yet we saw them targeted explicitly on the suspicion that they concealed underground tunnels used as bases for HAMAS operations. No concrete evidence of any of the civilian infrastructure that has been destroyed harbouring HAMAS militants has been demonstrated. Not only is this a flagrant disregard for international humanitarian law, but these condemnable acts allude to an unwillingness to act in the interests of humanity. When Israel cut off fuel to Gaza, it did so fully aware that there were several hospitals in Gaza where power was crucial to maintain the health of critically ill patients. These included 39 premature babies in Al Shifa Hospital. When it became international news that the hospital would run out of fuel within hours, fuel was still deliberately withheld, and these infants were removed from their incubators and kept together on a hospital bed wrapped in blankets and foil to maintain their body temperature and keep them alive. It took days for the World Health Organization and Palestinian Red Crescent Society to enter the hospital and evacuate some of the babies, some attending healthcare workers and some of their family members to hospitals in Egypt.<sup>[6]</sup> The withholding of fuel and destruction of hospitals directly violate the rights to life, health and to receive emergency treatment, which are protected by international law and the law in all nations. History will remember that in Gaza, in 2023, 39 premature babies were removed from their incubators because a state that was at war with a militant group cut off the supply of fuel as a means of paralyzing their enemy. Instead, this act had devastating consequences on infants, as well as countless other Palestinians whose names, faces, cries and stories were displayed to the world by journalists in Gaza. These casualties will be remembered, together with the countless other children who were killed, orphaned, rendered physically disabled, and psychologically traumatised by the conditions they are made to endure. The world has borne witness to families destroyed, a rapidly-rising death toll, a lack of medical facilities and care, and a lack of moral courage by many states to call for a ceasefire. The hostage exchange, which began on Friday, 24 November, has revealed that

Israeli military forces detain a large number of Palestinian children. Children, who are also explicitly protected under international law, and the conditions they are housed in and the care they are given while in detention, are unknown.

When considered in context, it is clear that the principles of international law have not been respected. Gaza has shone a spotlight on a global system that is historically-flawed and now epically failing. A system that has permitted civilians to be used as pawns in a conflict and the ethical and moral imperative to protect the weakest and most vulnerable among us has been removed from the agenda, and the places where the rights of these people can be given meaning and substance, such as schools and hospitals, are systematically destroyed. There has been too much destruction, and there has been too much loss. What is needed now is the moral courage to apply the principles of international law. There are several mechanisms which can be used. The International Criminal Court (ICC) can be approached to prosecute individuals for having committed international crimes as described in its establishing treaty, the Rome Statute of the International Criminal Court, 1998. War crimes are prosecutable in the ICC, as is genocide. This term has been used frequently to describe the mass killing of Palestinian civilians. While the term is often misused, there are several recorded written, audio, and video statements made by Israeli soldiers and officials that can be labelled as evidence of genocidal intent.<sup>[7]</sup> South Africa (SA), together with five other states, has already filed a complaint with the ICC asking the Prosecutor to investigate war crimes being perpetrated in Gaza.<sup>[8]</sup> SA is also due to request the International Court of Justice to declare Israel an apartheid state due to practices that include the establishment of segregated living spaces for Palestinian civilians, requiring Palestinian civilians to carry identity cards that indicate Palestinian ethnicity. International human rights organisations have confirmed that the mistreatment of the Palestinian population is apartheid. War crimes can also be prosecuted in our national courts under the principles of universal jurisdiction, which allow our courts

to prosecute specific international offences that all nations share an interest in seeing prosecuted.

SA, having found its freedom from a system of apartheid, is well-placed to lead a global effort for justice. We must use the principles and institutions of international law as they are intended to be used – to protect the lives of individuals and the healthcare institutions that aim to preserve those lives. The war in Gaza is having a divisive impact on the global community. It is awakening our collective memories of the Holocaust and the genocides of Rwanda and Srebrenica. We must be united in our humanity to protect life and health and the obligations of international law that are intended to protect us all.

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