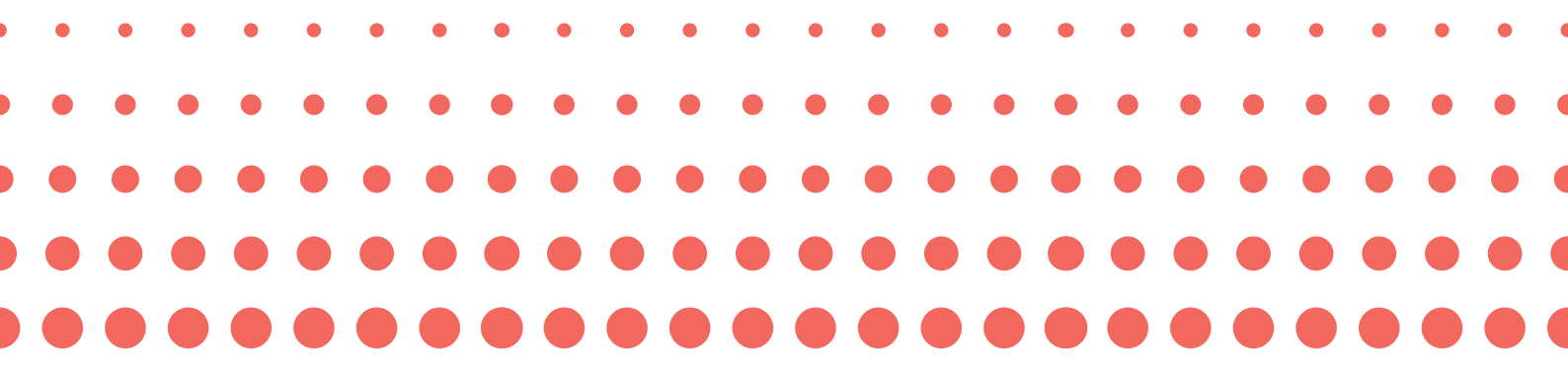


# FAQ on Gaza and International Law

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## Q: WHY SHOULD ISRAEL PROVIDE FOOD, WATER AND OTHER NECESSITIES TO GAZA?

### Reason 1: Israel is an Occupying Power

While Israel disputes it, under international law various actors including the International Court of Justice, consider Israel a de facto occupying power<sup>1</sup>. As a result it has obligations under the Geneva Conventions, which are the major legal documents codifying the rules of international humanitarian law (the laws of war).

Article 55, Geneva IV states:

*'To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.'*

### Reason 2: Depriving Civilians of the Necessities of Life is a War Crime and a Crime against Humanity

**Even if** Israel is not seen as an occupying power, it does control the movement of goods into Gaza. By preventing fuel, food, water, electricity, medical supplies and any other necessities from entering it is potentially committing a war crime and/or a crime against humanity:

- depriving a civilian population of the necessities they require to live is a war crime under Article 8 of the Rome Statute of the International Criminal Court.<sup>2</sup> This includes impeding relief supplies;
- Under Article 7(2)(b), Rome Statute the crime against humanity of 'extermination': *'includes the intentional infliction of conditions of life... the deprivation of access to food and medicine, calculated to bring about the destruction of a part of a population'*.

### Reason 3: Collective Punishment is a War Crime

Depriving civilians in Gaza of necessities can also be seen as a form of collective punishment, which is prohibited under international law.<sup>3</sup>

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<sup>1</sup> Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 9 July 2004: <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

<sup>2</sup> Article 8(2)(b)(xxv) (international armed conflicts) states; Article 8(2)(e)(ix) (non-international armed conflicts).

<sup>3</sup> Article 33, Geneva Convention IV.

## Q: ISRAEL WITHDREW FROM GAZA IN 2005 SO IT'S NOT AN OCCUPYING POWER IS IT?

The general view is that under international law Israel is still a de facto occupying power of Gaza and other Palestinian territory.

The independent [Commission of Inquiry established by the UN Human Rights Council](#)<sup>4</sup> [concluded](#) in 2022:

*'Although Israel disengaged from Gaza in 2005, the Commission notes that Israel continues to occupy the territory by virtue of the control it exercises over, inter alia, the airspace and territorial waters of Gaza, as well as its land crossings at the borders, supply of civilian infrastructure, including water and electricity, and key governmental functions such as the management of the Palestinian population registry' (para 19).*

*Israel remains in occupation of Gaza by virtue of the control exercised over, inter alia, its airspace and territorial waters, its land crossings at the borders and its supply of civilian infrastructure, including water and electricity. (para 82)*

## Q: SHOULD WE TRUST THE UN, AREN'T THEY BIASED?

Of course, this is a highly politicised situation and we have seen that the UN does not always seem to act consistently depending on the issue or actors involved.

**However**, it is worth remembering that the UN is not **one thing**. It is made up of many different parts - some political, some legal/judicial, some administrative.

So for example:

- The UN Human Rights Council, the UN Security Council and the UN General Assembly are made up of States and are therefore **political bodies**.
- The UN Relief and Works Agency for Palestinian Refugees (UNRWA), the Office of the High Commissioner for Human Rights (OHCHR), the World Health Organisation (WHO), the UN High Commissioner for Refugees (UNHCR) are all **professional bodies** within the UN system (**think of it like the difference between elected representatives in Parliament and the professional administrators and officers who work in government departments**).
- Bodies like the International Court of Justice and the International Criminal Court are separate from the UN and are **independent judicial institutions** made up of legal experts.

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<sup>4</sup> The UN Commission of Inquiry is an independent expert commission that was mandated by the UN Human Rights Council in 2021 to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021. It consists of three members: Navanethem Pillay (South Africa), Miloon Kothari (India) and Christopher Sidoti (Australia).

- Meanwhile, Special Rapporteurs and Commissions of Inquiry are **independent experts** who are selected on the basis of their in-depth knowledge of the context, issues and relevant legal standards. They are appointed by the UN but are expected to conduct research and provide an independent assessment or analysis of the situation.

This might be helpful in understanding why different parts of the UN system seem to be doing and saying different things but also in evaluating the information being presented by each.

## Q: ISRAEL SAYS IT IS FOLLOWING INTERNATIONAL LAW - IS THIS RIGHT?

**No**, Israel **does not** appear to be following international law.

### War Crimes

#### (a) Current Situation in Gaza

In relation to the current situation in Gaza, the following alleged acts by Israel could amount to war crimes under international law:

- The indiscriminate targeting of civilians<sup>5</sup>
- The indiscriminate destruction of property<sup>6</sup>
- The use of collective punishment<sup>7</sup>
- The starvation of civilians<sup>8</sup>
- The denial of humanitarian access to civilians<sup>9</sup>
- The use of incendiary weapons (white phosphorous)<sup>10</sup>

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<sup>5</sup> Rome Statute, Article 8(2)(e)(i) for non-international armed conflict; Article 8(2)(b)(i) for international armed conflict.

<sup>6</sup> Rome Statute, Article 8(2)(e)(ii) for non-international armed conflict; Article 8(2)(b)(ii) for international armed conflict. See also Article 53, Geneva Convention IV: '*Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations*'.

<sup>7</sup> Article 33, Geneva Convention IV.

<sup>8</sup> Article 8(2)(b)(xxv) of the Rome Statute (which applies to international armed conflicts) states: '*Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions*' constitutes a war crime'. Article 8(2)(e)(ix) applies to non-international armed conflicts.

<sup>9</sup> Article 23 and 142, Geneva Convention IV; Article 8(2)(b)(xxv)/(e)(ix).

<sup>10</sup> [Protocol on prohibitions or restrictions on the use of incendiary weapons](#) (Protocol III) to the Convention [on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be](#)

- The failure to take precautions to limit attacks on civilians and civilian objects<sup>11</sup>
- The targeting of medical personnel<sup>12</sup>
- The targeting of humanitarian workers<sup>13</sup> and journalists<sup>14</sup>
- The bombing of hospitals<sup>15</sup>
- The bombing of schools and universities<sup>16</sup>
- The bombing of churches and mosques<sup>17</sup>
- The prevention of aid entering Gaza<sup>18</sup>

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[Deemed to Be Excessively Injurious or to Have Indiscriminate Effects](https://www.hrw.org/news/2023/10/12/questions-and-answers-israels-use-white-phosphorus-gaza-and-lebanon#four), Article 2 prohibits the use of incendiary weapons against civilians. While Israel has not signed this Protocol it can be seen to constitute customary international law. The use of white phosphorus in densely populated areas also arguably violates the obligation on militaries to ensure civilians are not exposed to excessive risk. White phosphorus is indiscriminate and causes extreme pain and suffering. For more information see: <https://www.hrw.org/news/2023/10/12/questions-and-answers-israels-use-white-phosphorus-gaza-and-lebanon#four>

<sup>11</sup> Article 57, Additional Protocol I to the Geneva Conventions. Again, while Israel has not signed on to the Additional Protocols, it is arguable that this is a principle of customary international law and so still applies.

<sup>12</sup> Article 24, Geneva Convention I: Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.

<sup>13</sup> Article 71(2), Additional Protocol I. While Israel has not signed on to the Additional Protocols, it is arguable that this is a principle of customary international law and so still applies.

<sup>14</sup> Article 79, Additional Protocol I; How does international humanitarian law protect journalists in armed-conflict situations? - ICRC.

<sup>15</sup> Rome Statute, Article 8(2)(b)( ix) (for international armed conflict)/Article 8(2)(e)(iv) (for non-international armed conflict).

<sup>16</sup> Rome Statute, Article 8(2)(b)( ix) (for international armed conflict)/Article 8(2)(e)(iv) (for non-international armed conflict).

<sup>17</sup> Rome Statute, Article 8(2)(b)( ix) (for international armed conflict)/Article 8(2)(e)(iv) (for non-international armed conflict).

<sup>18</sup> Article 59, Geneva Convention IV: "If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal." See also Article 23, Geneva Convention IV: Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

It is also important to note that the obligation is on Israel to show it is **taking all possible steps to avoid unnecessary harm** to civilians and **unnecessary destruction** of civilian buildings and sites.

In the words of Karim Khan KC, Chief Prosecutor of the International Criminal Court:

*In relation to every dwelling house, in relation to any school, any hospital, any church, any mosque – those places are protected, unless the protective status has been lost. And I want to be equally clear that the burden of proving that the protective status is lost rests with those who fire the gun, the missile, or the rocket in question.*<sup>19</sup>

### **(b) Occupied Palestinian Territory**

Israel could also potentially be committing the War Crime of transfer of populations in all parts of the Occupied Palestinian Territory.<sup>20</sup> The Israeli Human Rights Organisation B'Tselem reports that since October 7, no fewer than thirteen herding Palestinian communities have been displaced, and many more are in danger of being forced to flee in the coming days.<sup>21</sup>

### **Crimes Against Humanity**

Israel may also be considered to be committing crimes against humanity. These are crimes that are committed as part of a '**widespread or systematic attack on a civilian population**' (this can be in the context of a war or not).

Currently, Israel is being accused of potentially committing the following crimes against humanity in both Gaza and the West Bank:

- murder<sup>22</sup>
- extermination<sup>23</sup>
- imprisonment/deprivation of physical liberty<sup>24</sup>

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<sup>19</sup> [Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel | International Criminal Court.](#)

<sup>20</sup> Geneva Convention IV, Article 49 (by an occupying power); Rome Statute, Article 8(2)(b)(viii) (for international armed conflict) and Article 8(2)(e)(viii) (for non-international armed conflict).

<sup>21</sup> [Emergency call to the international community - stop the forcible transfer in the West Bank | B'Tselem](#)

<sup>22</sup> Rome Statute, Article 7(1)(a). Alongside those who have died in Gaza it has been reported that at least 154 Palestinians have been killed in the West Bank by Israeli Settlers/IDF.

<sup>23</sup> Rome Statute, Article 7(1)(b).

<sup>24</sup> Rome Statute, Article 7(1)(e). This specifically relates to the Palestinians held without charge in administrative detention.



- torture<sup>25</sup>
- deportation or forcible transfer of populations<sup>26</sup>
- persecution<sup>27</sup>
- apartheid.<sup>28</sup> This crime is defined in the Rome Statute as:

*"The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.*<sup>29</sup>

## **Genocide**

There is also a growing concern among the international legal community that what Israel is doing could amount to Genocide.

This concern has been expressed by:

- the former Chief Prosecutor of the International Criminal Court, Mr Luis Moreno Ocampo;<sup>30</sup>
- UN Special Rapporteurs;<sup>31</sup>

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<sup>25</sup> Rome Statute, Article 7(1)(f). This relates to the alleged mistreatment and torture of Palestinian prisoners and detainees, including children, that has been documented by various human rights organisations.

<sup>26</sup> Rome Statute, Article 7(1)(d);.

<sup>27</sup> Rome Statute, Article 7(1)(h).

<sup>28</sup> The UN Special Rapporteur on the Situation of Human Rights in the Occupied Palestinian Territory, Human Rights Watch and Amnesty International have all stated that in their opinion Israel is currently committing the Crime against Humanity of Apartheid: UN Doc A/HRC/49/87, March 2022: [Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 \(A/HRC/49/87\) - Question of Palestine](#)); [A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution | HRW](#); [Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity - Amnesty International](#).

<sup>29</sup> Rome Statute, Article 7(2)(h).

<sup>30</sup> [Israeli crimes may amount to 'war crimes, genocide': Ex-ICC prosecutor | Al Mayadeen English](#); [Luis Moreno Ocampo, ex-ICC prosecutor: 'To not allow water, food and fuel through is to turn all of Gaza into an extermination camp' | International](#); [Why the Israel-Gaza war represents a broader crisis for global justice](#)

<sup>31</sup> [Gaza is 'running out of time' UN experts warn, demanding a ceasefire to prevent genocide](#); [Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide | OHCHR](#)

- The Director of the UN Human Rights Office (OHCHR) in New York Mr Craig Mokhiber<sup>32</sup>
  - 800 international scholars on genocide and international law<sup>33</sup>
  - The US Center for Constitutional Rights<sup>34</sup>
- Genocide is defined in Article 6, Rome Statute:

*For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group.*

This follows the definition provided in the 1948 UN Genocide Convention.

In the case of Israel, the statements by various Israeli government and military officials have suggested there is an intent to destroy not only Hamas but also the broader population of Gaza.

### **Previous & Ongoing Violations of International Law**

- Israel has been the subject of a number of UN Security Council resolutions since 1967, relating to its occupation of Palestinian territory in which it has been called on to respect international humanitarian law and also withdraw from Palestinian territory.<sup>35</sup>
- The UN Security Council has repeatedly found Israel to have violated international law by trying to change the legal status, character and demographic of Jerusalem.<sup>36</sup>

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<sup>32</sup> <https://www.theguardian.com/world/2023/oct/31/un-official-resigns-israel-hamas-war-palestine-new-york>

<sup>33</sup> [A Textbook Case of Genocide; Public Statement: Scholars Warn of Potential Genocide in Gaza - Opinio Juris](#)

<sup>34</sup> [CCR: Israel's Unfolding Crime of Genocide](#)

<sup>35</sup> UN Security Council resolutions 242 (1967); 465 (1980); 471 (1980); 476 (1980); 484 (1980); 592 (1986); 605 (1987); 607 (1988); 672 (1990); 673 (1990); 681 (1990); 726 (1992); 799 (1992); 1402 (2002); 1405 (2002); 1435 (2002);

<sup>36</sup> UN Security Council resolutions 252(1968); 267 (1969); 271 (1969); 298 (1971); 476 (1980) and 478 (1980).

- In 1990, 1996 and again in 2000 the UN Security Council condemned Israel for its excessive use of force against Palestinian civilians in the occupied territories.<sup>37</sup>
- The forced acquisition of Palestinian land, demolition of homes, evictions, deportations and establishment of Israeli settlements has been repeatedly condemned as a violation of Israel's obligations under the Geneva Conventions.<sup>38</sup>
- Israel has also been called on to disarm and bring to justice settlers responsible for violence.<sup>39</sup>
- There have been various reports of the torture and ill treatment of Palestinian detainees and prisoners held by Israel. This is a violation of Israel's obligations under the International Covenant on Civil and Political Rights and the UN Convention against Torture.
- Israel is violating its obligations under the UN Convention of the Rights of the Child by holding Palestinian children in detention, often without charge.
- In 2009 a UN fact-finding mission headed up by Judge Richard Goldstone found credible evidence of war crimes and serious human rights abuses committed by Israel in its 2008 attack on Gaza.<sup>40</sup>
- In 2022, the UN Commission of Inquiry headed up by former High Commissioner for Human Rights, Navi Pillay found that there were reasonable grounds to conclude that Israel's ongoing occupation of Palestinian territory was illegal. The Commission also found Israel had committed serious violations of international human rights and international humanitarian law in the West Bank and Gaza.<sup>41</sup>

## Q: DOESN'T ISRAEL HAVE A RIGHT TO DEFEND ITSELF UNDER INTERNATIONAL LAW?

The right to self-defence under Article 51 of the United Nations Charter is generally understood to relate **only to an attack on a State from outside the territory controlled by the State**. This is why the International Court of Justice in its [\*Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory\*](#)<sup>42</sup> did not

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<sup>37</sup> UN Security Council resolutions 672 (1990); 1073 (1996); 1322 (2000).

<sup>38</sup> UN Security Council resolutions 252 (1968); 446 (1979); 465 (1980); 607 (1988); 608 (1988); 636 (1989); 641 (1989); 694 (1991); 726 (1992); 799 (1992); 1402(2002) ; 1403 (2002); 1544 (2004); 2334 (2016).

<sup>39</sup> UN Security Council resolution 904 (1994).

<sup>40</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/158/66/PDF/G0915866.pdf?OpenElement>

<sup>41</sup> <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2022-10-19/Report-COI-OPT-14Sept2022-EN.pdf>

<sup>42</sup> Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 9 July 2004, at para. 139: [CONSÉQUENCES JURIDIQUES DE L'ÉDIFICATION D'UN MUR DANS LE TERRITOIRE PALESTINIEN OCCUPÉ LEGAL CONSEQUENCES OF THE CONSTRUCTI](#)

recognise the right of Israel to invoke self-defence against attacks/potential attacks from Palestinian territory that it occupied and therefore effectively controlled.

It is therefore arguable that Israel **does not** have the right to use force in self-defence given that under international law it is seen to have effective control over occupied Palestinian territory (which includes Gaza). Occupation Law [prohibits an occupying power from initiating armed force](#) against its occupied territory and requires that any police action taken is only to subdue a threat and maintain order. This must be done in accordance with international human rights and within the normal justice processes not through military force.

**Even where there is a right to self-defence** this right is not absolute. It must be:

- **Necessary** - this means that force can only be used to the extent necessary to **repel the attack** and an imminent wave of a **second attack**, but **not to destroy the opponent forever**
- **Proportionate**

**It cannot be used as retaliation or punishment** and must still follow the laws of war (explained below).

In particular, there is a need for all action to:

- make a clear **distinction** between combatants and civilians;
- be **proportionate** in terms of the cost to civilians/civilian property versus the direct, concrete military advantage gained;
- involve **precautions to minimise the**

The principle of proportionality applies at two levels:

1. **If** Israel has a right to self-defense (see above for why it may not), the overall self-defense must be **proportionate**, i.e.
  - a. can only be used against military objectives;
  - b. even where there is a legitimate military objective, it must not cause disproportionate harm and suffering to civilians;
  - c. (according to some interpretations) it should only be used to repel an attack;

While different experts take slightly different approaches, all agree that the right to self-defence **does not** extend to a total war against a civilian population even if they are on the 'enemy' side.<sup>43</sup>

2. In addition, and independently of whether a right to self-defense exists in the first place, **each individual attack** must follow the principle of proportionality, i.e.:
  - a. each attack **can only** be directed to **specific legitimate military objectives**; and
  - b. the expected cost in terms of loss of civilian life, injury to civilians and damage to civilian buildings must not be **disproportionate** to the direct and concrete military advantage expected

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<sup>43</sup> This is known as *jus ad bellum* proportionality: the proportionality of starting a conflict. For more information see: [Enough: Self-Defense and Proportionality in the Israel-Hamas Conflict](#)

- c. even if there is a military advantage and the civilian cost is considered proportionate, Israel must still take **all feasible precautions to avoid as much incidental harm** to civilians and civilian objects as possible<sup>44</sup>

## Q: DO PALESTINIANS HAVE A RIGHT TO SELF-DEFENCE OR RESISTANCE (INCLUDING THROUGH VIOLENCE)?

**Yes**, given that the occupation of Palestinian territory is considered illegal under international law, Palestinians do have a right to resist. This includes armed resistance.<sup>45</sup>

**However**, the right to armed resistance still means that those acting on behalf of Palestinians also need to **abide by international law**. This is why the unlawful actions of any Palestinian militia groups also have to be condemned and those responsible need to be prosecuted in a court of law. This includes the targeting of civilians and the taking of hostages (see below for a full list of alleged crimes).

## Q: IS THIS A WAR? DOES IT MATTER?

It is tricky defining the current situation because the position of Palestine in general and Gaza in particular is somewhere between an independent State and a territory under the control of Israel.<sup>46</sup>

It may also be considered an **international armed conflict** if we accept either that Gaza is under Israeli occupation or that Palestine is a separate state and has not consented to the use of force by Israel on its territory (which the Palestinian Authority has not).<sup>47</sup>

This matters because there are more extensive rules and protections that apply in international armed conflict than in internal armed conflict. But the difference may not be significant in this case given the scope of the international crimes being committed and the fact that many of Israel's and Hamas' actions are also prohibited under customary international law.

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<sup>44</sup> This is known as *jus in bello* proportionality: proportionality within the context of a conflict.

<sup>45</sup> UN General Assembly Resolutions 45/130 (1990): <https://www.un.org/unispal/document/auto-insert-184801/>; 37/43 (1982): <https://www.legal-tools.org/doc/fd351e/pdf/>. This is also enshrined in Additional Protocol I to the Geneva Conventions, Article 1(4). However, while Palestine is a party to the Additional Protocol, Israel is not and does not accept Article 1(4) as customary international law.

<sup>46</sup> See UN General Assembly Resolutions 43/176 and 177 (1988) on 'the Question of Palestine', which both acknowledge Palestine as a state and recognise its continued occupation by Israel.

<sup>47</sup> United Nations General Assembly Resolution 3103 (XXVIII) of 12 December 1973 entitled "Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes", para. 3.

**While now it is an armed conflict, it is worth noting that this may not have been the appropriate or legitimate response to the Hamas attacks.** Given Israel effectively controls the territory of Palestine and may be considered an occupying power (see earlier), it is arguable that it was not entitled to wage war but should rather have responded to the terrorist attacks of October 7th through its justice system (ie. detain, arrest and bring to trial those individuals responsible).

## Q: WHAT LAW APPLIES IN THESE SITUATIONS?

There are 3 main bodies of international law that apply:

### 1. International Humanitarian Law (also called 'the Laws of War').

This is mainly set out in the **Four Geneva Conventions** and the 2 Additional Protocols. Israel and Palestine have both ratified the Conventions. Israel has not ratified the Additional Protocols. Hamas is considered a non-state actor. Given that the Geneva Conventions have been ratified by 196 countries they are generally seen to be **universally binding on all parties to a conflict**.

There is also what is known as '**customary international law**' which is a set of rules that have been widely recognised by the international community over time and are therefore also relevant to all actors in a conflict regardless of whether they are party to particular Conventions.<sup>48</sup>

### 2. International Criminal Law

This sets out individual criminal responsibility for certain acts that are to be considered 'international crimes'. These include war crimes, crimes against humanity and genocide. The lists and definitions of these crimes are set out in the Rome Statute of the International Criminal Court. While Israel has not ratified the Rome Statute, Palestine has and therefore the International Criminal Court has jurisdiction over all acts committed within Palestinian Territory and acts by Palestinian nationals anywhere (including in Israel). Indeed there is an ongoing investigation already.<sup>49</sup>

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<sup>48</sup>[Frequently asked questions on the rules of war | ICRC](https://www.icrc.org/en/customary-ihl/v1). The ICRC has compiled a list of these rules: <https://ihl-databases.icrc.org/en/customary-ihl/v1>.

<sup>49</sup><https://www.icc-cpi.int/palestine>. A copy of the Court's decision on whether it had jurisdiction can be found here: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021\\_01165.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF).

### **3. International Human Rights Law**

While some human rights obligations can be temporarily suspended in an armed conflict or an emergency, there are a number of human rights protections that still apply: for example, the Conventions against Torture and Genocide are still relevant as is the Convention on the Rights of the Child. There is also an increasing consensus internationally that armies and governments should be following human rights norms in all their actions.

#### **Q: HAVEN'T HAMAS ALSO COMMITTED INTERNATIONAL CRIMES?**

**Yes**, Hamas are also accused of having committed the following crimes under international law:

##### **War Crimes**

- The indiscriminate targeting of civilians
- The taking of hostages
- Rape
- Torture<sup>50</sup>
- The use of human shields

These are prohibited under the Geneva Conventions and constitute war crimes under Article 8, Rome Statute.

##### **Crimes against Humanity**

- murder
- torture
- rape
- other inhumane acts

##### **Genocide**

The former ICC Chief Prosecutor, Luis Moreno Ocampo has stated in his opinion that genocide has potentially been committed by both Israel and Hamas. Just as Israeli officials' statements may satisfy the requirement for intent in the definition of genocide, so too might Hamas' statements regarding the total destruction of the state of Israel.

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<sup>50</sup> [Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel | International Criminal Court](#)

This means these will be investigated by the International Criminal Court and if there is credible evidence individual members of Hamas and any other fighting group can be prosecuted.

### **Previous Violations**

- The 2009 Goldstone report also found that Palestinian armed groups, including Hamas, had violated international humanitarian law by targeting Israeli civilians in their rocket and mortar attacks. It also reported allegations of torture, killing and mistreatment by these groups of Palestinians in Gaza.
- Interestingly, while there have been earlier allegations of Hamas using civilians as human shields, there has been no evidence to suggest this was the case.

It is important to note that **just because one side in a conflict has violated international law, does not remove or reduce the obligation of the other side to adhere to international law.**

### **Q: BUT ISN'T ISRAEL PROTECTING CIVILIANS BY ISSUING WARNINGS?**

Under the laws of war, parties to a conflict **must**, whenever possible, **provide effective** advance warnings of attacks that may affect the civilian population.

Alongside the principles of proportionality and distinction. All parties to a conflict are required to take precautions to protect civilian lives and buildings.

Whether a warning is effective depends on the circumstances, and must take into account:

- the amount of advance notice; and
- the ability of civilians to flee the area to safety.

In Gaza, warnings have included:

- flyers being dropped on neighbourhoods asking for immediate evacuation;
- phone calls informing people to evacuate without any information on safe routes by which to evacuate;
- an English-language online video meant for the Arabic-speaking population in Gaza who at that point had no access to the internet<sup>51</sup>

In addition, Palestinians in Gaza have been under blockade for 16 years; there are no humanitarian corridors or safe spaces in Gaza. In this assault, 40% of bombing has taken place in the south, where Israel has said Palestinians should move to be safe. In the 2014 assault on Gaza, Amnesty **noted**:

“There are no bomb shelters or protective facilities for Gaza’s 1.8 million people, and no place in the Strip that was truly safe during the hostilities. In some cases, the

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<sup>51</sup> [IDF re-issues urgent call for civilians in Gaza to move south, says aid to expand | The Times of Israel.](#)



warnings issued by the Israeli military did not specify safe evacuation routes, and in many cases, civilians who tried to evacuate came under Israeli fire.”

**Even if warnings are issued, this does not** take away the responsibility to:

- distinguish between civilian and military targets;
- cancel or stop an attack if it becomes clear that the incidental harm to civilians is excessive compared to the concrete and direct military advantage expected;
- cancel or stop an attack if it becomes clear that there was a mistake made in identifying the military objective.

Customary international law shows that “all obligations with respect to the principle of distinction and the conduct of hostilities remain applicable even if civilians remain in the zone of operations after a warning has been issued. Threats that all remaining civilians would be considered liable to attack have been condemned and withdrawn.”<sup>52</sup>

## Q: BUT ISN'T ISRAEL ALSO TRYING TO EVACUATE PEOPLE?

Under Article 49 of Geneva Convention IV an occupying power may only evacuate an area for ‘the security of the population or imperative military reasons’. If they are evacuating people they must:

*‘ensure to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated’*

AND

*‘Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.’*

- Given that Southern Gaza and the supposed ‘safe routes’ have both been subjected to intense bombing, there is a question mark around whether these evacuations have in fact been for the safety of the civilian population;
- Southern Gaza has also been subjected to intense bombing so there is inadequate accommodation for people to be evacuated to;
- The whole of Gaza is still subject to the Israeli blockade meaning no part has access to food, water, electricity, fuel or adequate medical facilities;
- Israel has repeatedly bombed the Rafah crossing and prevented aid trucks from entering Gaza;

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<sup>52</sup><https://ihl-databases.icrc.org/en/customary-ihl/v1/rule20#:~:text=armed%20conflictsInterpretation-.Rule%2020.,unless%20circumstances%20do%20not%20permit.>

- Israel has also subjected Gaza to such intense bombing that many people will have no homes to return to after evacuation;
- Israel will not allow Gazan civilians to cross into Israel but has only suggested they be allowed to move into the Sinai Desert in Egypt (which Egypt has been refusing)

For all these reasons the UN Special Rapporteur on the Human Rights Situation of the Occupied Palestinian Territory has expressed concern that Israel is currently engaging in ethnic cleansing<sup>53</sup> and that the moving of people appears to be more an act of forced displacement or transfer of a population than an evacuation for their safety. As noted above forced displacement or transfer of a population can constitute a war crime<sup>54</sup> and a crime against humanity.<sup>55</sup>

## Q: BUT WHAT IF HAMAS IS USING HOSPITALS AND SCHOOLS AS HIDEOUTS AND SITES TO LAUNCH ATTACKS?

If Hamas is doing this then it is violating international law. The use of civilians to protect sites from military attack is prohibited under the Geneva Conventions, the Rome Statute and customary international law.<sup>56</sup>

However, even if this is the case, Israel still has obligations under international law. Israel still needs to respect international humanitarian law. In particular the principles of distinction, proportionality and precautions. This means that:

- Israel needs to distinguish between combatants and civilians;
- The damage to civilian objects and cost in terms of civilian lives cannot be disproportionate to the achievement of a particular military objective;
- Israel needs to actively take steps to ensure that civilians and civilian buildings are protected wherever possible.

In the case of both schools and hospitals currently in Gaza, given how many people are currently seeking refuge and the infeasibility of evacuation, it is likely that an attack on either would be considered to cause disproportionate harm.

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<sup>53</sup> <https://www.ohchr.org/en/press-releases/2023/10/un-expert-warns-new-instance-mass-ethnic-cleansing-palestinians-calls>.

<sup>54</sup> Article 49, Geneva Convention IV; Rome Statute, Article 8(2)(b)(viii) (for international armed conflict) and Article 8(2)(e)(viii) (for non-international armed conflict).

<sup>55</sup> Rome Statute, Article 7(1)(d).

<sup>56</sup> Article 28, Geneva Convention IV; Article 8(2)(b)(xxiii), Rome Statute. See also CIHL, Rules 22-24 and Rule 97 of the ICRC Rules of Customary International Law: [https://ihl-databases.icrc.org/en/customary-ihl/v1/rule97#Fn\\_C7C1EC06\\_00002](https://ihl-databases.icrc.org/en/customary-ihl/v1/rule97#Fn_C7C1EC06_00002).

## Q: WHAT ABOUT THE HOSTAGES?

### **Israeli hostages**

The taking of hostages is prohibited under Common Article 3 of the Geneva Conventions, Article 34 of Geneva Convention IV and Article 8(2)(a)(viii), Rome Statute.

In terms of those currently held by Hamas, there is a need to distinguish between IDF soldiers and civilians. IDF soldiers - as combatants - can be considered **prisoners of war (POWs)** and may legitimately be held by Hamas. They still have protections under Geneva Convention III including the right to humane treatment (Article 13). However, if Hamas intends to hold soldiers as POWs, it must show that these soldiers were active combatants when taken and are now not being held under threat in order to compel Israel to do something in exchange for their release.<sup>57</sup>

**Hamas is not allowed under international law to hold civilians hostage. It is especially serious to hold children.**

### **Palestinian hostages**

As of 7 October 2023, 5,200 Palestinians were detained in Israel, including administrative detainees and children. The Israeli Human Rights Organisation B'tselem notes that as of June 2023, 1,117 Palestinians were being held in administrative detention, including 147 children.<sup>58</sup>

Israeli authorities claim that under Article 78 of the Fourth Geneva Convention, the occupying power has the right to detain persons subject to its authority under administrative detention. **Administrative detention refers to people being held without trial and without having committed an offense, on the grounds that they plan to break the law in the future.** This measure has no time limit, and the person is detained by order of the regional military commander, based on classified evidence that is not revealed to them.<sup>59</sup> International law allows administrative detention only in emergencies, and only if a fair hearing can be provided where the detainee can challenge the allegations against them. Human rights organisations claim that Israel is not doing this.<sup>60</sup>

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<sup>57</sup>[https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-3/commentary/2020?activeTab=undefined#\\_Toc44265136](https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-3/commentary/2020?activeTab=undefined#_Toc44265136).

<sup>58</sup> [https://www.btselem.org/statistics/detainees\\_and\\_prisoners](https://www.btselem.org/statistics/detainees_and_prisoners).

<sup>59</sup> [https://www.btselem.org/administrative\\_detention](https://www.btselem.org/administrative_detention)

<sup>60</sup>[https://www.addameer.org/israeli\\_military\\_judicial\\_system/administrative\\_detention#:~:text=Israeli%20authorities%20claim%20that%20under,its%20authority%20under%20administrative%20detention](https://www.addameer.org/israeli_military_judicial_system/administrative_detention#:~:text=Israeli%20authorities%20claim%20that%20under,its%20authority%20under%20administrative%20detention).

Since 7 October 2023, the number of Palestinian detainees rose to more than 11,000 people. Israel **arrested approximately 4,000 labourers from Gaza who were working in Israel**, including as a result of their work permits being cancelled on 7 October 2023, making them unlawfully present in Israel.<sup>61</sup> Israel **has also arrested at least 2,150 Palestinians in overnight army raids in the West Bank and East Jerusalem.**<sup>62</sup>

The Palestinian Human Rights Organisation Addameer notes that as of November 2023, at least 1,264 Palestinians were being held in administrative detention, including 170 children.<sup>63</sup> These **detainees could also be considered hostages**. Unless Israel charges and tries these detainees in line with international human rights law, it could be committing an international crime. **Given there is currently no war between Israel and the other parts of occupied Palestinian territory (aside from Gaza), those detained from these places cannot be considered prisoners of war.** They are therefore entitled to be processed through the justice system and either convicted of a criminal offence or released.

Israel also has **specific obligations related to those under the age of 18 in detention** as it is a signatory to the UN Convention on the Rights of the Child.

Depending on whether Israel is deemed to be an occupying power of Gaza or not (as covered in the FAQ question above), will affect its obligations to any Hamas or other Palestinian fighters detained in Gaza. If Israel is an Occupying Power it should also process these fighters through its justice system. If not then these fighters can also be considered Prisoners of War and detained subject to the same protections mentioned above, contained within Geneva III. Any fighter believed to have committed international crimes should be prosecuted in accordance with international human rights law and international criminal law.

## **Q: WHAT IS HAPPENING IN THE WEST BANK? IS THIS ALSO PART OF THE CONFLICT?**

In principle, there should be no military actions in the West Bank as it is the Palestinian Authority and not Hamas who are in charge and there has been no declaration of hostility between Israel and the Palestinian Authority. According to the UN Commission of Inquiry, the Israeli occupation of the West Bank and other Palestinian Territories should be considered illegal under international law. At the same time, given Israel is currently occupying these territories it is bound by international humanitarian law.

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<sup>61</sup> <https://tribunemag.co.uk/2023/11/locked-in-despair-palestinian-hostages-in-israeli-prisons>; [Six human rights organizations in High Court petition against secret and illegal detention of thousands of Palestinian permit-holders from Gaza](#) [המוקד להגנת הפרט](#)

<sup>62</sup> <https://www.aljazeera.com/news/2023/11/8/israel-hamas-war-list-of-key-events-day-33>

<sup>63</sup> <https://www.addameer.org/>

This means:

- the IDF is not authorised to be in the West Bank and certainly not to be conducting military operations;
- Israel should be arresting and prosecuting Settlers who have engaged in violence or threats of violence against Palestinians and other Israelis

## Q: WHAT ARE THE NEXT STEPS WITHIN THE SCOPE OF INTERNATIONAL LAW?

- The UN General Assembly has passed a non-binding resolution calling for a temporary humanitarian ceasefire;<sup>64</sup>
- The International Criminal Court (ICC) already has an open investigation on Gaza, relating to 2014. Karim Khan KC, Chief Prosecutor of the ICC has indicated that investigations are now actively underway meaning there could be criminal indictments issued for particular members of both Hamas and the Israeli government and armed forces;<sup>65</sup>
- The International Court of Justice (ICJ) is also currently working on an Advisory Opinion on Israel's policies and practices in the Occupied Palestinian Territory. It has announced that it will be holding open hearings starting in February 2024;<sup>66</sup>
- Some countries have cut diplomatic relations with Israel - withdrawing their Ambassadors from Israel and/or expelling Israel's Ambassadors: so far this has been done by South Africa, Colombia, Chile, Bolivia, Honduras, Turkey and Jordan.
- There is also a possibility of Israel being brought before the ICJ for breaching its obligations under the Genocide Convention.

## Q: WHAT MORE CAN BE DONE?

One of the problems is that while Israel has violated international law over a long time, it has not been held accountable for this. This needs to stop.

We can demand that our governments act to both condemn Israel's actions **and** actively hold it accountable:

- Under Common Article 1 of the Geneva Conventions, all States Parties are bound to 'respect' and 'ensure respect' for the Conventions. This has been interpreted to mean

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<sup>64</sup> <https://press.un.org/en/2023/ga12548.doc.htm>.

<sup>65</sup> <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel#:~:text=International%20Criminal%20Court%20Prosecutor%20Karim,transcript%20of%20his%20oral%20remarks>.

<sup>66</sup> <https://www.icj-cij.org/case/186>.

that 'States, whether engaged in a conflict or not, must take all possible steps to ensure that the rules are respected by all, and in particular by parties to conflict'.<sup>67</sup>

- Under Articles 146, 147 and 148 of Geneva Convention IV, States are also under an obligation to investigate and prosecute individuals believed to be committing international crimes.
- We also need to demand that after a ceasefire/end to the bombardment that there is a proper commitment to a political resolution of the situation in Israel and Palestine. This needs to involve as wide a range of voices as possible, including women and other marginalised groups.

## Q: WHY HASN'T ANYTHING HAPPENED YET TO STOP THIS?

- While there has been a UN General Assembly Resolution adopted calling for an immediate, sustained humanitarian truce, it is not binding.
- A Security Council Resolution would be binding and could make it possible to issue sanctions against Israel and to deploy a peacekeeping mission to Gaza but so far none of the Resolutions put forward have passed.
- The reason no Security Council Resolution as yet is because the Permanent 5 Members of the Security Council (US, UK, Russia, France, China) have the power to veto resolutions. So far the US has voted against both Security Council Resolutions calling for a ceasefire, and the UK and France have each voted against one Security Council Resolution calling for a ceasefire.<sup>68</sup>

## Q: WHAT SHOULD I DO NOW?

### **Immediate Action:**

- Write to your government demanding that they uphold their obligation under Common Article 1 (to ensure all parties to a conflict follow international law). This should include calling for a ceasefire.
- If your government is a member of the Security Council, lobby it to put forward another Resolution calling for:
  - a ceasefire;
  - Israel's withdrawal from Gaza and other occupied Palestinian territory;
  - Israel end the siege on Gaza (including the blockade that predates 7 October 2023)
- You can also lobby your government to include concrete actions that can be taken against Israel if it does not comply with the Security Council Resolution:
  - Sanctions;
  - a UN peacekeeping and humanitarian mission be deployed to Gaza to oversee the ceasefire and provide emergency assistance

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<sup>67</sup> <https://www.icrc.org/en/doc/resources/documents/article/other/57jqcp.htm>.

<sup>68</sup> So far the US has voted against both Security Council Resolutions calling for a ceasefire, the UK has voted against one and abstained on the other, France has voted against one and in favour of one, Russia has voted for one and abstained on the other and China has voted in favour of both.

- If you live in a country that is one of the Permanent 5 on the UN Security Council demand your government support a UN Security Council Resolution condemning Israel's actions or at the very least not block it by using its veto power
- Demand your country cut off diplomatic relations with Israel if it does not immediately end its bombardment and siege of Gaza and start abiding by international law
- Lobby your government to take action against the Israeli government and armed forces and members of Hamas (they can do this by initiating investigations and prosecutions if any of these individuals come to your country. They can also
- look at freezing assets as they did against Russia and Russian elites and companies: see the REPO Taskforce<sup>69</sup>).

### **Longer Term Action:**

- Demand your government support a meaningful peace process, which includes as wide a representation of the affected populations as possible. This should include women and other marginalised groups.
- Find out if your country provides Israel with arms and if so, lobby to stop the arms export. You may also want to join a broader campaign aimed at stopping arms production and trade.
- Join and support campaigns of naming individuals who could be investigated (@archivegenocide is seeking to document statements by public figures, politicians and journalists that support ethnic cleansing
- You can also participate in a sanctions campaign yourself - find out about the Boycott, Divest and Sanctions campaign (<https://bdsmovement.net/>) and boycott companies supporting Israel and its military efforts.

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<sup>69</sup><https://www.gov.uk/government/publications/russian-elites-proxies-and-oligarchs-taskforce-statement-and-advisory/global-advisory-on-russian-sanctions-evasion-issued-jointly-by-the-multilateral-repo-task-force-accessible-version>