

A Year of Atrocities

War Crimes in Israel and Gaza

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Introduction

Since hostilities reignited between Israel and Palestinian armed groups in Israel and the Gaza Strip on 7 October 2023, the number of Palestinians killed in the Gaza Strip has surpassed 41,000, including more than 17,000 children and women combined.¹ The Palestinian armed groups' initial attack in south Israel, on 7 October 2023, resulted in the killing of over 1,100 Israelis and foreign nationals, the majority civilians.²

On 20 May 2024, the Prosecutor of the International Criminal Court (ICC) announced that he had filed applications for arrest warrants against Israeli and Hamas leaders for alleged war crimes and crimes against humanity committed since 7 October 2023 on the territory of Israel and in the Gaza Strip. With respect to war crimes, he stated he had reasonable grounds to believe that:

- (i) Yahya Sinwar, Mohammed Deif and Ismail Haniyeh,³ military and political leaders of Hamas, bear criminal responsibility for murder; taking hostages; rape and other acts of sexual violence (in the context of captivity); torture (in the context of captivity); cruel treatment (in the context of captivity); and outrages upon personal dignity (in the context of captivity);
- (ii) Benjamin Netanyahu, Israel's Prime Minister, and Yoav Gallant, Israel's Minister of Defence, bear criminal responsibility for the war crimes of starvation of civilians as a method of warfare; wilfully causing great suffering, or serious injury to body or health, or cruel treatment; wilful killing, or murder; and intentionally directing attacks against a civilian population.⁴

On 12 June 2024, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (the "Commission of Inquiry") published one report and two conference-room papers, confirming it had reasonable grounds to believe that:

- (i) members of Hamas military wing, members of the military wings of other Palestinian armed groups and Palestinian civilians committed the war crimes of intentionally directing attacks against civilians; murder, or wilful killing; torture, inhuman or cruel treatment; destroying or seizing the property of an adversary; outrages upon personal dignity; taking hostages; and acts of sexual violence;
- (ii) Israeli authorities and members of the Israeli Security Forces committed war crimes and crimes against humanity. With respect to war crimes, the Commission found that starvation as a method of warfare; murder or wilful killing; intentionally directing attacks against civilians and civilian objects; forcible transfer; sexual violence; outrages upon personal dignity; and sexual and gender-based violence amounting to torture or inhuman and cruel treatment were committed.⁵

The International Commission of Jurists (ICJ) issues this legal briefing to highlight, through a limited selection of examples, that there is compelling evidence that certain acts committed in Israel and the Gaza Strip on and since 7 October 2023 amount to serious violations of international humanitarian law (IHL), giving rise to individual criminal liability. While certain of these acts, if it were established that they were perpetrated pursuant to a requisite policy or with the requisite specific intent, would also amount to crimes against humanity and/or genocide, this briefing focuses on war crimes – in particular some of the war crimes alleged by the ICC Prosecutor.

This legal briefing is based on a factual account of events derived from a range of open-source information, which the ICJ has verified by cross-referencing with other credible sources.

¹ The Gaza Health Ministry has reported that since 7 October 2023, more than 41,000 people have been killed in the Gaza Strip, including more than 11,000 children and 6,000 women, and more than 96,000 injured. The statistics do not distinguish between combatants and civilians. See OCHA Reported impact snapshot | Gaza Strip (2 October 2024) and Health Cluster's Unified Dashboard.

² The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (Col) reported, based on Israeli sources, 280 women and 40 children killed: see, Col, A/HRC/56/CRP.3, para. 21; see also, <https://www.france24.com/en/live-news/20231215-israel-social-security-data-reveals-true-picture-of-oct-7-deaths>. The number of injured people is reported to be about 5,000.

³ Since the ICC Prosecutor's application, both Mohammed Deif and Ismail Haniyeh have reportedly been killed. For that reason, the Prosecutor withdrew his application with respect to Ismail Haniyeh (see ICC-01/18-263-Red), while seeking to confirm Mohammed Deif's reported death, adding that, should sufficient and reliable information confirm his death, the Prosecution would withdraw its application for an arrest warrant against him.

⁴ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024.

⁵ A/HRC/56/26, 27 May 2024, issued 12 June 2024.

International Humanitarian Law

IHL is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It comprises treaty law – e.g., the Four Geneva Conventions of 1949⁶ and their Additional Protocols I and II of 1977⁷ – as well as customary IHL. Among other things, it protects persons who are not, or are no longer, directly or actively participating in hostilities, and imposes limits on the means and methods of warfare, thus also protecting both combatants and civilians not taking part in hostilities.

IHL is not concerned with the question of whether the resort to armed force that may have begun an armed conflict was lawful pursuant to public international law. Instead, IHL seeks to regulate and is concerned with the conduct of the parties to an armed conflict.

IHL obligations do not depend on or operate on the basis of reciprocity. As a result, the obligations of a party to the armed conflict under IHL do not depend on the conduct of the opposing party.⁸ Therefore, even serious violations of IHL by one party to an armed conflict do not justify their commission by the other.⁹

Israel is a High Contracting Party to the Four Geneva Conventions of 12 August 1949 and has ratified their Additional Protocol III of 8 December 2005.¹⁰ It is not a party to Additional Protocols I and II of 8 June 1977, so it is not bound by those instruments but is by customary IHL. Since, to a large extent, these Additional Protocols reflect and codify customary IHL, certain relevant provisions may be relied on for capturing the content of the corresponding rules of customary international law they mirror. The State of Palestine has acceded to the Geneva Conventions and their three Additional Protocols as well as the 1907 Hague Regulations.¹¹ Hamas and other organized Palestinian armed groups are obligated to comply at the very least with customary IHL.

The ICC Prosecutor concluded that the armed conflicts in Israel and the Gaza Strip comprise an international armed conflict – between Israel and Palestine – and a non-international armed conflict – between Hamas and Israel – running in parallel.¹² The armed conflicts' characterization matters in the context of the ongoing ICC proceedings, notably because, under the ICC Statute, the war crime of starvation of civilians as a method of warfare requires that the armed conflict at issue be an international one.¹³ The International Court of Justice has recently ruled that, "Israel's withdrawal from the Gaza Strip has not entirely released it of its obligations under the law of occupation [which] have remained commensurate with the degree of its effective control over the Gaza Strip," after having observed that, "Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip," and "even more so since 7 October 2023."¹⁴

Pursuant to the ICC elements of crimes and international jurisprudence, the term "international armed conflict" includes military occupation.¹⁵ By virtue of Israel's military presence in occupied Palestinian territory without Palestine's consent, there is an international armed conflict, and as long as the fighting with non-State armed groups takes place on a territory or in an area considered as occupied, Israel is bound by the law of occupation even if the said armed groups do not act under the overall control or on behalf of Palestine.¹⁶ As such, the occupying power is bound by the law of occupation and of international armed conflict with respect to the population of the occupied

⁶ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) relative to the Treatment of Prisoners of War; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

⁸ See [ICRC Customary International Humanitarian Law Study](#), rules 140 and 144. See also Vienna Convention on the Law of Treaties, art. 60(5).

⁹ The wording of common article 3 of the Geneva Conventions providing that the guarantees contained therein shall be applicable "in all circumstances" further reinforces this obligation.

¹⁰ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005.

¹¹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

¹² See [Report of the Panel of Experts in International Law](#), 20 May 2024, para. 13. The experts appointed by the Prosecutor to advise on his application for warrants of arrest concluded that there was an international armed conflict between Israel and Palestine on the basis, *inter alia*, that "[t]here is a belligerent occupation by Israel of at least some Palestinian territory". See also [ICC-01/18-346](#), paras 2 and 101.

¹³ This war crime can however be committed in both international and non-international armed conflict under customary IHL (see section 5). More generally, the classification of the armed conflict is also fundamental to identifying the type of protection afforded to persons in the power of the enemy.

¹⁴ International Court of Justice, [Advisory Opinion, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory](#), including East Jerusalem, 19 July 2024, paras 93-94. See also, paras 78, 104.

¹⁵ ICC Elements of Crimes, fn 34 (p. 9). See [ICC-01/04-01/06-2842](#), paras 541-542, with respect to art. 8(2)(b).

¹⁶ [ICC-01/04-02/06-2359](#), para. 728. In the same vein, Antonio Cassese considered that "[a]n armed conflict which takes place between an Occupying Power and rebel or insurgent groups—whether or not they are terrorist in character—in an occupied territory, amounts to an international armed conflict": A. Cassese, *International Law*, 2nd edn, Oxford University Press, Oxford, 2005, p. 420. See, *Amicus curiae* observations of Professor Adil Ahmad Haque, [ICC-01/18-303](#), paras 21-25. For the view that Hamas and Palestinian Islamic Jihad, two of the main Palestinian armed groups involved in the ongoing hostilities in the Gaza Strip, are organized armed groups belonging to Palestine, see RULAC's [analysis](#).

territory, regardless of whether it is engaged in hostilities with non-State actors. This is particularly so – to the extent of Israel’s effective control over the Gaza Strip – with respect to the obligations under the law of occupation and international armed conflict, such as ensuring the provision of objects indispensable to survival and relief supplies.¹⁷ Israel is thus bound by the relevant rules of customary IHL applicable to international armed conflicts in the context of the ongoing hostilities in the Gaza Strip.

International jurisprudence confirms that, depending on the particular actors involved, international and non-international armed conflicts may take place on the same territory at the same time.¹⁸ As regards Palestinian armed groups sufficiently organized, such as Hamas, they are bound by the obligations applicable in a non-international armed conflict, irrespective of the state of belligerent occupation, unless it can be demonstrated that they act under the control of or on behalf of Palestine, in which case they would be bound by the law of international armed conflict.¹⁹

Fundamental Principles of IHL

The fundamental principles of *humanity* and *military necessity* underlie and inform the entire normative framework of IHL. All rules of IHL reflect a careful balance between these two principles, which, in turn, informs the interpretation of these rules.²⁰ Furthermore, State practice establishes the principle of *distinction between civilians and combatants*, the prohibition against *indiscriminate attacks*, the principle of *proportionality in attack* and the principle of *precautions in attack* as rules and as norms of customary international humanitarian law applicable in both international and non-international armed conflicts. As such, both Israel and Palestinian armed groups are bound by them. An assessment of the legality of an attack involves a cumulative determination of whether or not it complied with any one of these principles, as relevant.

The principle of *humanity* imposes certain limits on the means and methods of warfare and requires that those who have fallen into enemy hands be treated humanely at all times. The principle of *military necessity* requires that a party to an armed conflict may only resort to those means and methods that are necessary to achieve the legitimate purpose of a conflict, i.e. “to weaken the military forces of the enemy”.²¹

The principle of *distinction*, applicable in both international and non-international armed conflicts, and codified in articles 48,²² 51(2)²³ and 52(2)²⁴ of Additional Protocol I to the Geneva Conventions and in article 13(2)²⁵ of Additional Protocol II – in turn reflecting customary IHL²⁶ – requires that:

- the parties to the conflict must at all times distinguish between civilians and combatants;
- attacks may only be directed against combatants;²⁷ and
- attacks must not be directed against civilians.²⁸

An extension of the principle of distinction, the prohibition on wilful killings or murders, that is, the deliberate killing of protected persons – such as civilians not taking direct part in hostilities or soldiers who have surrendered or have been detained or wounded (*hors de combat*) – is a war crime.²⁹ Furthermore, under IHL, medical personnel must be respected and protected in all circumstances, and only lose their protection if they commit, outside their humanitarian function, “acts harmful to the enemy”.³⁰ Journalists and other media workers also enjoy specific protections under IHL as long as they do not take a direct part in hostilities.³¹

¹⁷ See, Amicus curiae observations of Professor Adil Ahmad Haque, ICC-01/18-303, para. 25; Report of the Panel of Experts in International Law, 20 May 2024, paras 25-27.

¹⁸ ICC, ICC-01/04-01/06-2842, para. 540.

¹⁹ Ibid, paras 541-542.

²⁰ See https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/02_humanity_and_necessity-0.pdf.

²¹ https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/02_humanity_and_necessity-0.pdf.

²² “[T]he Parties to the conflict shall at all times distinguish between the civilian population and combatants”.

²³ “The civilian population as such, as well as individual civilians, shall not be the object of attack”.

²⁴ “Attacks shall be limited strictly to military objectives”.

²⁵ “The civilian population as such, as well as individual civilians, shall not be the object of attack.”

²⁶ ICRC Customary IHL Study, rule 1.

²⁷ All members of the armed forces of a party to the conflict are combatants, except medical and religious personnel: ICRC Customary IHL Study, rule 3.

²⁸ Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians: ICRC Customary IHL Study, rule 5.

²⁹ ICC Statute, arts 8(2)(a)(i) and 8(2)(c)(i).

³⁰ ICRC Customary IHL Study, rule 28; API, arts 12 and 13; APII, art. 11.

³¹ Article 79 of Additional Protocol I formally states that journalists engaged in dangerous professional missions in zones of armed conflict are civilians within the meaning of article 50(1). As such, they enjoy the full scope of protection granted to civilians under international humanitarian law. See also ICRC Customary IHL Study, rule 34, also applicable to non-international armed conflicts.

Reflecting customary IHL,³² article 85(3)(a) of Additional Protocol I states that violating this principle and “making the civilian population or individual civilians the object of attack” is a war crime. Under articles 8(2)(b)(i) and 8(2)(e)(i) of the ICC Statute, “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a war crime in international and non-international armed conflicts.

Another extension of the principle of distinction is the prohibition of *indiscriminate attacks*, i.e., attacks of a nature to strike military objectives and civilians or civilian objects without distinction, which is a prohibition of customary IHL applicable in both international and non-international armed conflicts.³³ Albeit not listed in the ICC Statute, launching an indiscriminate attack resulting in loss of life or injury to civilians is a war crime under customary IHL in both international and non-international armed conflicts,³⁴ and several war crimes under the ICC Statute reflect this prohibition, whether they relate to attacks against objects that are not military objectives, or to the use of certain weapons, such as biological agents.

The principle of *proportionality* is another cardinal rule of customary IHL, applicable in both international and non-international armed conflicts. Launching an attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.³⁵

A proportionality assessment occurs as the second step in the three-prong cumulative assessment of the legality of targeting or attacks. It is inoperative if the principle of distinction – the first step – is not respected.³⁶

Under article 85(3)(b) of Additional Protocol I, launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is a war crime, as is under article 8(2)(b)(iv) of the ICC Statute, albeit with a slightly different formulation.³⁷ While these provisions only apply in international armed conflicts, launching an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage is also a war crime under customary IHL applicable to non-international armed conflicts.³⁸

Finally, the principle of *precautions in attack* requires that in the conduct of military operations, constant care be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.³⁹ Under customary IHL, the principle applies in both international and non-international armed conflicts and has implications with respect to, *inter alia*, the target verification and selection as well as the choice of means and methods of warfare, and the obligation to give effective advance warning of attacks that may affect the civilian population. Parties to an armed conflict must take all feasible precautions to refrain from disproportionate attacks as defined above.⁴⁰

Moreover, the parties to the conflict must also take all feasible precautions to protect the civilian population and civilian objects under their control against the *effects of attacks*.⁴¹ The principle of precautions against the effect of attacks requires, to the extent feasible, to avoid locating military objectives within or near densely populated areas⁴² and to remove civilian persons and objects under one’s control from the vicinity of military objectives.⁴³

³² ICRC Customary IHL Study, rule 156, also committed in non-international armed conflicts.

³³ ICRC Customary IHL Study, rules 11 and 12; API, art. 51(4). Indiscriminate attacks are those:

(a) which are not directed at a specific military objective;

(b) which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law.

³⁴ ICRC Customary IHL Study, rule 156.

³⁵ ICRC Customary IHL Study, rule 14; API, arts 51(5)(b) and 57.

³⁶ This means that one does not move on to assess proportionality if one has found that the principle of distinction was violated. Thus, compliance with the principle of proportionality is only examined following an assessment that either finds that the principle of distinction was complied with or that concludes it was not possible to assess distinction conclusively.

³⁷ “Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”

³⁸ ICRC Customary IHL Study, rule 156.

³⁹ ICRC Customary IHL Study, rule 15; AP I, art. 57.

⁴⁰ ICRC Customary IHL Study, rules 18 and 19; AP I, arts 57(2)(a)(iii) and 57(2)(b).

⁴¹ ICRC Customary IHL Study, rule 22; AP I, art. 58(c).

⁴² ICRC Customary IHL Study, rule 23.

⁴³ ICRC Customary IHL Study, rule 24.

War Crimes

A war crime is a serious violation of IHL committed by any 'natural' person, no matter whether military or civilian, giving rise to individual criminal liability under international law. Article 8(2)(a) and (b) of the ICC Statute – generally reflecting customary international law⁴⁴ – defines war crimes in the case of an armed conflict of an international character as grave breaches of the Four Geneva Conventions of 12 August 1949 and other serious violations of the laws and customs applicable in international armed conflict, respectively, while article 8(2)(c) and (e) defines them in the case of an armed conflict not of an international character as serious violations of article 3 common to the Four Geneva Conventions and other serious violations of the laws and customs applicable in armed conflicts not of an international character, respectively.

To establish whether a crime qualifies as a war crime, certain pre-conditions must be met: (a) the existence of an armed conflict (international or non-international); and (b) a nexus between the alleged criminal conduct and the armed conflict, which means that the conduct must have taken place in the context of and was associated with an armed conflict, and that the perpetrator was aware of the factual circumstances that established the existence of an armed conflict. While the exact contours of the required mental state of the person committing the specific underlying acts – namely, the mental element of the war crime/s – vary depending on the crime concerned, the prohibited conduct must have been committed either intentionally (*dolus directus*) or recklessly (*dolus eventualis*).⁴⁵

Due to Palestine's accession to the ICC Statute in 2015, the ICC has jurisdiction over Rome Statute crimes, either perpetrated by Palestinian nationals⁴⁶ or occurring in whole or in part on Palestinian territory.⁴⁷ The Gaza Strip is Palestinian territory in this respect.⁴⁸ In light of this, the ICC may, if all other relevant criteria are fulfilled, exercise jurisdiction over Rome Statute crimes perpetrated by Hamas, other Palestinian armed groups and Palestinian civilians in Israel and the Gaza Strip, as well as over Rome Statute crimes committed by Israeli nationals in the Gaza Strip, despite the fact that Israel is not a State Party to the ICC.⁴⁹

To issue an arrest warrant as requested by the Prosecutor, the ICC Pre-Trial Chamber judges must be satisfied that there are reasonable grounds to believe that the suspect has committed a crime within the jurisdiction of the ICC.

1. Murders/wilful killings, taking of hostages: Palestinian armed groups' attacks on 7 October 2023

There is incontrovertible evidence that, during the attack launched against Israel on 7 October 2023, Palestinian armed groups, including Hamas, along with Palestinian civilians, committed serious violations of IHL, including war crimes, such as deliberate killings of civilians or members of armed forces placed *hors de combat*, the taking of hostages, intentionally directing attacks against civilians or civilian objects and indiscriminate attacks through launching of indiscriminate rockets against civilians and civilian objects. In addition to constituting war crimes, those acts may amount to other serious crimes under international law.

On 7 and 8 October 2023, members of Palestinian armed groups, accompanied by Palestinian civilians, who infiltrated Israeli territory, directly attacked civilians, killing hundreds and injuring thousands more. According to Israel, over 1,100 Israelis and foreign nationals were killed. Evidence indicates that unarmed civilians, including women and children, were intentionally shot and killed, as well as unarmed soldiers in the armed groups' custody. This included the massacre of hundreds of people attending an outdoor musical festival and the killing of hundreds of civilians in Israeli kibbutzim, towns and villages located near Gaza.⁵⁰ The requisite intent of the perpetrators to intentionally kill civilians is based on their *modus operandi*, as supported by video evidence from the attack. The Commission of Inquiry concluded that, where members of Palestinian armed groups targeted civilians and caused deaths and injuries, they committed the war crime of intentionally directing attacks against civilians not taking any direct part in the hostilities.⁵¹

⁴⁴ See ICC, ICC-02/05-01/20 OA8, para. 89, where the Appeals Chamber noted "that the statutory crimes are a product of a concerted effort to codify the developing state of international law so as to provide the clarity that was lacking in the preceding international tribunals [and considered] that the crimes under the Statute were intended to be generally representative of the state of customary international law when the Statute was drafted." With respect to citizens of non-States Parties upon referral by the UN Security Council, the Appeals Chamber found however necessary to determine "whether and to what extent, at the time of their commission, the conducts charged against [the accused] were criminalised by either [the national law of their country] or as a matter of international customary law". *Ibid.*, paras 86-87.

⁴⁵ ICC Statute, art. 30.

⁴⁶ ICC Statute, art. 12(2)(b).

⁴⁷ ICC Statute, art. 12(2)(a).

⁴⁸ ICC, ICC-01/18-143, paras 114-131.

⁴⁹ See ICJ Amicus Curiae Observations, ICC-01/18-311. See also, ICC-01/18-346, paras 33-82.

⁵⁰ See Col, A/HRC/56/CRP.3; <https://www.amnesty.org/en/latest/news/2023/10/israel-palestinian-armed-groups-must-be-held-accountable-for-deliberate-civilian-killings-abductions-and-indiscriminate-attacks/>; <https://www.hrw.org/report/2024/07/17/i-cant-erase-all-blood-my-mind/palestinian-armed-groups-october-7-assault-israel>.

⁵¹ Col, A/HRC/56/CRP.3, para. 279.

There is also incontrovertible evidence that Hamas forces captured many Israeli civilians – including elderly people and children – and soldiers and took more than 250 of them hostage.⁵² Hostage-taking, which is an inherently unlawful deprivation of liberty, is distinguished from other forms of deprivation of liberty occurring in armed conflict because it is a form of detention that is accompanied by a threat to kill, injure, or continue to detain in order to compel a third party to do or to abstain from doing any act as an explicit or implicit condition for the release or safety of the hostage.⁵³ In the present case, Hamas has made it plain that it intends to hold the civilians and soldiers it has taken hostage as bargaining chips to secure the release of Palestinians detained by Israel. It has also threatened to kill these hostages in an effort to compel Israel to refrain from attacking homes in Gaza. In light of this, it appears to be acting with the specific intent that defines hostage-taking under customary IHL. The act of holding persons hostage, be they civilians or soldiers, is a serious violation of IHL and a war crime in both international and non-international armed conflicts.⁵⁴ The failure to release these hostages makes this a continuing and ongoing crime.⁵⁵

2. Outrages upon personal dignity

The prohibition of outrages upon personal dignity is enshrined in customary IHL.⁵⁶ Additional Protocols I and II prohibit “outrages upon personal dignity, in particular humiliating and degrading treatment”.⁵⁷ Articles 8(2)(b)(xxi) and 8(2)(c)(ii) of the ICC Statute criminalize the same conduct as a war crime in the case of an armed conflict of an international or non-international character, respectively, and so does customary IHL.⁵⁸ The ICC Elements of Crimes defines “outrages upon personal dignity” as an act in which “[t]he perpetrator humiliated, degraded or otherwise violated the dignity” of a person and “[t]he severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.” Outrages upon personal dignity can be committed against the dead.⁵⁹ In terms of the definition of what violates the dignity of a person, there is a core element: the humiliation, degradation, or violation of the person’s dignity, which must be committed with objectively sufficient gravity so as to be “generally recognized as an outrage upon personal dignity”.⁶⁰ Examples of outrages upon personal dignity include: “compelling victims to dance naked on a table”; “using detainees as human shields”; “forcing detainees to relieve bodily functions in their clothing”; “imposing conditions of constant fear of being subjected to physical, mental, or sexual violence”; or “burying corpses in latrine pits”.⁶¹

The following are examples where there is compelling evidence that both sides to the conflict committed the war crime of outrages upon personal dignity. Witness testimonies, videos and photographs taken during the attack on 7 October show Palestinian armed groups parading and posing with the corpses, some unclothed, of civilians and soldiers, and mutilating them.⁶² Hamas also released videos displaying hostages extremely distressed.⁶³ The Commission of Inquiry also found that those abducted were subjected to degrading and humiliating treatment, and confirmed the gendered nature of such treatment inflicted on women,⁶⁴ while the ICC Prosecutor alleged that rape and other forms of sexual violence, torture, cruel treatment, and outrages upon personal dignity had been committed on hostages while in captivity. The Commission and Human Rights Watch further found that acts of sexual violence were committed during the 7 October attack based, in particular, on images of victims’ bodies displaying signs of sexual violence.⁶⁵ The ICC Prosecutor indicated his office would continue to investigate reports of sexual violence perpetrated on 7 October.⁶⁶

In December 2023, photos and videos of Palestinian men and boys stripped, lined up and taken away in trucks by the Israeli Defence Forces (IDF), circulated on social media.⁶⁷ An internal report compiled by the UN Relief and Works Agency for Palestine Refugees (UNRWA), which the BBC claims to have seen, includes detailed testimony

⁵² See Col, A/HRC/56/CRP.3; <https://www.hrw.org/report/2024/07/17/i-cant-erase-all-blood-my-mind/palestinian-armed-groups-october-7-assault-israel>.

⁵³ ICRC Customary IHL Study, rule 96; ICC Elements of Crimes, art. 8(2) (a)(viii) and (c)(iii).

⁵⁴ ICC Statute, art. 8(2)(a)(viii), in the context of international armed conflict, and art. 8(2)(c)(iii) within a non-international armed conflict; ICRC Customary IHL Study, rule 96.

⁵⁵ According to Human Rights Watch, “[a]s of July 1 [2024], 116 hostages were still in Gaza, at least 42 of them dead.”

⁵⁶ ICRC Customary IHL Study, rule 90, which relates to the prohibition of torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment. Customary IHL also provides that belligerents “must take all possible measures to prevent the dead from being despoiled,” that “mutilation of dead bodies is prohibited” (rule 113) and that “the dead must be disposed of in a respectful manner and their graves respected and properly maintained” (rule 115).

⁵⁷ API, art. 75(2)(b); APII, art. 4(2)(e); Common Article 3 of the Geneva Conventions, applicable to non-international armed conflicts, also enshrines the prohibition of outrages upon personal dignity.

⁵⁸ ICRC Customary IHL Study, rule 156.

⁵⁹ Footnotes 49 and 57 of the Elements of Crimes (pp. 18 and 23 respectively). The prohibition of mutilating dead bodies is thus covered by the war crime of committing outrages upon personal dignity under the ICC Statute.

⁶⁰ ICC, ICC-01/04-01/07-17, para. 369.

⁶¹ Ibid, para. 371.

⁶² Col, A/HRC/56/CRP.3, paras 287, 290. See also, <https://www.hrw.org/report/2024/07/17/i-cant-erase-all-blood-my-mind/palestinian-armed-groups-october-7-assault-israel>.

⁶³ <https://www.hrw.org/news/2023/11/10/gaza-hostage-videos-outrage-personal-dignity>.

⁶⁴ Col, A/HRC/56/CRP.3, paras 288-289.

⁶⁵ Col, A/HRC/56/CRP.3, para. 291; <https://www.hrw.org/report/2024/07/17/i-cant-erase-all-blood-my-mind/palestinian-armed-groups-october-7-assault-israel>.

⁶⁶ Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024.

⁶⁷ <https://www.youtube.com/watch?v=oJ3qJOGcnjk>.

from Palestinian detainees who describe an extensive range of abuse and ill-treatment.⁶⁸ According to testimonies and footage seen by the BBC, Palestinian medical staff were blindfolded, detained, forced to strip and repeatedly beaten by Israeli troops after a raid at al-Nasser Hospital, in the Gaza Strip, on 16 February 2024.⁶⁹ The Commission of Inquiry concluded that Israeli soldiers committed sexual and gender-based crimes against civilians, both men and women, including during various incidents in the Gaza Strip and prior to arrest in the Occupied Palestinian Territory, amounting to the war crimes of sexual violence, outrages on personal dignity and sexual and gender-based violence amounting to torture and inhumane and cruel treatment.⁷⁰ In July 2024, the Office of the High Commissioner for Human Rights reported allegations of torture and other forms of cruel, inhuman and degrading treatment, including sexual abuse of women and men who had been taken from the Gaza Strip to Israel and detained.⁷¹

By January 2024, the IDF had desecrated at least 16 cemeteries in Gaza, leaving gravestones ruined, soil upturned and bodies unearthed.⁷² Following a two-week raid by Israeli forces on Al-Shifa Hospital in March 2024, eye-witnesses reported how bulldozers crushed bodies of people everywhere in and around the Hospital's yard.⁷³

3. Attacks on hospitals and medical staff: Al-Shifa Hospital

Since the beginning of the Israeli offensive on Gaza, there had been 512 attacks on healthcare facilities in the Gaza Strip as of 18 September 2024, resulting in 110 facilities, including 32 hospitals, being damaged or destroyed.⁷⁴ As of the same date, only 17 out of 36 hospitals and 57 out of 132 healthcare centres were still partially functioning in the Gaza Strip.⁷⁵

The IDF has deliberately targeted hospital generators, hospital solar panels,⁷⁶ and life-saving equipment, such as oxygen stations and water tanks.⁷⁷ It has also intentionally targeted ambulances, medical convoys and first responders.⁷⁸ As of 18 September 2024, at least 986 health workers had been killed.⁷⁹ As of the same date, at least 759 Palestinians had been killed at hospitals and healthcare centres in Gaza.⁸⁰ These statistics indicate that the attack on the healthcare system in the Gaza Strip has been widespread and systematic.

Under both customary and conventional IHL applicable to both international and non-international conflicts, medical units and transports exclusively assigned to medical purposes must be respected and protected in all circumstances.⁸¹ They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.⁸² However, attacks on hospitals being used to commit "acts harmful to the enemy" are still unlawful if they are indiscriminate, disproportionate or because they violate the principle of precautions in attack. Under the ICC Statute, intentionally directing attacks against "hospitals and places where the sick and the wounded are collected, provided they are not military objectives" and against "medical units ... using the distinctive emblems of the Geneva Conventions in conformity with international law" constitutes a war crime in both international and non-international armed conflicts.⁸³

Prior to launching an attack against a medical unit suspected of being used to commit acts harmful to the enemy, a warning should be issued setting out a reasonable time-limit by which such use must cease. Only after such a warning has gone unheeded may an attack be launched.⁸⁴ However, even in those circumstances, the attacking party must abide by the principle of distinction, proportionality and precaution, which continue to apply regardless of the medical unit's loss of protected status. The attacker should provide for evacuation of those who do not lose their protected status – such as the sick and wounded, medical personnel and civilians not participating in hostilities – from the medical unit where they find themselves, notwithstanding its use to commit acts harmful to

⁶⁸ <https://www.bbc.com/news/world-middle-east-68514816>.

⁶⁹ <https://www.bbc.com/news/world-middle-east-68513408>.

⁷⁰ Col. A/HRC/56/CRP.4, paras 441-447.

⁷¹ OHCHR, *Thematic Report: Detention in the context of the escalation of hostilities in Gaza*, 31 July 2024.

⁷² <https://edition.cnn.com/2024/01/20/middleeast/israel-gaza-cemeteries-desecrated-investigation-intl-cmd/index.html>.

⁷³ <https://edition.cnn.com/2024/04/01/middleeast/israel-idf-withdraws-al-shifa-hospital-intl-hnk/index.html>.

⁷⁴ World Health Organization (WHO), *oPt Emergency Situation Update Issue 45*, 18 September 2024. WHO defines an attack on health care as any act of verbal or physical violence or obstruction or threat of violence that interferes with the availability, access and delivery of curative and/or preventive health services during emergencies. Types of attacks vary across contexts and can range from violence with heavy weapons to psychosocial threats and intimidation.

⁷⁵ *Ibid.*

⁷⁶ Forensic Architecture has compiled an analysis of the various attacks on Gaza's hospitals: Forensic Architecture, *Destruction of Medical Infrastructure in Gaza*, 20 December 2023.

⁷⁷ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Hostilities in the Gaza Strip and Israel | Flash Update #37*, 12 November 2023.

⁷⁸ MSF, *MSF convoy attack in Gaza: All elements point to Israeli army responsibility*, 1 December 2023; OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #28*, 3 November 2023.

⁷⁹ OCHA, *Reported impact snapshot | Gaza Strip (18 September 2024)*.

⁸⁰ World Health Organization (WHO), *oPt Emergency Situation Update Issue 45*, 18 September 2024.

⁸¹ ICRC Customary IHL Study, rules 28 and 29; AP I, arts 12-13; AP II, art. 11.

⁸² *Id.*

⁸³ ICC Statute, art. 8(2) (b) (ix) and (xxiv) and (e) (ii) and (iv).

⁸⁴ ICRC Customary IHL Study, rules 28 and 29; AP I, art. 13; AP II, art. 11(2).

the enemy. Moreover, intentionally launching an attack, for example, on a hospital, in the *knowledge* that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects that would be *clearly excessive* in relation to the concrete and direct overall military advantage anticipated, is a war crime.⁸⁵

On 3 November 2023, it was reported that an ambulance convoy leaving Al-Shifa Hospital to evacuate critically injured and sick patients to hospitals in the south of the Gaza Strip was targeted by an IDF air strike.⁸⁶ Gaza's Health Ministry reported that 15 people were killed and 60 injured in the strike.⁸⁷ In a televised interview that day, an IDF spokesperson stated: "our forces saw terrorists using an ambulance as a vehicle to move around. They perceived a threat and accordingly we struck that ambulance." There is no evidence that the IDF gave a warning prior to the strike, and video footage taken shortly after the attack took place shows a woman on a stretcher in the targeted ambulance.⁸⁸ In addition, thus far, Israel has failed to provide any evidence that the clearly marked ambulance was being used for "acts harmful" to the IDF. In any event, even assuming that the attack was directed at a military objective, thereby respecting the principle of distinction, the attack resulted in high numbers of civilian casualties, which were *prima facie* "clearly excessive"⁸⁹ and, therefore, there are reasonable grounds to consider that this attack amounts to a war crime.⁹⁰

Months later, following a two-week-long siege, the IDF withdrew from Al-Shifa Hospital on 1 April 2024, after it had destroyed the Hospital's main surgery building, its intensive care unit, emergency, general surgery and orthopaedic departments.⁹¹ Following the IDF's withdrawal, at least 300 bodies had been found as of 1 April 2024 scattered across the grounds at Al-Shifa, according to Gaza's Civil Defense,⁹² albeit the Hamas government media office stated on the same day that some 400 people had been killed within the Hospital during the IDF operations.⁹³ Based on its initial investigation and testimonies collected, Euro-Med Monitor reported that hundreds of dead bodies, including some burned, and others with their heads and limbs severed, were discovered both inside the Hospital complex and in the surrounding area.⁹⁴ Health workers were among those reportedly killed, and at least 22 patients were killed in their hospital beds during the siege.

While the IDF has claimed that the Hospital was being used by Hamas forces, even if such – thus far unverified – claim was accurate, the resultant extensive destruction of the Hospital complex, and the extremely high number of civilians killed, are clearly excessive in relation to any purported military advantage. In this regard, with respect to children, the Commission of Inquiry found that, "where it was foreseeable that children would be present in the area targeted by the Israeli Security Forces (for example, in [...] medical facilities [...], [they] intentionally directed attacks against the civilian population including the children."⁹⁵

There are reasonable grounds to consider, therefore, that the complete destruction of the complex, as well as the attacks on civilians and people *hors de combat* – in this instance health workers, the sick and wounded, and the people who protected them – amounted to violations of the prohibition on indiscriminate attacks and the principles of distinction and proportionality and, as such, to war crimes.

4. Intentionally directing attacks against civilians: The "Flour Massacre", the attack on the World Central Kitchen convoy and the Shujaiya massacre

Wilful killing, that is, the deliberate killing of protected persons – such as civilians not taking direct part in hostilities or persons *hors de combat* – is a war crime as recalled above.⁹⁶ According to one of ICC Pre-Trial Chambers, the war crime of intentionally directing attacks against civilians does not presuppose that the civilian population is the sole and exclusive target of the attack. The crime may be perpetrated in any of the two following scenarios: (i) when individual civilians not taking direct part in the hostilities or the civilian population are the sole target of the attack; or (ii) when the perpetrator launches the attack with two distinct specific aims: (a) a military objective and, simultaneously, (b) the civilian population or individual civilians not taking direct part in the hostilities.⁹⁷

⁸⁵ ICC Statute, art. 8(2)(b)(iv) [emphasis added]. See also ICRC Customary IHL Study, rule 156, also a war crime in the context of a non-international armed conflict although not codified in the Rome Statute.

⁸⁶ <https://news.un.org/en/story/2023/11/1143217>; <https://www.diakonia.se/ihl/news/2023-hostilities-in-gaza-and-israel-factual-account-of-events/>.

⁸⁷ Reuters, *Israel strikes ambulance near Gaza hospital, 15 reported killed*, 4 November 2023.

⁸⁸ Human Rights Watch, *Gaza: Unlawful Israeli Hospital Strikes Worsen Health Crisis Israel's Blockade, Bombardment Decimate Healthcare System; Investigate as War Crimes*, 14 November 2023.

⁸⁹ In other words, if the assessment leads to the conclusion that the attack would violate the principle of proportionality, and that therefore the attack is unlawful even if the intended target was a legitimate military objective.

⁹⁰ ICC Statute, art. 8(2)(b)(iv). See also rule 156, also a war crime in the context of a non-international armed conflict although not codified in the Rome Statute.

⁹¹ <https://www.independent.co.uk/tv/news/israel-gaza-war-al-shifa-hospital-destroyed-b2521580.html>.

⁹² <https://edition.cnn.com/2024/04/01/middleeast/israel-idf-withdraws-al-shifa-hospital-intl-hnk/index.html>.

⁹³ <https://www.bbc.com/news/world-middle-east-68705765>.

⁹⁴ <https://euromedmonitor.org/en/article/6254/Al-Shifa-Medical-Complex-Witnesses-One-of-the-Largest-Massacres-in-Palestinian-History>.

⁹⁵ Col. A/HRC/56/CRP.4, para. 434.

⁹⁶ ICC Statute, arts 8(2)(a)(i) in an international armed conflict and 8(2)(c)(i) (murder) in a non-international armed conflict.

⁹⁷ ICC, ICC-01/04-01/10, para. 142. The crime of directing attacks against civilians pursuant to article 8(2)(e)(i) of the ICC Statute, which applies in a non-international armed conflict, is the equivalent crime pursuant to article 8(2)(b)(i), which applies in international armed conflicts.

There are reasonable grounds to consider that at least 112 people were deliberately attacked and killed as they gathered to collect flour just outside Gaza City on 29 February 2024,⁹⁸ an incident that UN experts described as a “massacre”.⁹⁹ In addition to the dead, 760 people were injured.¹⁰⁰ The deaths and injuries were the direct result of indiscriminate IDF gunfire, as starving people gathered around a convoy of trucks delivering humanitarian aid to Gaza City. The director of Kamal Adwan Hospital told the New York Times that they received the bodies of 12 people killed by gunshots and tended to 100 people injured with bullet wounds.¹⁰¹ At Al-Awda Hospital, the interim manager told the BBC that, on the morning of 29 February, they had admitted 176 people who had sustained injuries, 142 of whom had bullet wounds.¹⁰² A UN official who visited Al-Shifa Hospital in the aftermath of the incident described seeing dozens of patients with gunshot wounds, and told the BBC that Israeli forces had “shot into the thickest part of the crowd”.¹⁰³ Investigations by Euromed Monitor documented evidence of IDF’s responsibility for these killings.¹⁰⁴ Evidence included the injuries on the bodies of the dead and injured, the footage released by the IDF, which includes audible evidence of gunfire emanating from Israeli tanks positioned near the coast, and an aerial video published by the IDF, which, “despite being heavily edited, captures the state of sheer panic and intimidation that struck all of the civilians present—including those relatively far away from the aid trucks—and pushed them to flee in all directions in order to seek shelter.”¹⁰⁵ While the Commission on Inquiry “could not definitively conclude the exact circumstances surrounding the incident...”, it “emphasize[d] that it is the obligation of the occupying power, Israel, to ensure that humanitarian aid is delivered safely to the civilian population in Gaza” and that, “[e]ven if unarmed civilians climbed onto trucks to get the flour, the ISF soldiers were still under an obligation to follow the principle of distinction and not kill civilians”.¹⁰⁶ The ICC Prosecutor, in his statement announcing his application for arrest warrants, referred to “attacks on civilians, including those queuing for food; [...] and attacks on and killing of aid workers”.¹⁰⁷

In addition, there are reasonable grounds to consider that the IDF missile strikes against a World Central Kitchen (WCK) aid convoy on 1 April 2024 – which killed seven humanitarian workers – were intentional attacks on civilians not taking a direct part in hostilities and thus constituted war crimes. The airstrikes – which destroyed three vehicles returning to base after delivering 100 tonnes of food aid – bore the hallmarks of a precision strike.¹⁰⁸ Images taken from the bombing sites show that the vehicles were travelling in a deconflicted zone,¹⁰⁹ and were clearly marked on their roofs and windshields as belonging to WCK. There had been prior coordination between WCK and the IDF about the movements.¹¹⁰ Israeli Defence sources told the Israeli newspaper Haaretz that the attack was launched because of an initial suspicion that a Hamas target was travelling with the convoy, albeit the same sources eventually confirmed this was not the case,¹¹¹ and there are indications that the perpetrators defied orders. Israel’s Prime Minister, Benjamin Netanyahu, admitted that the IDF had “unintentionally [hit] innocent people in the Gaza Strip ... it happens in war.”¹¹² Following the attack, WCK – along with other aid organizations – announced it was pausing operations in the region immediately.¹¹³ The Commission of Inquiry indicated it would investigate this incident.¹¹⁴ There are reasonable grounds to consider that the IDF committed the war crime of intentionally directing attacks against individual civilians not taking direct part in hostilities and/or wilful killing in the course of this incident.

As of 18 September 2024, at least 302 aid workers, including 295 Palestinian nationals and seven foreigners, had been reportedly killed, some in the line of duty.¹¹⁵

The IDF razed an entire housing block, purportedly to kill a single Hamas commander, Wissam Farhat – a military target – on 2 December 2023 in Shujaiya, a district of Gaza City.¹¹⁶ The IDF killed an estimated 300 civilians in the

⁹⁸ <https://www.bbc.com/news/world-middle-east-68445973>.

⁹⁹ <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

¹⁰⁰ <https://www.bbc.com/news/world-middle-east-68445973>.

¹⁰¹ <https://www.972mag.com/gaza-aid-convoy-massacre-testimonies/>.

¹⁰² <https://www.bbc.com/news/world-middle-east-68445973>.

¹⁰³ <https://www.bbc.com/news/world-middle-east-68454348>. See also, <https://www.972mag.com/gaza-aid-convoy-massacre-testimonies/>; <https://www.aljazeera.com/news/longform/2024/3/5/the-blood-was-everywhere-inside-israels-flour-massacre-in-gaza>.

¹⁰⁴ <https://euromedmonitor.org/en/article/6207/New-evidence-confirms-Israel%E2%80%99s-full-involvement-in-%E2%80%99Flour-Massacre%E2%80%99-of-starving-Palestinian-civilians>.

¹⁰⁵ Ibid.

¹⁰⁶ Col, A/HRC/56/CRP.4, paras 240-249.

¹⁰⁷ Statement of ICC Prosecutor Karim A.A. Khan KC, 20 May 2024.

¹⁰⁸ <https://www.bellingcat.com/news/2024/04/02/strike-that-killed-world-central-kitchen-workers-bears-hallmarks-of-israeli-precision-strike/>.

¹⁰⁹ <https://guide-humanitarian-law.org/content/article/3/deconfliction-humanitarian-identification-and-notification/>.

¹¹⁰ <https://www.aljazeera.com/news/2024/4/2/al-jazeera-sanad-probe-finds-israeli-forces-deliberately-hit-wck-convoy>.

¹¹¹ <https://archive.is/2024.04.02-120825/https://www.haaretz.com/israel-news/2024-04-02/ty-article/premium/idf-bombed-wck-aid-convoy-3-times-targeting-armed-hamas-member-who-wasnt-there/0000018e-9e75-d764-adff-9eff29360000>.

¹¹² <https://www.aljazeera.com/news/2024/4/2/al-jazeera-sanad-probe-finds-israeli-forces-deliberately-hit-wck-convoy>.

¹¹³ <https://wck.org/news/gaza-team-update>.

¹¹⁴ Col, A/HRC/56/CRP.4, para. 253.

¹¹⁵ OCHA, Reported impact snapshot | Gaza Strip (18 September 2024).

¹¹⁶ Israeli human rights group B’Tselem said that the bombing that day destroyed dozens of buildings, killed dozens of people, and buried hundreds under the ruins of their homes: https://www.btselem.org/gaza_strip/20231205_israel_is_not_fighting_against_hamas_but_against_civilians_implementing_a_criminal_policy_of_bombings.

attack in Shujaiya.¹¹⁷ According to an investigation by +972 Magazine, the IDF has authorized the killing of “hundreds” of civilians per target, pursuant to an official policy for which there is no historical precedent in Israel.¹¹⁸ In light of the above, it was foreseeable that hundreds of civilians would be killed as a result of the attack and, therefore, there are reasonable grounds to consider that the IDF intentionally launched the attack against a civilian population. In any event, intentionally launching an attack in the *knowledge* that such attack will cause incidental loss of life or injury to civilians, which would be *clearly excessive* in relation to the concrete and direct overall military advantage anticipated, is also a war crime.¹¹⁹ The ICC Prosecutor indicated that his office was investigating “the large-scale bombing that has caused and continues to cause so many civilian deaths, injuries, and suffering in Gaza.”¹²⁰

5. Starvation of civilians as a method of warfare

Customary IHL prohibits the use of starvation of the civilian population as a method of warfare, a norm applicable in both international and non-international armed conflicts.¹²¹ Article 8(2)(b)(xxv) of the ICC Statute codifies “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”, as a war crime if committed in the context of an international armed conflict. Customary IHL also recognizes it as a war crime in the context of a non-international armed conflict based on extensive State practice.¹²²

A key element of the criminal proscription of starvation of the civilian population as a method of warfare concerns the heightened protection of “objects indispensable to the survival of the civilian population,” such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works,¹²³ as well as fuel, medicines and, in some cases, blankets.¹²⁴ “Attacking, destroying, removing or rendering useless” such objects are acts constituting the material element of this war crime, which may be established without the need to show that any specific consequence arose from those acts.¹²⁵ The prohibition of starvation entails also a prohibition on wilfully impeding humanitarian relief.¹²⁶

Pursuant to the terms of article 54 (2) and (3)(a) of Additional Protocol I and customary IHL,¹²⁷ objects indispensable to survival cannot be targeted for their sustenance value (including their sustenance value to the adversary), unless they provide sustenance *solely* to combatants. In other words, unlike targetable dual-use objects, objects indispensable to survival of the civilian population are legally protected from attack and cannot be targeted even when they also provide sustenance to the adversary.

Criminal liability for the abovementioned war crime under the Rome Statute, however, arises only when the perpetrator deprives civilians of objects indispensable to their survival with the intent to starve them as a method of warfare.¹²⁸ Therefore, starvation as a method of warfare consists of depriving civilians of objects indispensable to their survival with *two* constituent elements of intent:¹²⁹ (i) the intent to deprive; *and* (ii) the intent to starve civilians as a method of warfare.

With respect to this, on 9 October 2023, Israeli Defence Minister, Yoav Gallant, announced a “complete siege” on Gaza, declaring, “[t]here will be no electricity, no food, no water, no fuel, everything is closed.” This was an order to

¹¹⁷ <https://www.middleeasteye.net/live-blog/live-blog-update/estimated-300-killed-shujaiya-massacre-says-palestinian-civil-defence>; https://www.lemonde.fr/en/international/article/2023/12/04/gaza-s-shujaiya-district-obliterated-by-israeli-strikes_6311096_4.html.

¹¹⁸ <https://www.972mag.com/lavender-ai-israeli-army-gaza/>: “In an unprecedented move, according to two of the sources, the army also decided during the first weeks of the war that, for every junior Hamas operative that Lavender marked, it was permissible to kill up to 15 or 20 civilians; in the past, the military did not authorize any “collateral damage” during assassinations of low-ranking militants. The sources added that, in the event that the target was a senior Hamas official with the rank of battalion or brigade commander, the army on several occasions authorized the killing of more than 100 civilians in the assassination of a single commander”.

¹¹⁹ ICC Statute, art. 8(2)(b)(iv)[emphasis added]. See also ICRC Customary IHL Study, rule 156, also a war crime in the context of a non-international armed conflict although not codified in the Rome Statute.

¹²⁰ Statement of ICC Prosecutor Karim A.A. Khan KC, 20 May 2024.

¹²¹ ICRC Customary IHL Study, rule 53. See also AP I, art. 54(1); AP II, art. 14.

¹²² ICRC Customary IHL Study, rule 156. Among other things, the ICRC commentary on Rule 156 states “These violations are not listed in the Statute of the International Criminal Court as war crimes. However, State practice recognizes their serious nature and, as a result, a court would have sufficient basis to conclude that such acts in a non-international armed conflict are war crimes. [...] (vii) *Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including by impeding relief supplies.* This practice is a violation of Additional Protocol II, and customary international law (see Rule 53). In addition, there is very extensive State practice expressing outrage at such acts in non-international armed conflicts, including the impediment of relief supplies which caused the starvation of civilians. This practice proves that such behaviour is not only a violation of customary international law, but also, in the eyes of the international community, a very serious violation.” Footnotes omitted.

¹²³ AP I, art. 54(2), AP II, art. 14.

¹²⁴ ICRC Customary IHL Study, rule 54.

¹²⁵ ICC Elements of Crimes, p. 21.

¹²⁶ Rule 55 of ICRC Customary IHL Study states that “the parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control”. According to the Study, this rule is a norm of customary international law applicable in both international and non-international armed conflicts.

¹²⁷ ICRC Customary IHL Study, rule 54, also applicable in non-international armed conflicts.

¹²⁸ ICC Elements of Crimes, p. 21. The ICRC Customary IHL Study indicates that “[m]ost military manuals, however, do not indicate such a requirement and prohibit attacks against objects indispensable to the survival of the civilian population as such.”

¹²⁹ Pursuant to the meaning of “intent” in the ICC Statute, the intent to deprive can be either direct, or established where the perpetrator knew that their conduct would lead to that deprivation (art. 30(2)).

deprive Palestinian civilians of objects indispensable for their survival and was followed by a combination of total siege, subsequent severe impediments to the delivery of humanitarian relief, attacks, destruction, or rendering useless of objects indispensable to the survival of civilians inside the Gaza Strip. The conditions created by the siege were exacerbated by Israel's continuing strikes on the Gaza Strip, including on its bakeries, water facilities and last remaining operating mill, and its razing of agricultural lands, crops, orchards and greenhouses.¹³⁰ Water was also severely depleted. Israel continued to cut off piped water for the North of the Gaza Strip, and the North's water desalination plants stopped working due to fuel shortage as Israel has prevented fuel entry in the northern Gaza Strip.¹³¹ Moreover, the damage caused by Israeli airstrikes and shelling rendered most of the water system inoperable.¹³² On 13 March 2024, an Israeli strike hit one of UNRWA's few remaining food distribution centres, notwithstanding the fact that, according to UNRWA, the IDF had received the facility's location coordinates the previous day.¹³³

Israel continues to impede the effective delivery of humanitarian assistance to Palestinians, not only by refusing to allow sufficient aid into the Gaza Strip, and imposing restrictions at crossings, but also by precluding its distribution through maintaining intense military operations without a system of humanitarian deconfliction.¹³⁴ By March 2024, Israel had entirely sealed off northern Gaza and denied access to humanitarian missions. International humanitarian workers were denied access into Israel and the Gaza Strip, as requests for work visas are not being processed.¹³⁵ Israel has attempted to undermine the UNRWA, on which most Gazans depend for their survival, leading to several States withdrawing vital funding.¹³⁶

By 9 July 2024, at least 34 people, the majority being children,¹³⁷ had already starved to death, with 495,000 people facing catastrophic acute food insecurity.¹³⁸ Reports indicate that civilians have been reduced to desperate coping mechanisms, including accounts of families using animal fodder to make flour and the consumption of animal feed, bird seeds and leaves to stave off hunger.¹³⁹ According to a statement by UN human rights experts issued on 5 March 2024, Israel had been intentionally starving the Palestinian people in Gaza since 8 October.¹⁴⁰ In granting provisional measures on 26 January 2024 in *South Africa v. Israel*, a case in which South Africa is accusing Israel of violating the Genocide Convention over its actions in Gaza, the International Court of Justice determined that "[s]tarvation, destitution and death [were] evident".¹⁴¹ On 28 March 2024, noting "the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation," the Court unanimously ordered Israel to "[t]ake all necessary and effective measures to ensure, without delay" the "unhindered provision at scale" of basic services and humanitarian aid—including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation products, and medical supplies and care to the people of Gaza.¹⁴²

Even assuming the ultimate goal is, as the IDF claims, exclusively to coerce Hamas combatants,¹⁴³ that objective is being pursued through an operation that purposively denies sustenance to the civilian population, and, thus, may also amount to collective punishment, a serious crime under international law.

In light of the foregoing, and consistent with the findings of Human Rights Watch and Oxfam that starvation was being used as a weapon war,¹⁴⁴ there is compelling evidence that Israeli officials have committed the war crime of

¹³⁰ OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #35*, 10 November 2023; *Flash Update #40*, 15 November 2023; OCHA, *Reported impact snapshot | Gaza Strip (18 September 2024)*; HRW, *Israel: Starvation Used as Weapon of War in Gaza*, 18 December 2023.

¹³¹ OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #66*, 11 December 2023; OCHA, *Reported impact snapshot | Gaza Strip (18 September 2024)*.

¹³² UN News, *Barely a drop of safe water to drink in Gaza, UN aid agency warns*, 20 December 2023; OCHA, *Humanitarian Situation Update #214 | Gaza Strip*, 6 September 2024.

¹³³ UNRWA, *At least one UNRWA staff killed when Israeli Forces hit UNRWA centre used for food and lifesaving supplies*, 13 March 2024.

¹³⁴ See: <https://casebook.icrc.org/case-study/syria-deconfliction-humanitarian-facilities>.

¹³⁵ Oxfam, *Inflicting unprecedented suffering and destruction*, 15 March 2024.

¹³⁶ Several countries have since *resumed funding for UNRWA*, including as a result of the findings of an *independent review* published on 22 April 2024 that found that Israel had not provided any evidence of its allegations against UNRWA, which, in turn had led many donor nations to withdraw support for the agency.

¹³⁷ <https://www.unognewsroom.org/story/en/2258/gaza-health-update-who>; <https://www.ohchr.org/en/press-releases/2024/07/un-experts-declare-famine-has-spread-throughout-gaza-strip>. See also, Col, A/HRC/56/CRP.4, para. 330, pointing that "these figures represent only those children who were able to reach hospitals" and that "[o]ther children are likely to have died due to starvation without receiving medical attention." See also, paras 332-336 on impact on children.

¹³⁸ IPC Global Initiative Special Brief, 10 July 2024; *Global Report on Food Crises 2024 Mid-Year Update*, 5 September 2024. Between March and April 2024, half of the population of the Gaza Strip (1.1 million people) was projected to face catastrophic acute food insecurity.

¹³⁹ Insecurity Insight, *Flash Analysis Report: Over Five Months of Attacks on Food Security in Gaza*, March 2024; Jens Laerke, spokesperson for OCHA: "All coping mechanisms have been exhausted. And mind you, the coping mechanisms we have seen the past weeks, even months, are people eating birds' seeds, animal fodder, wild grass and wheat. So, they have consumed that already, we are beyond that. There's literally nothing left." See, *Gaza imminent threat of famine: OCHA - WHO - OHCHR*, 9 March 2024.

¹⁴⁰ <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

¹⁴¹ <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

¹⁴² *Ibid.*

¹⁴³ Article 54(3)(b) of Additional Protocol I precludes the use of starvation methods to cause the civilian population's starvation or force its movement.

¹⁴⁴ Oxfam, *Starvation as weapon of war being used against Gaza civilians*, 25 October 2023; HRW, *Israel: Starvation Used as Weapon of War in Gaza*, 18 December 2023.

starvation of civilians as a method of warfare. The Commission of Inquiry has reached a similar conclusion.¹⁴⁵ In addition, as noted at the beginning of this briefing, the ICC Prosecutor applied for arrest warrants against Benjamin Netanyahu, Israel's Prime Minister, and Yoav Gallant, Israel's Minister of Defence, for, among others, the war crime of starvation of civilians as a method of warfare,¹⁴⁶ and other war crimes associated with the use of starvation of civilians as a method of warfare, namely, wilfully causing great suffering, or serious injury to body or health, or cruel treatment, wilful killing or murder, and intentionally directing attacks against the civilian population.¹⁴⁷

Recommendations

In light of the mounting civilian casualties, including at least 41,000 so far in the Gaza Strip, the ongoing denial of humanitarian aid and rising levels of starvation, the continuous bombardment and destruction of civilian areas, the IDF's long track record of failing to investigate credible allegations of war crimes, effectively or at all, and the fact that, a number of States with particular influence over Israel, particularly the United States, continue to provide arms to the Israeli government are already on notice that, by their actions and omissions, they are aiding and abetting the perpetration of war crimes, the ICJ makes the following recommendations.

The ICJ calls on Israel to:

1. Agree to an immediate, lasting ceasefire;
2. Respect the IHL principles of distinction, proportionality, precautions in attack and the prohibition on indiscriminate attacks;
3. Cease and prevent the wilful killing of civilians and protected persons, including healthcare personnel, humanitarian workers and journalists;
4. Cease and prevent the cruel and inhuman treatment of detained Palestinians;
5. Allow unimpeded humanitarian access to the Gaza Strip and take measures to prevent starvation;
6. Cease and prevent further unlawful attacks on aid convoys, hospitals, ambulances, residential buildings, and other civilian objects;
7. Comply with the provisional measures ordered by the International Court of Justice on 26 January 2024, on 28 March 2024 and on 24 May 2024;
8. Comply with the resolutions of the UN Security Council, in accordance with article 25 of the UN Charter;
9. Cooperate with the ICC and the Commission of Inquiry.

The ICJ calls on Hamas and other Palestinian armed groups to:

1. Agree to an immediate, lasting ceasefire;
2. Respect the IHL principles of distinction, proportionality, precautions in attack and the prohibition on indiscriminate attacks;
3. Release all hostages immediately and unconditionally;
4. Cease and prevent the cruel and inhuman treatment of hostages in captivity;
5. Cooperate with the ICC and the Commission of Inquiry.

The ICJ calls on all States to:

1. Do the utmost to secure a permanent ceasefire;
2. Redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion, thereby establishing a just and lasting peace in the region, as urged by the International Court of Justice;
3. Cease arms exports to Israel in accordance with HRC resolution A/HRC/55/L.30;
4. Restore and/or increase funding to UNRWA;
5. Take immediate action to protect, promote and respect the rights to life, health, and dignity of those affected by loss and trauma, through effective access to humanitarian assistance by means of land crossings, protection of remaining health infrastructure, health workers and humanitarian personnel;
6. Fund the reconstruction of Gaza, particularly vital infrastructure;
7. Convene an urgent Conference of High Contracting Parties to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 ("the Fourth Geneva Convention");
8. Play a proactive role in identifying key suspected perpetrators and helping to facilitate prosecutions through the principle of mutual legal assistance;
9. Exercise universal jurisdiction over suspected perpetrators;
10. Commit to ensuring that the ICC has the political, diplomatic and financial support it needs to carry out its mandate.

¹⁴⁵ Col. A/HRC/56/CRP.4, paras 448-451.

¹⁴⁶ See, Report of the Panel of Experts in International Law, paras 24-28.

¹⁴⁷ Ibid., paras 22, 29-32.

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