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With this thought, we hereby present to you

# **USE OF FORCE IN GAZA: THE INTERSECTION OF INTERNATIONAL HUMANITARIAN LAW AND THE RIGHT TO SELF-DEFENSE**

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## **Introduction**

The ongoing conflict in Gaza, primarily between Israel and Hamas, has raised significant legal and humanitarian concerns in the realm of international law. Gaza, a narrow strip of land located between Israel, Egypt, and the Mediterranean Sea, has been the center of recurrent hostilities, marked by periodic escalations and military operations. At the heart of these conflicts lies the question of the legality of the use of force. Both Israel and Hamas have invoked the right to self-defense as a justification for their military actions, but the legal frameworks under which they operate, namely International Humanitarian Law (IHL) and the principles of self-defense under Public International Law (PIL), are often in tension. This research paper seeks to examine the intersection of IHL and the right to self-defense in the Gaza context, providing an analysis of the legality of force used by both Israel and Hamas in light of these legal doctrines.<sup>1</sup>

The Gaza conflict is a unique case in international law due to the complexity of the actors involved and the nature of the hostilities. Israel, as a sovereign state, is subject to international law governing the use of force, including the United Nations Charter and IHL. Hamas, on the other hand, is a non-state actor designated by many countries, including Israel, as a terrorist organization. Despite its non-state status, Hamas has taken control over Gaza and engaged in armed conflict with Israel. Both parties claim a legal right to self-defense, and this claim shapes their military strategies, justifications, and the conduct of their forces on the ground.<sup>2</sup>

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<sup>1</sup> International Court of Justice, Legality of the Use of Force (Serbia and Montenegro v. United States of America), Judgment, ICJ Reports, 2004, p. 5.

<sup>2</sup> United Nations Charter, Article 51

Under international law, the right to self-defense is codified in Article 51 of the United Nations Charter, which permits states to use force in response to an armed attack until the Security Council takes measures to restore international peace and security.<sup>3</sup> However, this right is circumscribed by the principles of necessity and proportionality, which ensure that self-defense is exercised within legal bounds. In the case of Israel, the use of force in Gaza is often framed as a legitimate exercise of self-defense in response to rocket fire from Hamas. However, the scale and nature of Israeli military operations, which have led to significant civilian casualties and infrastructural damage, raise questions about whether Israel's actions comply with the requirements of proportionality and distinction under IHL.<sup>4</sup>

On the other hand, the legal status of Hamas complicates the application of international law. While it lacks the status of a sovereign state and is subject to certain limitations under IHL, Hamas claims the right to self-defense on behalf of the Palestinian people. Hamas justifies its use of force against Israel as resistance to occupation, invoking the right to defend its territory and population. However, the methods employed by Hamas, including the targeting of civilian populations with rockets, raise concerns about compliance with IHL, which prohibits deliberate attacks on civilians and indiscriminate use of force.<sup>5</sup>

The question of how these two competing claims of self-defense and the application of IHL principles intersect is central to understanding the legal justifications for military actions in Gaza. This paper will explore these issues by examining the key legal principles that govern the use of force in international law, particularly in non-international armed conflicts, and assess how they apply to the actions of both Israel and Hamas. It will also critically analyze the challenges of enforcing these principles in asymmetric conflicts, where one party is a state with advanced military capabilities and the other is a non-state actor engaged in irregular warfare.<sup>6</sup> This research paper aims to answer several key questions: First, how does the right to self-defense apply to the use of force in Gaza? Second, how does IHL regulate the conduct of military operations in the region, particularly regarding the protection of civilians? Finally, how do the actions of Israel and Hamas measure up against these legal standards, and what are the implications for accountability and international intervention? These questions are vital not

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<sup>3</sup> Geneva Conventions, 12 August 1949, and Additional Protocols I and II, 8 June 1977.

<sup>4</sup> Human Rights Watch, "Israel: Gaza Conflict in 2014," 2014. Available at: [www.hrw.org](http://www.hrw.org).

<sup>5</sup> United Nations, Report of the Independent International Commission of Inquiry on the 2014 Gaza Conflict, A/HRC/29/52, 2015.

<sup>6</sup> International Criminal Court, Situation in Palestine, ICC-01/18, 2019.

only for legal scholars but also for policymakers and international organizations involved in conflict resolution and humanitarian assistance.<sup>7</sup>

The legal and humanitarian consequences of the use of force in Gaza are immense, affecting not only the people living in the region but also the broader international community. As the conflict continues, the need for a thorough understanding of the legal frameworks governing the use of force in Gaza becomes increasingly urgent. This paper will contribute to this understanding by providing a comprehensive analysis of the intersection of International Humanitarian Law and the right to self-defense in this highly contentious conflict.<sup>8</sup>

## **International Humanitarian Law and Its Application to Gaza**

International Humanitarian Law (IHL), often referred to as the law of armed conflict or the law of war, is a set of rules designed to limit the effects of armed conflict for humanitarian reasons. It seeks to balance military necessity with humanitarian considerations, aiming to protect persons who are not or no longer participating in hostilities and to regulate the means and methods of warfare. IHL is primarily codified in the four Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as customary international law. The application of IHL to the ongoing conflict in Gaza presents a number of challenges, given the complexity of the conflict, the involvement of both state and non-state actors, and the frequent violations of the principles of distinction, proportionality, and necessity.<sup>9</sup>

### **IHL and the Gaza Conflict**

The Gaza Strip, a small but highly contentious region, has been the site of multiple military operations and armed confrontations between Israel and various Palestinian factions, most notably Hamas. These hostilities are often characterized by their asymmetric nature: Israel, a state with a sophisticated military, faces off against Hamas, a non-state actor and militant group governing Gaza. This asymmetric warfare complicates the application of IHL, as the parties involved have differing obligations under the law. The primary legal questions concern the

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<sup>7</sup> The United Nations General Assembly, "The Right of the Palestinian People to Self-Determination," A/RES/67/19, 2012.

<sup>8</sup> International Committee of the Red Cross, *International Humanitarian Law and the Gaza Conflict*, 2009.

<sup>9</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31.

status of the parties involved, the treatment of civilians, the conduct of hostilities, and the proportionality of the military responses.<sup>10</sup>

### **The Status of the Parties**

IHL distinguishes between international and non-international armed conflicts, with different rules applying to each. The conflict between Israel and Hamas has primarily been categorized as a non-international armed conflict (NIAC), given that Hamas is a non-state actor and Israel is a state party. However, aspects of the conflict, such as cross-border military actions and the involvement of third-party states, have led some scholars and organizations to argue that the situation could also involve elements of an international armed conflict (IAC). Nevertheless, for the purposes of IHL, the prevailing view is that the conflict is non-international, and as such, the relevant rules of IHL applicable to NIACs—such as Common Article 3 of the Geneva Conventions and Additional Protocol II—govern the conduct of hostilities.<sup>11</sup>

The legal status of Hamas itself is a matter of considerable debate. While Israel and many other countries regard Hamas as a terrorist organization, it exercises de facto control over Gaza and has engaged in sustained armed conflict with Israel. According to IHL, the definition of a party to a non-international armed conflict is broad and includes organized armed groups like Hamas, provided they possess the ability to conduct hostilities and maintain a sufficient degree of organization. As such, Hamas is considered a party to the conflict, bound by the same rules of IHL as Israel, despite its status as a non-state actor.<sup>12</sup>

### **Protection of Civilians**

One of the core principles of IHL is the protection of civilians. The principle of distinction, enshrined in Article 48 of Additional Protocol I, mandates that parties to the conflict distinguish between combatants and civilians, and between military objectives and civilian objects. Attacks may only be directed at military targets, and direct attacks on civilians or civilian infrastructure are strictly prohibited. Civilians, who are not taking part in hostilities, are protected from the effects of war.<sup>13</sup>

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<sup>10</sup> Additional Protocol I to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3.

<sup>11</sup> Common Article 3 of the Geneva Conventions of 12 August 1949, Art. 3.

<sup>12</sup> Jean-Marie Henckaerts & Louise Doswald-Beck, Customary International Humanitarian Law 45 (International Committee of the Red Cross, 2005).

<sup>13</sup> Additional Protocol I to the Geneva Conventions of 12 August 1949, Art. 48.

In Gaza, both Israel and Hamas have faced allegations of violating the principle of distinction. Israeli airstrikes on Gaza have resulted in significant civilian casualties, including the deaths of women, children, and the elderly. Human rights organizations, such as Human Rights Watch and Amnesty International, have repeatedly raised concerns about the indiscriminate nature of Israeli bombardments, particularly in densely populated areas. For example, the 2014 Gaza conflict saw widespread destruction of civilian infrastructure, including schools, hospitals, and homes, some of which were not shown to be legitimate military targets. This raises serious concerns about compliance with IHL's requirement for proportionality in the use of force.<sup>14</sup>

On the other hand, Hamas has also been accused of violating IHL by launching indiscriminate rocket attacks targeting Israeli civilian areas. These rockets are often fired from populated areas in Gaza, further complicating the distinction between combatants and civilians. Hamas's practice of launching rockets from civilian zones makes it difficult to ensure the protection of civilians and raises questions about the group's compliance with IHL.<sup>15</sup>

### **Proportionality and Necessity**

The principles of proportionality and necessity are fundamental to the use of force under IHL. The principle of proportionality prohibits attacks that are expected to cause excessive harm to civilians in relation to the anticipated military advantage. Article 51(5)(b) of Additional Protocol I specifically prohibits attacks that are "indiscriminate" and likely to cause excessive civilian casualties.<sup>16</sup>

Israel's military operations in Gaza, particularly airstrikes and artillery bombardments, have often led to large numbers of civilian casualties. Critics argue that Israel's use of disproportionate force violates the proportionality principle. However, Israel justifies its actions by pointing to the ongoing threat posed by Hamas and other militant groups in Gaza, who launch rockets indiscriminately into Israeli territory, endangering civilian lives. Israel contends that its military operations are necessary to neutralize this threat, but the high civilian toll challenges the application of proportionality under IHL.<sup>17</sup>

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<sup>14</sup> Human Rights Watch, Israel: Gaza Conflict in 2014, <https://www.hrw.org/world-report/2015/country-chapters/israel/palestine>.

<sup>15</sup> Amnesty International, Gaza: Israel's Indiscriminate Attacks on Gaza Have Led to War Crimes, Aug. 2014, <https://www.amnesty.org/en/latest/news/2014/08/gaza-israel-indiscriminate-attacks/>.

<sup>16</sup> Additional Protocol I to the Geneva Conventions, Art. 51(5)(b).

<sup>17</sup> United Nations, Report of the Independent International Commission of Inquiry on the 2014 Gaza Conflict, A/HRC/29/52 (2015).

For Hamas, the principle of proportionality is also relevant. While Hamas often frames its rocket attacks as a form of resistance against Israeli occupation, its tactics—targeting civilian populations in Israel—are in clear violation of IHL. The use of indiscriminate rockets, which are not guided and often lack precision, constitutes a breach of the prohibition on attacks against civilians. Moreover, launching attacks from within civilian areas in Gaza, thereby putting Palestinian civilians at risk of Israeli retaliation, further complicates compliance with the principle of distinction.<sup>18</sup>

### **Accountability and Enforcement**

One of the challenges in the Gaza conflict is the lack of accountability for violations of IHL. Both Israel and Hamas have been accused of committing war crimes, but due to the political complexities of the situation and the absence of an effective enforcement mechanism, these violations often go unpunished. The International Criminal Court (ICC) has opened investigations into the situation in Palestine, which includes alleged war crimes committed by both sides. However, the ICC's jurisdiction and effectiveness in this regard remain limited, particularly because Israel is not a state party to the Rome Statute, and Hamas's non-state actor status complicates the application of international criminal law.<sup>19</sup>

The United Nations has also attempted to intervene, but its efforts have often been stymied by political considerations and the veto power of Security Council members. The lack of effective enforcement mechanisms has allowed the continuation of hostilities and the persistence of humanitarian violations.<sup>20</sup>

### **The Right to Self-Defense Under International Law**

The right to self-defense is a fundamental principle of international law, enshrined in both customary international law and in the legal texts of international organizations such as the United Nations. This right is most famously codified in Article 51 of the Charter of the United Nations (UN Charter), which affirms the inherent right of states to defend themselves in the event of an armed attack. This chapter explores the legal framework surrounding the right to self-defense, its historical evolution, and its application in the context of the ongoing conflict

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<sup>18</sup> *Id*

<sup>19</sup> International Criminal Court, Situation in Palestine, ICC-01/18 (2019).

<sup>20</sup> United Nations, Gaza Conflict: UN Role in Ceasefire Efforts, U.N. Press Release, Dec. 2014.

in Gaza, particularly with respect to Israel's right to self-defense against Hamas.<sup>21</sup>

## **The Legal Framework of Self-Defense in International Law**

The right to self-defense under international law is rooted in both customary law and treaty law. It is primarily codified in Article 51 of the UN Charter, which provides that:

*“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”*<sup>22</sup>

This provision establishes the legality of self-defense in response to an armed attack, ensuring that states can protect their territorial integrity and sovereignty against aggression. Article 51 has been the subject of extensive interpretation, particularly regarding the threshold for what constitutes an “armed attack” and when self-defense can be lawfully exercised. In addition to the Charter, the customary principles of self-defense are also reflected in various international treaties, declarations, and judicial decisions, forming a robust framework for self-defense.

### **The Threshold of an Armed Attack**

Article 51 of the UN Charter does not define what constitutes an “armed attack,” and this has led to significant debate in international law. Historically, an “armed attack” was interpreted as an act of violence that was of sufficient scale and intensity to threaten the territorial integrity or political independence of a state. This interpretation was reinforced by the International Court of Justice (ICJ) in its landmark judgment in the *Nicaragua v. United States* case (1986), where the Court stated that an armed attack involves the “use of force” in a manner that is sufficiently severe to invoke self-defense.<sup>23</sup>

The *Nicaragua* decision also clarified that not all uses of force justify the invocation of the right to self-defense; for instance, actions such as border skirmishes, minor military incursions, or covert operations typically do not rise to the level of an armed attack. Thus, the threshold for self-defense is relatively high, ensuring that the right is not abused or overextended.<sup>24</sup>

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<sup>21</sup> U.N. Charter art. 51

<sup>22</sup> U.N. Charter art. 51

<sup>23</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Judgment, 1986 I.C.J. Rep. 14, ¶ 195.

<sup>24</sup> *Id*

## **The Scope of Self-Defense: Individual and Collective Defense**

International law recognizes both individual and collective self-defense. Individual self-defense refers to a state's right to defend itself against an armed attack, while collective self-defense allows states to assist one another in the event of an armed attack against any member of a collective defense arrangement. The most well-known example of collective self-defense is NATO, where member states are bound by the North Atlantic Treaty to assist any member that is attacked.

The UN Charter implicitly recognizes both forms of defense in Article 51. However, the principle of collective self-defense has been contentious in various contexts, especially when a state claims to be acting in collective defense without the express consent of the attacked state. This issue arose in the case of Israel's intervention in Lebanon during the 2006 war, where Israel justified its actions as collective self-defense in response to Hezbollah's attacks. However, the legality of such interventions remains controversial, especially when they occur without the explicit invitation or request of the attacked state.<sup>25</sup>

### **Israel's Right to Self-Defense in the Context of Gaza**

The application of the right to self-defense in the context of Gaza has been a significant point of contention in international law, particularly concerning Israel's responses to rocket attacks and other hostile actions emanating from Hamas-controlled Gaza. Since the early 2000s, Hamas has consistently launched rocket attacks on Israeli civilian areas, with escalations in violence leading to multiple military operations by Israel in Gaza. Israel has consistently justified its military actions as acts of self-defense under Article 51 of the UN Charter, citing the need to protect its civilians from indiscriminate rocket fire.<sup>26</sup>

### **The Right to Self-Defense Against Non-State Actors**

One of the key issues in the Gaza conflict is the application of the right to self-defense against non-state actors such as Hamas. In *Nicaragua v. United States*, the ICJ clarified that self-defense could be exercised in response to acts committed by non-state actors, provided those acts amount to an "armed attack."<sup>27</sup> This is significant because Hamas, as a non-state actor,

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<sup>25</sup> Ibid

<sup>26</sup> "Israel's Justification for Military Operations in Gaza," Israel Ministry of Foreign Affairs (2020).

<sup>27</sup> *Nicaragua v. United States*, 1986 I.C.J. 14, ¶ 195.

does not enjoy the same legal status as a state party under international law. Despite this, Israel has argued that the ongoing rocket fire from Hamas, coupled with other militant activities, constitutes an “armed attack” against its territorial integrity and thus justifies the exercise of self-defense.<sup>28</sup>

The 2004 Israeli military operation in Gaza, named “Operation Cast Lead,” and subsequent operations like “Pillar of Defense” (2012) and “Protective Edge” (2014), were framed as responses to rocket fire from Hamas and other militant groups. Israel asserted that its actions were necessary to protect its civilian population from attacks, in accordance with its right to self-defense. However, the legality of these operations under international law has been questioned, particularly due to concerns about the proportionality and distinction principles of International Humanitarian Law (IHL). While Israel’s actions may meet the threshold of an armed attack under Article 51, critics argue that the response often violates the proportionality and necessity requirements of self-defense.<sup>29</sup>

### **Collective Self-Defense and Third-Party Interventions**

While Israel’s right to self-defense is often framed as an individual right in response to Hamas, the question of collective self-defense is also relevant in the broader context of Gaza. Some Arab states, such as Egypt and Qatar, have expressed support for Palestinian groups, including Hamas, under the banner of collective defense against Israeli actions. The right of these third parties to intervene in Gaza is highly controversial under international law. According to the UN Charter, states are generally prohibited from using force in the territory of another state without its consent unless the intervention is approved by the UN Security Council or is an exercise of collective self-defense following an armed attack. Therefore, the involvement of external states in the Gaza conflict, even in support of Palestinian groups, raises significant legal questions regarding the legitimacy of their actions under international law.

### **Self-Defense and Humanitarian Considerations**

The right to self-defense under international law is not absolute. The exercise of this right must always be consistent with the principles of necessity and proportionality. Israel’s military operations in Gaza often raise questions regarding whether the force used was proportionate to

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<sup>28</sup> Israel Ministry of Foreign Affairs, “Defensive Military Actions and the Gaza Conflict” (2021).

<sup>29</sup> Human Rights Watch, “Israeli Airstrikes in Gaza: Assessing the Proportionality and Impact on Civilians,” 2014.

the threat posed by Hamas. In many instances, the use of heavy artillery, airstrikes, and drone attacks has led to widespread destruction and significant civilian casualties. Under IHL, any use of force must be proportionate to the military advantage anticipated, and excessive harm to civilians is prohibited. The challenge for Israel, therefore, lies in balancing its right to self-defense with its obligations under IHL to minimize civilian harm and respect the principles of distinction and proportionality.

## **Legal and Political Implications of the Use of Force in Gaza**

The ongoing conflict in Gaza, marked by frequent military escalations between Israel and Hamas, presents significant legal and political challenges, particularly regarding the use of force. While the legal justifications for the use of force are often framed within the context of Israel's right to self-defense under international law, the broader political implications of military operations in Gaza are equally significant. These implications affect not only the parties involved but also the international community's response to the conflict. This chapter explores both the legal and political consequences of Israel's use of force in Gaza, focusing on the impact of these actions on international relations, the legitimacy of self-defense under international law, and the challenges of balancing military necessity with humanitarian concerns.

### **Legal Implications of the Use of Force in Gaza**

The legal ramifications of Israel's use of force in Gaza primarily center around two key issues: the interpretation of the right to self-defense under international law and the application of International Humanitarian Law (IHL).

#### **1. Self-Defense under International Law**

Israel justifies its military actions in Gaza as an exercise of the right to self-defense, enshrined in Article 51 of the United Nations Charter. According to Israel, Hamas's persistent rocket fire constitutes an armed attack, which entitles Israel to respond in defense of its territory and civilians. The UN Charter, however, imposes restrictions on the use of force, mandating that any self-defense response must be proportional and necessary. While Israel's actions in Gaza have often been portrayed as measures of self-defense, the legal validity of these operations under international law is debated, especially when the scale of military responses is considered.

The principle of proportionality is a key element in the evaluation of the legality of the

use of force in self-defense. Under international law, proportionality dictates that the force used in response to an armed attack should not exceed what is necessary to achieve the legitimate military objective. Critics argue that Israel's operations, which have resulted in high civilian casualties and widespread destruction of infrastructure, fail to meet this requirement. For instance, during *Operation Cast Lead* (2008-2009) and *Operation Protective Edge* (2014), large numbers of Palestinian civilians were killed, leading to widespread condemnation of Israel's tactics under IHL. The International Court of Justice (ICJ) has held that self-defense must be proportional to the armed attack and that excessive harm to civilians is impermissible under both IHL and the UN Charter.<sup>30</sup>

## 2. **International Humanitarian Law (IHL)**

IHL is designed to regulate the conduct of warfare, ensuring that military actions are conducted with respect for civilians and civilian objects. The Geneva Conventions, particularly Common Article 3, and Additional Protocols I and II, provide the legal framework for IHL, establishing rules governing the treatment of civilians and the conduct of hostilities. Israel, as a signatory to the Geneva Conventions, is legally obligated to adhere to these rules, regardless of the justification for its use of force.

The principle of distinction, which requires parties to a conflict to differentiate between combatants and civilians, is one of the most important provisions of IHL. The densely populated nature of Gaza, where Hamas operates from within civilian areas, complicates the application of this principle. Israel's critics argue that the Israeli Defense Forces (IDF) often fail to adequately distinguish between military targets and civilian infrastructure, leading to civilian casualties and damage to non-military facilities, such as hospitals and schools.<sup>31</sup>

Additionally, the principle of proportionality under IHL prohibits attacks that cause disproportionate harm to civilians and civilian objects in relation to the military advantage gained. Israel's military operations in Gaza, particularly airstrikes and artillery bombardments, have frequently been criticized for violating this principle, as the destruction in Gaza has often far exceeded the strategic value of the military

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<sup>30</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004), Advisory Opinion, I.C.J. Rep. 136, ¶ 139.

<sup>31</sup> International Committee of the Red Cross, "International Humanitarian Law and the Conflict in Gaza," (2009), available at <https://www.icrc.org/en>.

targets.<sup>32</sup> Moreover, the use of collective punishment against civilians, which is prohibited under IHL, has also been a point of contention, particularly in light of the extensive damage caused to civilian infrastructure and the humanitarian crisis exacerbated by Israel's actions.<sup>33</sup>

## **Political Implications of the Use of Force in Gaza**

The political consequences of Israel's use of force in Gaza are far-reaching and affect regional stability, international diplomacy, and the broader dynamics of the Israeli-Palestinian conflict. The political implications of military operations in Gaza are influenced by several key factors: international reaction, the legitimacy of Israeli actions, and the impact on the peace process.

### **1. International Reactions and Diplomatic Strains**

Israel's military operations in Gaza have sparked widespread international criticism, particularly from countries and organizations sympathetic to the Palestinian cause. The United Nations, including the UN Human Rights Council, and various non-governmental organizations (NGOs) have condemned Israel for alleged violations of IHL, particularly in relation to civilian casualties and the destruction of infrastructure. These condemnations have led to strained diplomatic relations between Israel and many countries in the international community.

The political impact of these international reactions is particularly pronounced within the context of the Middle East, where Israel's use of force in Gaza has often led to a further polarization of regional actors. For instance, Arab states, including Egypt and Qatar, have historically supported Palestinian factions, including Hamas, and have criticized Israel's military actions in Gaza. These states often call for international intervention or pressure on Israel to cease its military operations. On the other hand, Israel's closest ally, the United States, has consistently supported Israel's right to self-defense, though U.S. officials have occasionally raised concerns about civilian casualties and urged Israel to minimize harm to civilians. The political divide between these international actors has led to challenges in achieving a unified approach to the Gaza conflict at the UN and other international forums.<sup>34</sup>

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<sup>32</sup> U.N. Human Rights Council, "Report of the United Nations Fact Finding Mission on the Gaza Conflict," A/HRC/12/48, 25 September 2009.

<sup>33</sup> United Nations, Security Council Resolution 1860, S/RES/1860 (2009).

<sup>34</sup> U.S. Department of State, "U.S. Statements on the Gaza Conflict," (2020), available at <https://www.state.gov>.

## 2. **Legitimacy of Self-Defense and the Challenge of Accountability**

The political legitimacy of Israel's self-defense claims has been questioned by various international actors, especially given the high civilian toll and the extensive damage to Gaza's infrastructure. Critics argue that Israel's use of force constitutes an unlawful occupation and that its military actions amount to collective punishment, a violation of the prohibition against the use of force under the UN Charter. This political discourse is critical in shaping global perceptions of the conflict and the legitimacy of Israel's military operations in Gaza.

On the other hand, Israel maintains that its military operations are justified as self-defense under international law and that the use of force is necessary to protect its civilian population from Hamas's continued rocket attacks. Israel's justification is politically and legally grounded in its perception of Hamas as a terrorist organization that uses civilian populations as human shields, further complicating the moral and legal considerations in this conflict. The political implications of this justification are substantial, as they shape Israel's domestic policy, its relations with international partners, and the way its actions are viewed in the broader geopolitical context.<sup>35</sup>

## 3. **Impact on the Peace Process**

The use of force in Gaza has significant implications for the peace process between Israel and the Palestinians. Military operations by Israel often lead to an escalation of hostilities, further entrenching the division between Israeli and Palestinian communities. The cycle of violence and retaliation has made it increasingly difficult to advance negotiations aimed at achieving a two-state solution.

The political implications of Israel's military actions also extend to its relationship with the Palestinian Authority (PA), which is the internationally recognized representative of the Palestinian people. The PA has often criticized Israel's military operations in Gaza, particularly because they complicate efforts to establish a unified Palestinian political front. The divide between the PA and Hamas—both in terms of governance and political ideology—has further complicated efforts to negotiate a peaceful resolution to the Israeli-Palestinian conflict. While the PA has historically sought a negotiated peace with Israel, Hamas's control of Gaza and its more militant stance have made it difficult for Israel to engage in peace talks with a unified Palestinian

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<sup>35</sup> Israel Ministry of Foreign Affairs, "Israel's Right to Self-Defense," (2012), available at <https://mfa.gov.il>.

representative.<sup>36</sup>

### **Legal Reform and Future Perspectives: The Use of Force in Gaza**

The ongoing conflict in Gaza raises critical questions regarding the application of international law, particularly International Humanitarian Law (IHL) and the right to self-defense under the United Nations (UN) Charter. As Israel and Hamas continue their military operations, the legal frameworks governing the use of force remain a focal point for scholars, policymakers, and human rights advocates. Given the complexities and humanitarian consequences of the conflict, legal reforms are essential to address the challenges associated with the use of force, protection of civilians, and the pursuit of long-term peace in Gaza. This chapter examines potential reforms in international law related to the use of force in Gaza and offers perspectives on how legal frameworks can be adapted to better address the evolving nature of modern conflicts.

### **Legal Reform and Future Perspectives: The Use of Force in Gaza**

The ongoing conflict in Gaza highlights critical challenges to the application and enforcement of international law, particularly in relation to International Humanitarian Law (IHL) and the right to self-defense under the United Nations Charter. As Israel and Hamas continue their military operations, there is increasing debate over how international legal frameworks can be adapted to better address the complexities of modern warfare. The asymmetric nature of the Gaza conflict, combined with the involvement of non-state actors and the significant humanitarian toll, has underscored the limitations of existing legal structures. This chapter explores potential legal reforms necessary to ensure greater protection for civilians, enhance accountability for violations, and clarify the application of the right to self-defense in future conflicts.<sup>37</sup>

### **Challenges in the Current Legal Framework**

The current international legal framework governing the use of force, particularly in Gaza, faces multiple challenges. These challenges include the status of non-state actors like Hamas, the difficulties in applying the principles of distinction and proportionality in densely populated areas, and the broader issue of accountability for violations of international law.

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<sup>36</sup> The Palestinian Authority and Hamas: A Historical and Political Analysis, *Journal of Middle East Politics*, vol. 13, no. 2, 2014.

<sup>37</sup> Eyal Benvenisti, *The International Law of Occupation* 182 (2d ed. 2012).

### 1. **The Issue of Non-State Actors**

One of the primary challenges in Gaza is the involvement of non-state actors, primarily Hamas, which does not have formal recognition under international law as a sovereign entity. While Israel is recognized as a sovereign state and entitled to exercise the right to self-defense under Article 51 of the UN Charter, Hamas's status complicates the application of international law.<sup>38</sup> The right to self-defense is typically exercised against another state, not a non-state actor, which creates ambiguity in its application when the adversary is a group like Hamas. Legal reform is necessary to address how the right to self-defense should be exercised in conflicts involving non-state actors, and to establish clearer guidelines on how such actors can be held accountable under international law.

### 2. **Principles of Distinction and Proportionality**

The principles of distinction and proportionality are central to the conduct of hostilities under IHL. The principle of distinction requires that combatants distinguish between military targets and civilians, while proportionality mandates that the harm caused to civilians and civilian objects should not be disproportionate to the military advantage gained.<sup>39</sup> In Gaza, these principles are frequently challenged due to the dense urban environment in which Hamas operates, often from within civilian areas. Israel's use of airstrikes and artillery in densely populated regions has resulted in significant civilian casualties, leading to allegations of violations of IHL.<sup>40</sup>

While Israel justifies its actions on the grounds of self-defense, the scale and intensity of military operations have sparked widespread criticism for their failure to adhere to the proportionality principle. The destruction of civilian infrastructure, such as schools, hospitals, and residential buildings, has raised serious concerns regarding the legitimacy of these military operations under international law. Legal reforms are necessary to clarify how proportionality should be applied in asymmetric conflicts, particularly when one side operates from within civilian populations, and to provide better mechanisms for evaluating the legality of military operations in such contexts.<sup>41</sup>

### 3. **Accountability and Enforcement**

Another major challenge in Gaza is the lack of accountability for violations of international law. Despite widespread condemnation from international bodies like the

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<sup>38</sup> U.N. Charter art. 51.

<sup>39</sup> International Committee of the Red Cross, *International Humanitarian Law and the Conflict in Gaza*, (July 2009), <https://www.icrc.org/en/document/international-humanitarian-law-and-conflict-gaza>.

<sup>40</sup> United Nations, *Human Rights Council Report on the Gaza Conflict A/HRC/12/48* (2009).

<sup>41</sup> United Nations, *Report of the United Nations Fact Finding Mission on the Gaza Conflict* (2009), A/HRC/12/48.

United Nations and non-governmental organizations (NGOs), neither Israel nor Hamas has been held accountable for violations of IHL. Israel's military operations have resulted in significant civilian casualties, while Hamas has been accused of using human shields and launching indiscriminate rocket attacks against Israeli civilians. The lack of accountability for both parties is a significant flaw in the current international legal system.<sup>42</sup>

While the International Criminal Court (ICC) has jurisdiction to investigate and prosecute war crimes, it faces limitations in enforcing accountability in conflicts involving non-state actors. The situation in Gaza presents a clear example of the need for international legal reforms that can effectively address violations of IHL, particularly by non-state actors. Strengthening the enforcement mechanisms of international law, and ensuring that all parties—state and non-state actors alike—are held accountable, is essential to upholding the principles of IHL and preventing further violations.<sup>43</sup>

## Potential Legal Reforms

To address the challenges outlined above, several key legal reforms are needed to better regulate the use of force in Gaza and similar conflicts. These reforms could enhance the protection of civilians, improve accountability, and ensure that military actions remain within the boundaries of international law.

### 1. Clarification of the Legal Status of Non-State Actors

A major area for legal reform is the status and legal obligations of non-state actors in armed conflicts. International law has traditionally focused on relations between states, leaving the status of non-state actors, such as Hamas, relatively unclear. Legal reforms could clarify the responsibilities of non-state actors under international law, particularly in relation to IHL obligations such as the prohibition of targeting civilians and the requirement to distinguish between civilian and military objects. Additionally, reforms could address how non-state actors are held accountable for violations of IHL and the UN Charter, ensuring that these groups are not exempt from the legal framework governing armed conflict.<sup>44</sup>

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<sup>42</sup> International Criminal Court, *Prosecutor v. Omar Al Bashir* (Case No. ICC-02/05-01/09) (June 2010).

<sup>43</sup> U.N. Security Council, Resolution 1860 (2009), S/RES/1860 (2009).

<sup>44</sup> ICRC, Additional Protocols to the Geneva Conventions, art. 3(1), 8 U.N. J. 10.

## 2. **Updating the Laws of War for Asymmetric Conflicts**

The traditional laws of war, including IHL, were largely developed with conventional state-to-state warfare in mind. However, modern conflicts often involve asymmetrical warfare, where one side, like Hamas, operates from within civilian populations. International law needs to be updated to better address these situations, particularly in terms of balancing military necessity with the protection of civilians. Reforms could include clearer guidelines on the use of force in densely populated urban areas, where the principle of distinction becomes difficult to apply. The development of new rules for asymmetric warfare would provide greater clarity on how to protect civilians while still allowing for legitimate self-defense.<sup>45</sup>

## 3. **Strengthening Accountability Mechanisms**

To address the lack of accountability for violations of IHL, legal reforms should focus on enhancing enforcement mechanisms. This could include the creation of specialized international tribunals or expanding the jurisdiction of the ICC to prosecute war crimes committed by non-state actors. In addition, reforms could provide for more robust mechanisms for investigating violations of IHL, particularly in situations where evidence is difficult to collect, such as in Gaza. Strengthening the role of the UN and other international organizations in monitoring and investigating violations could help ensure greater accountability and transparency in the enforcement of international law.<sup>46</sup>

## 4. **Clarifying the Application of the Right to Self-Defense**

Reforms to the application of the right to self-defense under international law are necessary to address the complexities of modern conflicts. While Article 51 of the UN Charter permits states to exercise self-defense in response to an armed attack, its application is often ambiguous, particularly in cases involving non-state actors. Legal reforms could clarify the conditions under which self-defense can be invoked, particularly when the adversary is a non-state actor like Hamas. This would provide clearer guidelines for states facing attacks from non-state actors and ensure that responses remain proportionate and necessary under international law.<sup>47</sup>

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<sup>45</sup> U.N. General Assembly, Report of the Secretary-General on the Protection of Civilians in Armed Conflict (A/67/779), (2013).

<sup>46</sup> U.N. Security Council, Resolution 1539, S/RES/1539 (2004).

<sup>47</sup> U.N. Charter art. 51.

## **Conclusion: The Need for Comprehensive Legal Reform**

The legal challenges presented by the use of force in Gaza highlight significant gaps in the current international legal framework. Asymmetric warfare, the involvement of non-state actors, and the frequent violation of IHL principles like distinction and proportionality necessitate a reevaluation of how international law applies to modern conflicts. Legal reforms are essential to ensure that international law is better equipped to address these challenges, protect civilians, and hold all parties accountable for violations. By clarifying the status of non-state actors, updating the laws of war to account for asymmetric conflicts, and strengthening accountability mechanisms, international law can better regulate the use of force in Gaza and similar situations, contributing to the protection of human rights and the promotion of lasting peace.

### **Conclusion**

The conflict in Gaza has highlighted the complex and often contentious intersection of international law, particularly International Humanitarian Law (IHL) and the right to self-defense under the United Nations Charter. Israel's military actions, justified primarily as self-defense against armed attacks from Hamas, have sparked intense legal debates surrounding proportionality, distinction, and the protection of civilians. This legal discourse is not only central to the current hostilities but also fundamental in shaping the future of international law and its application in asymmetric conflicts, such as the one in Gaza.

From a legal standpoint, the application of the right to self-defense remains a critical issue. While Israel's actions can be framed within the legal framework of self-defense under Article 51 of the UN Charter, the principles of proportionality and necessity raise significant concerns when assessing the scale of military responses to rocket attacks. The civilian toll in Gaza, coupled with the extensive destruction of infrastructure, presents a challenge to the proportionality of Israel's use of force, as set out by both IHL and the UN Charter. Additionally, the nature of the conflict, with Hamas operating within densely populated civilian areas, complicates the application of the principle of distinction, often leading to accusations of violations of international law.

The political implications of these legal issues are also far-reaching. International reactions to Israel's use of force have been divided, with some countries defending Israel's right to self-

defense while others criticize the humanitarian impact of its military operations. These differences shape international diplomacy, regional alliances, and the broader peace process. The challenge of ensuring accountability for violations of international law by both state and non-state actors like Hamas further complicates efforts to reach a peaceful resolution. Despite the availability of international legal mechanisms such as the International Criminal Court (ICC), achieving accountability remains difficult, especially with the absence of enforcement mechanisms for non-state actors.

Looking forward, legal reforms are essential to adapt international law to the realities of contemporary conflict. These reforms could include clarifying the status and legal responsibilities of non-state actors, updating the laws of war to better address asymmetric warfare, and strengthening accountability mechanisms to ensure that all parties are held to the same legal standards. Additionally, the international community must address the challenges inherent in the use of force against non-state actors in a manner that protects civilians and adheres to the core principles of international law.

Ultimately, the conflict in Gaza underscores the urgent need for both legal and political solutions that prioritize humanitarian protection while ensuring that the rights of states to defend themselves are not undermined. As international law continues to evolve, the lessons learned from Gaza could shape the future of conflict regulation and pave the way for a more consistent, just, and humane approach to warfare.