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**PROTECTING CIVILIANS DURING ARMED CONFLICT: A CRITICAL ANALYSIS OF
THE PRINCIPLE OF DISTINCTION IN THE ISRAELI-PALESTINIAN CONFLICT**

BY:

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**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN
PARTIAL FULFILLMENT OF THE BACHELOR OF LAWS (LLB) DEGREE**

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DECLARATION

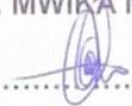
I, **Mauzhya Kenneth Shilukobo Chintu**, declare that this dissertation entitled **PROTECTING CIVILIANS DURING ARMED CONFLICT: A CRITICAL ANALYSIS OF THE PRINCIPLE OF DISTINCTION IN THE ISRAELI/PALESTINIAN CONFLICT** which is hereby submitted as part of the requirements for the award of the Bachelor of Laws (LLB) to the school of law, University of Lusaka, is my original work and has not previously been submitted at any institution of higher learning or tertiary education.



SUPERVISOR'S RECOMMENDATION

I, **MWIKA MUSAKUZI**, do recommend that this dissertation titled **PROTECTING CIVILIANS DURING ARMED CONFLICT: A CRITICAL ANALYSIS OF THE PRINCIPLE OF DISTINCTION IN THE ISRAELI/PALESTINIAN CONFLICT** authored by **MAUZHYA K.S. CHINTU** done under my supervision, be accepted by the University for Examination. I have checked it carefully and I am satisfied that it meets the requirements relating to the format as laid down by the University regulations.

MR. MWIKA MUSAKUZI

..... 20/11/2025

DEDICATION

To my beloved parents Dr. Schmidt Shilukobo Chintu and Sithokozile Lydes Chintu. My siblings, Sylvia, Chipo and Jabulani and my Super Gogo(Geoginah Mbewe).

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ABSTRACT

The Principle of Distinction under IHL is in place to ensure that parties to an armed conflict differentiate between combatants and civilians at all times. The evolution of warfare in this modern era has however made it difficult to appreciate this Principle thereby affecting its applicability. This dissertation aimed to examine the challenges that have come about as a result of modern forms of conflict, such as cyber warfare attacks, the use of autonomous weapon systems, and asymmetric warfare. It also explored how the urbanization of battlefields and the technological sophistication of modern warfare have made implementation of the Principle of Distinction difficult. While borrowing from case studies from recent conflicts and analysing the existing legal frameworks, the study highlighted the gaps between the law and the realities of modern combat. The dissertation concluded by providing recommendations for strengthening the enforcement or implementation and compliance with the Principle of Distinction through legal policies and technological reforms, therefore ensuring greater protection for civilian populations in future armed conflicts.

LIST OF ACRONYMS

IHL – International Humanitarian Law

ICJ – International Court of Justice

ICC – International Criminal Court

ICRC – International Committee of the Red Cross

IDF – Israeli Defence Forces

IAF – Israeli Air Force

ICTY – International Criminal Tribunal for the former Yugoslavia

UNITAR - United Nations Institute for Training and Research

UN – United Nations

UNOSAT – United Nations Satellite Centre

PLO – Palestinian Liberation Organisation

OHCHR – Office of the United Nations High Commissioner for Human Rights

TABLE OF CASES

Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226

Prosecutor v. Dusko Tadic, Case No. IT-94-1-T, ICTY, 1997

Prosecutor v. Kupreskic et al., Case No. IT-95-16-T ICTY, 2000

Prosecutor v. Milan Martić, Case No. IT-95-11-T, ICTY, 2007

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ICRC, Geneva Conventions and Additional Protocols (1949-2005)

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CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.0 INTRODUCTION

The Israeli-Palestinian conflict has engaged numerous Arab and Western nations for over five decades and stands as one of the most protracted global issues. The international world has acknowledged the protracted and increasingly intense fight that has persisted for six decades. The initiation of this conflict was prompted by the United Nations's resolution to rescind British authority over the Palestinian territories and partition them into two separate states: one for the Israeli Jewish community and another for the Palestinian Arab majority. The Palestinians, who historically reside in the region, are demonstrating against the decision made by the United Nations (UN). Consequently, the protests that precipitated a more extensive confrontation were instigated by Israel's apprehension regarding its attempt to exert authority over the entirety of the Palestinian territory.

The protracted conflict has caused many casualties and prolonged suffering for the Palestinian people. This has led to regional disputes throughout the Middle East. A broader confrontation involving neighbouring countries such as Egypt, Jordan, Syria, Iraq, Iran, and other Middle Eastern countries was triggered by the Israeli invasion. As of April 24, 2024, no less than 34,488 Palestinians were killed in Gaza, 14,500 of whom were children and 9,500 women. Another 77,643 people were reported injured, and 75% of them are estimated to be women.¹

The battle escalated significantly on Saturday, October 7, 2023, when the Palestinian militant group, Hamas, launched an unprecedented attack in which militants raided several towns in southern Israel, killing more than 800 Israeli personnel. Israel then declared war on the Gaza Strip, and the eyes of the world were once again focused on

¹ OHCHR, *Onslaught of Violence against Women and Children in Gaza Unacceptable: UN Experts*, 2024.

the Israeli-Palestinian conflict. Tens of thousands of people have died, and millions have been displaced from their homes as a result of the conflict, but what happens in a matter of days and weeks is a re-sprouting of the seeds left behind in history. Since the Hamas attack inside Israel, which killed more than 1,400 people, Israel's full-scale siege of Gaza by bombing and air strikes has led to an escalation of the Israeli-Palestinian conflict. According to a release from the Palestinian Central Bureau of Statistics (PCBS), on June 10, 2024, the number of Palestinian deaths in the Gaza Strip increased for the 248th day. According to the study, there were 36,171 deaths in the Gaza Strip and 519 deaths in the West Bank. A total of 15,162 children fell prey to the situation, while a significant number of other youngsters were also taken from their homes. A total of 10,018 women lost their lives in Israeli assaults, with an additional 7,000 women reported as missing. According to mass media sources, around 1,000 Palestinian youngsters in Gaza were killed during the initial 100 days of the conflict. There are around 1.2 million Palestinian refugees, some of whom have been forced to flee multiple times in search of secure locations. A total of 108 journalists were officially verified to have died.²

1.1 BACKGROUND OF THE STUDY

International Humanitarian Law contains no stronger doctrine than the Principle of Distinction. The principle is as unequivocal as it is inflexible: parties to a conflict must "direct their operations only against military objectives."³ When parties target non-military objectives such as civilians, they violate international law. The Principle of Distinction is widely accepted and constitutes the core doctrine of the law of war.⁴ The principle of distinction has also been found by the ICRC to be reflected in state practice; it is therefore an established norm of customary international law in both international and non

² Palestinian Central Bureau of Statistics, *Presents the Conditions of the Palestinian Population on the Occasion of the World Population Day*, 2024.

³ Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1), art. 48, U.N. Doc. A/32/144, Annex I, 1125 U.N.T.S. 512, reprinted in 16 I.L.M. 1391 (1977) [hereinafter Additional Protocol 1]

⁴ Michael N. Schmitt, *The Principle of Discrimination in 21st Century Warfare*, 2 YALE HUM. RTS. & DEV. L.J. 143, 148 (1999). See, e.g., INTERNATIONAL RED CROSS, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW* Gean-Marie Henckaerts & Louise Doswold Beck eds., (2005).

international armed conflict. It also prohibits attacking those hors de combat, the prohibition to inflict unnecessary suffering, the principle of precaution.⁵ Those principles are based on treaties, customs or general principles of laws, under international humanitarian law in any armed conflict, the right of the parties to the conflict to choose the methods or means of war fare is not unlimited.⁶ In order to ensure that the rules of international humanitarian law are enforced and observed during armed conflict the principles that govern armed conflict were developed. Under Article 51 of Additional Protocol I of Geneva Convention states that civilian population as well as individual civilians shall not be object of attack.

1.2 STATEMENT OF THE PROBLEM

The protection of civilians in armed conflict remains a cornerstone of international humanitarian law (IHL), governed primarily by the principle of distinction, which mandates belligerents to distinguish between combatants and non-combatants at all times. However, the persistent hostilities between Israel and Palestine have revealed significant challenges in the application of this principle. Civilians have frequently borne the brunt of violence, with reports of indiscriminate attacks, use of human shields and destruction of civilian infrastructure. These incidents not only undermine the humanitarian aims of IHL but also, expose gaps in its enforcement mechanisms and the accountability of violators.

The protection of civilians in armed conflict is enshrined in international humanitarian law, particularly through key instruments such as the **Geneva Conventions of 1949** and their **Additional Protocols of 1977**. Central to these laws is the principle of distinction, which obligates belligerents to differentiate between combatants and non-combatants, ensuring that civilian populations and civilian infrastructure are not subjected to any harm. Despite these robust legal frameworks, the Israeli-Palestinian conflict underscores significant challenges in the implementation of this principle. Frequent allegations of indiscriminate attacks, targeting of civilian structures, and the use of human shields highlight recurring

⁵ Article 57(3) of AP1

⁶ Article 35 API

violations of Articles 48 and 51 of Protocol I, which emphasize the protection of civilians from hostilities and prohibit indiscriminate attacks. Moreover, asymmetrical warfare, involving non-state actors operating within densely populated areas, further exacerbates the difficulty in maintaining compliance with these principles.

Persistent gaps in International Humanitarian Law become evident in the lack of effective enforcement mechanisms and the limited accountability for violations. While institutions such as the ICC, ICJ and U.N bodies aim to hold perpetrators accountable, political factors often undermine their ability to act decisively. The absence of universally binding mechanisms to investigate and prosecute violations, coupled with differing interpretations of IHL provisions, results in a fragmented and inconsistent application of these laws.

1.3 GENERAL OBJECTIVES

This research seeks to critically analyze the principle of distinction as applied in the Israeli/Palestinian conflict, identify the obstacles to its implementation, and explore potential reforms to enhance the protection of civilians in such protracted and contentious disputes.

1.3.1 SPECIFIC OBJECTIVES

1.3.2 To analyze the principle of distinction under international humanitarian law (IHL)

1.3.3 To analyze factors that complicate the protection of civilians in the Israeli/Palestinian conflict

1.3.4 To assess the impact of violations of the principle of distinction on non-belligerents, their infrastructure and designated safe zones.

1.4 RESEARCH QUESTIONS

1. What are the legal obligations under international humanitarian law regarding the principle of distinction?
2. Is the early lawmakers' purpose of the regulations still fulfilled in modern warfare?
3. What legal or operational reforms could enhance the protection of civilians in future conflicts?

1.5 PURPOSE AND SIGNIFICANCE OF THE STUDY

Research indicates that the failure of International Law to mitigate the humanitarian crisis in Palestine-Israel is significantly affected by the intricate dynamics of the conflict. Human Rights Watch and Amnesty International report that, despite the framework of International Humanitarian Law designed to safeguard civilians, violations of human rights persist by both parties, particularly due to Israeli military operations that frequently lead to considerable civilian casualties.⁷ A report by the International Crisis Group indicates that the international community's failure to implement sanctions against these infractions exacerbates conflict and deteriorates the humanitarian conditions in Gaza and the West Bank.⁸

1.6 LIMITATIONS OF STUDY

The research concentrated on the Hague Regulations, fourth Geneva Convention laws and adopted Additional Protocol 1 and 2 to Geneva Convention. It also concentrated on the periods between 2023-2025 when Hamas instigated the ongoing conflict and in furtherance, this study will also analyze cases of destruction or damage to UNESCO World Heritage Sites in the conflict zone, examining the implications for international cultural heritage law.

1.7 LITERATURE REVIEW

There is currently a dearth of Zambian literature on international law. This absence is further seen in the field of international humanitarian law. It is envisaged that this research, once completed will add to the body of knowledge in this field of law. However, this research contains only an overview of controversies regarding the protection of civilians

⁷ Lina Qassem-Hassan and Raphael Walden, 'A Palestinian and an Israeli Physician Speak out for Medical Ethics', *The Lancet*, 402.10413 (2023), 1619–20 [https://doi.org/10.1016/S0140-6736\(23\)02403-0](https://doi.org/10.1016/S0140-6736(23)02403-0)

⁸ Husam Dweik and others, 'Perspectives of Palestinian Physicians on the Impact of the Gaza War in the West Bank', *SSM - Qualitative Research in Health*, 6 (2024), 100504 <https://doi.org/10.1016/j.ssmqr.2024.100504>

by critically analyzing the applicability of the principles of IHL, with a particular focus on the principle of distinction.

The 2019 International conference of the Red Cross and Red Crescent (International Conference),⁹ coincides with the 70th anniversary of the four Geneva Conventions of 1949, the foundation treaties of modern law in armed conflict have for seven decades after their adoption enjoyed universal ratification, frequent reaffirmation and widespread integration into domestic law and military doctrine, despite the significant achievements, noncompliance with International humanitarian law in protecting civilians rights during armed conflicts remains an intractable problem.¹⁰

The early development of the law of war as treaty law began in the 1860s when Henry Dunant¹¹ recounted the savagery he saw when he witnessed the battle of Solferino he made a position that was two folded. On one hand the need to create relief societies for the purpose of giving care to the wounded in war times and on the other hand the need to formulate an international principle sanctioned by a convention which would serve as basis and support for relief societies.

Thus, the principle of distinction or non-combatant immunity, which protects civilian from intentional attacks in war, is the most widely recognized and deeply rooted moral constraint on the conduct of war. However, in today's context, war seems to have become a "legitimate" means of resolving international disputes, and the number of civilians being attacked by war is increasing day by day, so the principle of distinction has been seriously challenged and provoked.

Chikondi Tembo¹² in his dissertation, explored how scholars draw various theoretical frameworks to analyze the experiences of women in conflict zones and delved into analyzing how feminist theories highlight the gendered impacts and nature of armed conflicts and the differential impact on women.

⁹ IRRC No.911 of 2019.

¹⁰ International Humanitarian Law and Challenges of Contemporary Armed Conflicts, 2015

¹¹ Henry Dunant. A memory of Solferino. ICRC Geneva 1986

¹² Chikondi. T; Protection of Civilians During Armed Conflict: Analyzing the Protection of Women in the Middle East (UNILUS LLB Thesis, 2024)

However, this research taking the past and present of the Israeli-Palestinian conflict as a case study, the research unravels the persecution of civilians in war and the violation of the principle of distinction (non-combat immunity). It calls on the international community to urgently improve the principle of distinction and to urgently construct a more robust legal framework and a moral code to limit the indiscriminate harm of war on civilians. It is argued that while primary responsibility to stop violating civilian immunity rests on the warring parties there, and recognizes the inherent right to self-determination of the Palestinian people. The research concludes with some suggestions which may help to further prevent/mitigate armed violence against civilian populations.

Avril Mc'Donald¹³ reveals that the principle is faced with threats in the contemporary world by certain factors, such as 21st century trends in armed conflicts that do not observe the rules of distinction, the civilization of the military by the recruitment of civilians to design, manufacture, maintain, and operate several weapons systems, the privatisation of former military functions, and terrorism and counterterrorism.

TL Dowdeswell¹⁴ identifies the problem of mistaken killings at war as a pivotal problem in the doctrine of distinction. She acknowledges that the Rule of Engagement and the ICRC's Interpretative Guidance resolve this pivotal problem of distinction by privileging the prerogatives of states and their military objectives. She, however, concedes that the resolution of the problem is inadequate and unsatisfactory because mistaken killings at war violate the fundamental legal principles that guarantee equality and neutrality under the law of armed conflict.

Edward P. Hamann and Robert Muggah in their article entitled "Implementing The Responsibility To Protect: New Directions For Peace And International Security"? State that the responsibility to protect was admitted as an international norm in 2005 by 191 heads of government and state, and as such states have the responsibility to protect their women and children from four major human rights violations, genocide, war crimes, crimes against humanity and ethnic cleansing.

¹³ Yearbook of International Humanitarian Law – Volume 12, 2009

¹⁴ The rules of engagement

However, this study will explore the gap between the acknowledgment of Responsibility to protect (R2P) norm and its effective implementation in protecting women and children in times of armed conflict, by specifically focusing on the challenges faced in translating this norm into practical actions and policies that prioritize the safety and well-being of women in conflict zones.

In the non-international armed conflict the main treaty rule is Article 13(2) of AP11 which prohibits belligerents from making the civilian population as such or individual civilian the object of attack. Similarly in the case of *Prosecutor v Dusko Tadic*¹⁵ it established that the rules on conduct of hostilities in international armed conflicts have been widely accepted as being very similar to those applicable in internal armed conflict. This case stated that serious violation of Common Article 3 as well as general principles and rules on the protection of the victims of the internal armed conflicts and fundamental principles and rules regarding means and methods of combat in civil strife are criminalized under customary law.

The Resolution 38 of the International Conference of the Red Cross and Crescent¹⁶ states four basic principles of the law of armed conflict. In 1968 the UN General Assembly endorsed three of these principles on protection of the civilian population which stated that it is prohibited to launch attacks against a civilian population as such that distinction must be made at all times between persons taking part in hostilities and members of the civilian population to the effect that latter be spared as much as possible.¹⁷

In *Prosecutor v Tihomir Blasldc*¹⁸ it was stressed that customary law prohibits unlawful attack upon civilians and civilian property whatever the conflict. In *Frits Kalshoven and Zegveld* case supra it was stressed that humanitarian law aims at mitigating the human suffering caused by war or to "humane" war. That humanitarian law does not make war fashionable; it aims at restraining the parties to armed conflict from wanton cruelty and ruthlessness, and to provide direct protection to those most affected by the conflict.

¹⁵ IT-90-1AR 72- Appeals chambers 2"" Oct 1995

¹⁶ Vienna, Austria 1965

¹⁷ Frits Kalshoven and Leis beth Zegveld. Constraints in the waging of war 41 h edition ICRC Geneva March 2001

¹⁸ 7 IT-95-14-T 3" March 2000 para 162

Despite the above exhaustive principles of international humanitarian law warring parties in the armed conflict continue to attack the civilian population and continue disobeying the IHL rules. Civilians in Gaza, West Bank and East Jerusalem are not immune to this disobedience.

The Israel-Palestine conflict (Israeli Defense Force and Hamas The Islamic Resistance Movement) has inflicted unspeakable suffering upon civilians, their villages, and towns. The International Community, Non-Governmental Organizations such as Amnesty International, Human Right Watch and United Nations High Commissioner for Refugees has made and is still making efforts albeit slowly to secure peace and stop violation of humanitarian principles in Gaza and West Bank.

1.8 RESEARCH METHODOLOGY

The research is basically a theoretical study; it relied on the secondary data which includes international instruments, ICRC websites, journal articles, credible news outlets, and reports by NGO's such as, Human Right Watch, Amnesty International, textbooks relevant to the subject matter and any other useful materials.

1.8.1 RESEARCH TYPE

The type of research that will be employed will involve integrating quantitative and qualitative (mixed-method approach) in order to gain a comprehensive understanding of this research topic.

1.8.2 RESEARCH OUTLINE

CHAPTER ONE stands as an introduction to the principle of distinction in IHL and its importance in protecting civilians during armed conflicts. Provides a background to the Israeli/Palestinian conflict and its impact on civilian populations. Clearly states the research questions and objectives and finally outlines the scope and methodology of the study.

CHAPTER TWO will define the principle of distinction in IHL, discuss the legal framework governing the principle of distinction, including Geneva Conventions and Additional

Protocols and examine the challenges in applying the principle of distinction in contemporary armed conflicts.

CHAPTER THREE will provide an overview of the Israeli-Palestinian conflict, including its history, key events and current status. Discuss the impact of the conflict on civilian populations, including casualties, displacement, and infrastructure damage. Finally the study will analyze the application of the principle of distinction in the conflict, including challenges and controversies.

CHAPTER FOUR aims to discuss the complexities of urban warfare and asymmetric conflicts in applying the principle of distinction. Examine the role of non-state actors, such as Hamas, and their impact on civilian populations and finally analyze the use of military technologies, such as drones and precision-guided munitions, and their implications for civilian protection.

CHAPTER FIVE seeks to present case studies of specific incidents or events in the Israeli/Palestinian conflict where the principle of distinction was challenged or violated and conducts a legal analysis of these incidents, applying established IHL principles and relevant case law. In conclusion, this chapter will offer recommendations for improving the protection of civilians in the Israeli-Palestinian conflict, including policy and legal reforms.

CHAPTER TWO

THE PRINCIPLE OF DISTINCTION IN INTERNATIONAL HUMANITARIAN LAW.

2.0 Introduction

The Principle of Distinction is a cornerstone in IHL. Its effective enforcement is however not solely dependent on legal provisions. Various non-legal factors like technological advancements, the changing nature of armed conflict among others play significant roles in shaping how the Principle of Distinction is applied in contemporary conflicts. This chapter examines the non-legal challenges that affect the enforcement of the Principle of Distinction, highlighting the difficulties they introduce to the practical enforcement of the Principle of Distinction.

2.1 The Historical Development of the Principle of Distinction

Throughout history, knights of the middle ages and early modern time jurists have all tried to limit the destruction of war. It has not only been a western concern throughout history, but a global one. Various rules have been created during many decades, in many different places. In the 19th century the codifying movement formed the basis of IHL.¹⁹

In 1938, the Assembly of the League of Nations took a stance by claiming, “the intentional bombing of civilian populations is illegal.” This was one of the first steps of the long journey of protecting civilians in warfare. In 1965, the 20th International Conference of the Red Cross took place. It declared that all responsible parties in armed conflicts have to respect the prohibition of attacking civilians. The principle of distinction is declared in the “resolution on respect for human rights in armed conflicts”, by the UN General Assembly adopted in 1968. The principle was to be applicable in all armed conflicts. In 1999, the prohibition of attacking civilians is restated in the Plan of Action for the years 2000-2003, adopted by the 27th International Conference of the Red Cross and Red Crescent. The plan required all parties involved in the armed conflict to conform to “the total ban on directing attacks against the civilian population as such or against civilians not taking a

¹⁹ Alexander A. (2015) p. 111-112.

direct part in hostilities.”²⁰ Lastly, the UN Security Council reaffirmed its strong condemnation of attacking civilians in armed conflict, in a resolution adopted in 2000.²¹

Today, the ICRC describes IHL in the following manner, providing a purpose with the regulations: “It aims to protect persons who are not or are no longer taking part in hostilities, the sick and wounded, prisoners and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities.”²²

2.2 Legal Precedents Highlighting The Principle of Distinction

The Tadic case, Martić case and Kupreskić constitutes jurisprudence of the International Court of Justice in the Nuclear Weapons case, of the International Criminal Tribunal for the former Yugoslavia. Together, the cases reaffirm the fact that it is customary in both international and non-international armed conflicts to make a distinction between civilians and combatants.²³

2.2.1 Prosecutor v. Dusko Tadic 1999

According to the case of Tadic, the third article in the ICTY Statute does not explicitly prohibit direct targeting of civilians, but it contains a non-exhaustive list of violations of laws of war. Article 3 is based on the Hague Law, specifically means and methods of warfare.²⁴ In the Tadic decision on Jurisdiction, it was emphasized that Article 3 covers all violations of IHL and is not limited to just the violations of Hague Law.²⁵

2.2.2 Prosecutor v. Milan Martić 2000

Pursuant to the Martić case which provides further evidence that indiscriminate attacks are also included in the principle of distinction. An indiscriminate attack is defined by the attacker not specifically targeting any person in particular, but random or larger groups of people. These can be both civilians and combatants. This case in particular was in regard to a non-guided rocket attack directed at the city of Zagreb, a densely populated civilian

²⁰ “Rule 1”

²¹ “Rule 1”

²² Alexander A. (2015) p. 110-111.

²³ “Rule 1”.

²⁴ ICTY Statute, Art. 3.

²⁵ Prosecutor v. Dusko Tadic 1999.

area. This showed an indiscriminate attack due to the indifference showed by the attacker as to whether the attack would cause damage to civilians or not.²⁶

2.2.3 Prosecutor v. Kupreskic et al. 2000

Additionally, the The Kupreskic case confirmed that the term “civilians” might also include resistance movements. It stated that “the presence of those actively involved in the conflict should not prevent the characterization of a population as civilian and those actively involved in a resistance movement can qualify as victims of crimes against humanity.”²⁷

2.3 SIGNIFICANCE OF THE PRINCIPLE OF DISTINCTION IN IHL

The existence of a law governing the conduct of armed conflict is the antithesis and the negation of total war. If there is total war, anything and everything may be attacked in order to further one’s own war effort and to destroy the enemy’s war effort. If the targeted object contributes to the war, it may be attacked. As we have seen, in a modern society involved in armed conflict few things do not contribute to the war effort. Hence, almost everything could be made the object of attack. However, one of the most fundamental principles of the LOAC is the distinction between civilians and military objectives.²⁸

The ICRC began working on the study “Customary International Humanitarian Law” in 1996.²⁹ The study was aimed to identify the customary law in the area of IHL. The previous rules were made up mostly by various treaties but left significant gaps in the law. The ICRC could, with a clarified catalogue of rules, strengthen the legal protection of victims of war.³⁰ The first rule of this catalogue showcases the principle of distinction. The first part of rule 1 emphasizes the principle of distinction. It states “parties to a conflict must at all times distinguish between combatants.” Further parts of rule 1, protects civilians from attacks by stating “attacks may only be directed against combatants” and “attacks must not be directed at civilians.” Further, combatants are obligated to, by

²⁶ Prosecutor v. Milan Martić 2007.

²⁷ Prosecutor v. Kupreskic et al. 2000, para. 549

²⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 Art 48.

²⁹ Customary International Humanitarian Law , 2005.

³⁰ Customary International Humanitarian Law , 2005.

appearance, distinguish themselves from civilians. Parties to the conflicts must also distinguish between military objects, and civilian objects.³¹

The protection of civilians in war is a long-discussed moral issue, and ethicists have relied on the principle of distinction also known as the principle on non-combat immunity as the theoretical fulcrum for the protection of civilians in war.³² This principle has been codified in international law, the Hague Draft Rules of Air War, the Additional Protocol to the Rules of Air War, the Geneva Convention and its Additional Protocols etc., all of which reflect the international community's efforts to explicitly protect and assist non-combatants.³³ In the social construction of popular culture and political discourse, the term "non-combatant" is equated with the term "civilian." It is well understood that civilians are defined as nonmilitary personnel, which loosely means innocent, vulnerable, and in need of protection.³⁴ Thus, the principle of distinction, which protects civilian from intentional attacks in war, is the most widely recognized and deeply rooted moral constraint on the conduct of war. However, in today's context, war seems to have become a "legitimate" means of resolving international disputes, and the number of non-combatants being attacked by war is increasing day by day, so the principle of non-combatant immunity has been seriously challenged and provoked.³⁵

2.4 THE LEGAL FRAMEWORK GOVERNING THE PRINCIPLE OF DISTINCTION.

The common feature shared by any 'regulation' is that it sets out rules of behaviour. A rule tells you that in a given set of circumstances, you may or must do this and/or that, or that in these circumstances you may or must not do this and/or that. Hence, the expression *pacta sunt servanda* or 'treaties must be observed' embodies a rule.³⁶

³¹ "Rule 1".

³² Hough, P. (2023). Convention (II) With Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague. British Politics and the Environment in the Long Nineteenth Century. London: Routledge, 399–409.

³³ Cross, N. Z. R. (2010). The red cross and the Geneva conventions—60 years. On. Vict. U. Wellington L. Rev. 41, 113–113. doi: 10.26686/vuwlr.v41i2.5240

³⁴ Alexander, A. (2007). The genesis of the civilian. Leiden J. Int. Law 20, 359–376. doi: 10.1017/S0922156506003347

³⁵ Abumere, F. A. (2020). The problem with the individualist approach to the principle of the immunity of non-combatants. South Afr. J. Philos. 39, 274–284. doi: 10.1080/02580136.2020.1809121

³⁶ Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331 Art 26.

The principle of distinction is one of the cardinal principles of international humanitarian law and originated in the St. Petersburg Declaration in 1868, along with the principle of proportionality and the prohibition of unnecessary suffering. The principles are closely related and were necessary due to the evolving technology of weapons. This declaration was the first formal agreement to prohibit certain weapons in war, and also show the need for a more humane warfare.³⁷ The declaration states “That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy,” as well as encouraging combatant parties to “yield to the requirements of humanity.”³⁸

Also pleading to the interests of humanity, is the Hague Regulations from 1907. The regulations are “inspired by the desire to diminish the evils of war so far as military necessities permit.” Based on the statements and principles from the St. Petersburg Declaration, the Hague Regulations once again enforces the protection of civilians. The principle of distinction is not defined in the regulations, but Article 25 is clearly based off the principle of distinction by prohibiting “the attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended.”³⁹

The principle of distinction takes its final form in Article 48, 51(2), 52(2) of the 1977 Additional Protocol I to the Geneva Conventions of 1949. The first additional protocol to the Geneva Convention of 1949, strived towards expanding the protection for civilians in international armed conflicts.⁴⁰

After the Geneva Convention and its additional protocols, the principle has been used in several other statutes and formal agreements, among them the 1996 Advisory Opinion on Nuclear Weapons. It contains two cardinal IHL principles, the first one being the principle of distinction. It is aimed “at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; States

³⁷ St. Petersburg Declaration, 1868.

³⁸ St. Petersburg Declaration, 1868.

³⁹ Hague Regulations, 1907, Art. 25.

⁴⁰ “The Geneva Conventions of 1949 and their Additional Protocols”, 2014.

must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets.”⁴¹

Further, the opinion holds that the use of nuclear weapons could never be compatible with the principle of distinction, among other principles, and is therefore prohibited. When used, combatant parties are, under all circumstances, unable to make the distinction between the civilian population and military target, due to the almost uncontrollable forces behind a nuclear attack. The attack would be an indiscriminate attack. Based on this view, the opinion holds that nuclear weapons are by nature illegal under IHL.⁴²

In addition to these bigger and more important documents, various national military manuals contain the principle of distinction, or parts based on the principle, in order to ensure civilian protection.⁴³

In regard to non-international armed conflicts, Article 13(2) of Additional Protocol II is the most current definition of the principle of distinction.

The Protocol III to the Convention on Certain Conventional Weapons and Amended Protocol II to the Convention on Certain Conventional Weapons is a treaty that regulates armed conflicts. It is built around customary IHL and its principles, including the principle of distinction.⁴⁴

The principle of distinction stems from various legislative efforts, mainly starting from the end of the second world war. It is a key principle in International Humanitarian Law and is mostly discussed on international and global platforms. One of the most important documents that presents the principle is the Geneva Conventions and its additional protocols. Another crucial source to the definition and debate regarding the principle is the International Commission of the Red Cross, also known as ICRC. International Humanitarian Law as a whole, including the principle of distinction is a very political subject, that has been greatly debated over the last decades.

⁴¹ Nuclear Weapons, Advisory Opinion 1996 para. 78.

⁴² Nuclear Weapons, Advisory Opinion 1996 para. 78.

⁴³ “Rule 1”.

⁴⁴ United Nations, Conventional Weapons, October 1980 and protocols.

2.5 CHALLENGES IN APPLYING THE PRINCIPLE OF DISTINCTION IN CONTEMPORARY ARMED CONFLICTS.

2.5.1 Modern Warfare and the Erosion of the Principle of Distinction.

Most regulations that have been presented in this research were created in a time where most conflicts were international, one country against another. The times have fluctuated, battlefields are multi-dimensional and asymmetrical. The principle of distinction is one of the most fundamental principles in IHL, but faces contemporary challenges.⁴⁵

The nature of warfare has drastically evolved in recent years, leading to challenges in enforcing the Principle of Distinction. Felicity Gerry and Robert Kolb have explored how technological advances such as the use of drones, cyber operations, and autonomous weapons systems have complicated the identification of combatants and civilians on the battlefield.

In the IRRC, the civilianization of the digital battlefield was also discussed, where we see private contractors, civilian intelligence personnel, and other civilian government employees are increasingly involved in military operations. The urbanization of warfare has brought conflict literally onto individual civilian doorsteps with many of them taking up active roles.

In asymmetric operations, for example, the nominally weaker side will often engage and rely on civilians to confuse and outmaneuver the asymmetrically stronger enemy.⁴⁶

There is also a difficulty in drawing a distinction between combatants and civilians in the virtual spaces.⁴⁷ In the use of information and communications technologies, the principle of distinction requires that parties to an armed conflict at all times distinguish between civilians and combatants and between civilian objects and military objectives. Cyber attacks may only be directed against combatants or military objectives. Cyber attacks must not be directed against civilians or civilian objects. Indiscriminate cyber attacks are prohibited.

⁴⁵ Wenger A and Mason S.J.A (2008) p. 835.

⁴⁶ Andres Wenger and Simon J.A Mason, the civilization of armed conflict. Trends and implications. International Review of the Red Cross, Vol 90, no 872, 2008, p842

⁴⁷ Russia, statement by Dr. Vladimir Shin, Deputy Director of the Department of International Information, Security of the Ministry of Foreign Affairs of the Russian federation.

The principle of distinction is one of the oldest principles and a cornerstone of IHL. The International Court of Justice considers it a 'cardinal' and 'intransgressible' principle that forms part of the 'fabric' of IHL.⁴⁸ It applies only in the context of an armed conflict and prohibits directing attacks against civilians and civilian objects.⁴⁹ The UN Group of Governmental Experts has noted the principle of distinction as one of the 'established international legal principles' in the context of how international law applies to the use of information and communication technologies by States and identified the 'need for further study on how and when' it applies.⁵⁰

2.5.2 The Changing Nature of Armed Conflict.

The nature of military engagement is evolving, in that there is a new shift from conventional war of state-to-state confrontations to new forms of conflict with no clear boundaries between military and civilian spheres,⁵¹ for instance, what is happening in Gaza where civilians are being targeted with claims that they are working together with combatants. The changing nature of armed conflict explains how since the Cold War's end, the view of warfare has been challenged by three notable developments: the apparent decline in the prevalence of interstate warfare in comparison to the proliferation of intra-state conflicts, the impact of technological developments on western approaches to warfare and the increased reliance on private security companies in military campaigns.⁵²

There is an increasing rise in non-state actors and the new conflicts make it difficult to distinguish between state and non-state actors, making accountability for violations of the

⁴⁸ ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996, paras 78–79.

⁴⁹ Additional Protocol I (1977), Articles 48, 51, and 52; ICRC, *Study on Customary International Humanitarian Law*, 2005, Rules 1 and 7.

⁵⁰ UN, *Report of the Group of Governmental Experts on Advancing responsible State behaviour in cyberspace in the context of international security*, July 2021, para. 71(f); see also UN, *Report of the open-ended working group on security of and in the use of information and communications technologies 2021–2025*, August 2022, para. 15(b)(ii).

⁵¹ Andres Wenger and Simon J.A Mason, *The civilization of Armed Conflicts: Trends and Implications*, *International Review of the Red Cross*, Volume 90 Number 872 December 2008

⁵² Christopher S. Browning, *International Security: A Very Short Introduction*, *Very Short Introductions* (Oxford Academic, 24 October 2013), <https://doi.org/10.1093/actrade/9780199668533.003.0005> (accessed 19th August 2025)

Principle of Distinction in IHL difficult as most of the non-state actors act in disregard of IHL.⁵³

2.5.3 Urban Warfare

Urban warfare refers to armed conflict conducted within the confines of urbanized areas such as cities, towns and villages.⁵⁴ It is a growing challenge today as many of the armed conflicts are taking part in urban areas.

Urban warfare is characterized by intermingling of military objectives with civilians, creating significant challenges for belligerents to fully comply with the principle of distinction.⁵⁵

In urban warfare, since military objectives and civilians and civilian objects are co located, heavy explosive weapons, such as large bombs, missiles, rockets mortars and artillery shells are more likely to hit the military target, but their wide, inaccurate and all too often indiscriminate blast areas take down everything around them too.⁵⁶ Such tactics violate the distinction principle, as weapons used will not be able to differentiate between combatants and civilians, thereby harming civilians.

Urban warfare results in the destruction of critical infrastructure essential to supply vital services such as electricity, water and sanitation, healthcare, food and education.⁵⁷ These all fall under the umbrella of civilian objects that are essential and are afforded protection under IHL in the principle of distinction.

Urban environments present numerous obstacles like buildings, walls, buildings, and underground networks that limit visibility and real-time intelligence.⁵⁸ The Gaza Strip for

⁵³ Micheal Aboneka, The Changing Nature of Conflicts is putting a new strain on Human Rights, [https://africlaw.com/2025/01/31/the-changing-nature-of-conflicts-is-putting-a-new-strain-human rights/#_ftn10](https://africlaw.com/2025/01/31/the-changing-nature-of-conflicts-is-putting-a-new-strain-human-rights/#_ftn10) (accessed 19th August 2025)

⁵⁴ EBSCO Research Starters Home, Urban Warfare, <https://www.ebsco.com/research-starters/military-history-and-science/urban-warfare> (accessed 19th August 2025)

⁵⁵ Ibid

⁵⁶ International humanitarian law and policy on urban warfare and violence by ICRC <https://www.icrc.org/en/law-and-policy/urban-warfare-and-violence> (accessed 19th August 2025)

⁵⁷ International humanitarian law and policy on urban warfare and violence by ICRC <https://www.icrc.org/en/law-and-policy/urban-warfare-and-violence> (accessed 19th August 2025)

⁵⁸ Samaei, Seyed Reza & Behdadfar, Elham. (2024). HSE and health monitoring of structures in urban underground spaces using artificial intelligence.

instance has a dense population of approximately 2 million within 141 square miles. A direct attack in this location led to massive civilian casualties and infrastructure damage.⁵⁹ Buildings in urban centers may be indiscriminately attacked leading to mass deaths and civilian casualties, as combatants may be targeting the opposing party, but since both civilians and combatants are on ground in an urban warfare, civilians will be injured and killed thus violating the principle of distinction in IHL.⁶⁰

2.5.4 Technological Developments and Autonomous Weapons Systems

Rapid advancements in military technology, particularly artificial intelligence, robotics, and autonomous systems have significantly reshaped contemporary warfare.⁶¹ Autonomous weapons systems represent an emerging category of military technologies capable of executing combat operations independently once deployed without human control.⁶²

These technologies leverage advancements in AI and robotics to identify and track targets, maneuver through combat zones, and make decisions during combat situations. A common example of such weapons is a landmine. The severe injuries and fatalities they have inflicted upon the civilian populace across numerous conflicts are well established, prompting the global community to move towards banning anti-personal mines in 1997.⁶³

The challenges these self-operating military systems pose in relation to the principle of distinction include; a lack of human judgment, as these weapons lack the understanding needed to assess a person's combat status, especially in this modern era where war is carried out in urban areas densely populated with civilians.⁶⁴ The speed and action of the

⁵⁹ Stimson, Unpacking the History of Urban Warfare and Its Challenges in Gaza, <https://www.stimson.org/2023/unpacking-the-history-of-urban-warfare-and-its-challenges-in-gaza/> (accessed 19th August 2025)

⁶⁰ Luigi Daniele, Incidental harm to the civilian in international humanitarian law and its *Contra Legem* antonyms in recent discourses on the laws of war, *Journal of Conflict and Security Law*, Volume 29, Issue 1, Spring 2024, Pages 21–54

⁶¹ Osimen, G. U., Newo, O., & Fulani, O. M. (2024). Artificial intelligence and arms control in modern warfare. *Cogent Social Sciences*, 10(1). <https://doi.org/10.1080/23311886.2024.2407514> (accessed 19th August 2025)

⁶² United Nations General Assembly, Lethal Autonomous Weapons Systems, Report of the Secretary General, 1 July 2024 page 5

⁶³ <https://www.icrc.org/en/document/what-you-need-know-about-autonomous-weapons> (accessed 4 August 2025)

⁶⁴ Noel Sharkey, 'Autonomous Weapons and the Problem of Operational Constraints' (2017) 94 *International Legal Studies* 322

autonomous weapons is also another challenge these weapons create for the Principle of Distinction. They act faster than humans can intervene, increasing the risk of disproportionate attacks before oversight mechanisms can respond.⁶⁵ This makes it hard to practice the Principle of Distinction as these autonomous weapons act faster than a human being and may end up attacking civilians that they should not attack.

2.6 Conclusion

This empirical review highlights the non-legal aspects affecting the enforcement of distinction in modern warfare. The enforcement of the Principle of Distinction in modern warfare is undermined by illicit challenges such as urban warfare, technological advancements, the behaviors of rebel militias, and asymmetric strategies. These factors complicate the identification of lawful targets and expose civilians to greater risks. Addressing these issues requires not only legal regulation but also practical, ethical, and strategic responses tailored to the realities of contemporary warfare.

⁶⁵ ICRC, Artificial Intelligence and Machine Learning in Armed Conflict: A Human-Centered Approach, <https://www.icrc.org/en/document/artificial-intelligence-and-machine-learning-armed-conflict-human-centered-approach> (accessed 19th 2025)

CHAPTER THREE

THE ISRAELI-PALESTINIAN CONFLICT AND CIVILIAN PROTECTION

3.0 Introduction

The conflict between the Israelis and the Palestinians reflects a long-standing struggle in the region encompassing the land between the Jordan River to the east and the Mediterranean Sea to the west. This conflict has deep historical roots, shaped by statehood claims from the Israelis and the Palestinians that have been supported by various international agendas and activities over time. Following the "Al-Aqsa Storm" operation launched by Hamas on October 7, 2023, and the subsequent Israeli military response, thousands of civilians have been killed or injured in Gaza and Israel. In addition, numerous civilian infrastructures, including hospitals, schools, and residential areas, have been destroyed or severely damaged.

3.1 THE BALFOUR DECLARATION

More than 100 years ago, on November 2, 1917, Britain's then-foreign secretary, Arthur Balfour, wrote a letter addressed to Lionel Walter Rothschild, a figurehead of the British Jewish community. The letter was short – just 67 words – but its contents had a seismic effect on Palestine that is still felt to this day. It committed the British government to “the establishment in Palestine of a national home for the Jewish people” and to facilitating “the achievement of this object”.⁶⁶ The letter is known as the Balfour Declaration. In essence, a European power promised the Zionist movement a country where Palestinian Arab natives made up more than 90 percent of the population.⁶⁷

A British Mandate was created in 1923 and lasted until 1948. During that period, the British facilitated mass Jewish immigration – many of the new residents were fleeing Nazism in Europe – and they also faced protests and strikes. Palestinians were alarmed by their country's changing demographics and British confiscation of their lands to be handed over to Jewish settlers.

⁶⁶UN General Assembly, Resolution 181 (II) <https://www.un.org/unispal/data-collection/general-assembly/> (Last visited Oct 13, 2025)

⁶⁷ Israeli-Palestinian Conflict Timeline <https://education.cfr.org/learn/timeline/israeli-palestinian-conflict-timeline>

3.1.1 Arab Revolt of the 1930s

Escalating tensions eventually led to the Arab Revolt, which lasted from 1936 to 1939. In April 1936, the newly formed Arab National Committee called on Palestinians to launch a general strike, withhold tax payments and boycott Jewish products to protest British colonialism and growing Jewish immigration. The six-month strike was brutally repressed by the British, who launched a mass arrest campaign and carried out punitive home demolitions, a practice that Israel continues to implement against Palestinians today. The second phase of the revolt began in late 1937 and was led by the Palestinian peasant resistance movement, which targeted British forces and colonialism.

By the second half of 1939, Britain had massed 30,000 troops in Palestine. Villages were bombed by air, curfews imposed, homes demolished, and administrative detentions and summary killings were widespread.⁶⁸ In tandem, the British collaborated with the Jewish settler community and formed armed groups and a British-led “counterinsurgency force” of Jewish fighters named the Special Night Squads. Within the Yishuv, the pre-state settler community, arms were secretly imported and weapons factories established to expand the Haganah, the Jewish paramilitary that later became the core of the Israeli army. In those three years of revolt, 5,000 Palestinians were killed, 15,000 to 20,000 were wounded and 5,600 were imprisoned.⁶⁹

3.1.2 UN Partition Plan, November 29th 1947

By 1947, the Jewish population had ballooned to 33 percent of Palestine, but they owned only 6 percent of the land. Following the end of World War II, the newly formed United Nations proposed a plan that would grant 55% of historic Palestine to a Jewish state and 42% to a non-contiguous Arab one. The plan, however, was never implemented on the ground.

The United Nations adopted Resolution 181, also known as the UN-two-state solution, which called for the partition of Palestine territory into two states, one Arab and one Jewish. The resolution also envisioned an international, UN-run body to administer Jerusalem. The Palestinian territories had been under the military and administrative

⁶⁸ Israeli-Palestinian Conflict Timeline <https://education.cfr.org/learn/timeline/israeli-palestinian-conflict-timeline>

⁶⁹ Israel and the Palestinian: History of the conflict explained <https://www.bbc.com/news/articles/ckgr71z0jp4o>

control of the United Kingdom (known as a mandate) since the 1917 defeat of the Ottoman Empire in World War I. Civil strife and violence between the Jewish and Arab communities of the Palestinian territories intensified.

The Palestinians rejected the plan because it allotted about 55 percent of Palestine to the Jewish state, including most of the fertile coastal region. At the time, the Palestinians owned 94 percent of historic Palestine and comprised 67 percent of its population.

3.1.3 The 1948 Nakba, or the Ethnic Cleansing of Palestine

Even before the British Mandate expired on May 14, 1948, Zionist paramilitaries were already embarking on a military operation to destroy Palestinian towns and villages to expand the borders of the Zionist state that was to be born.⁷⁰

In April 1948, more than 100 Palestinian men, women and children were killed in the village of Deir Yassin on the outskirts of Jerusalem. That set the tone for the rest of the operation, and from 1947 to 1949, more than 500 Palestinian villages, towns and cities were destroyed in what Palestinians refer to as the Nakba, or “catastrophe” in Arabic. An estimated 15,000 Palestinians were killed, including in dozens of massacres.

The Zionist movement captured 78 percent of historic Palestine. The remaining 22 percent was divided into what are now the occupied West Bank and the besieged Gaza Strip. An estimated 750,000 Palestinians were forced out of their homes. Today their descendants live as six million refugees in 58 squalid camps throughout Palestine and in the neighbouring countries of Egypt, Lebanon, Syria and Jordan.⁷¹

3.1.4 Israel Declares Independence

On May 15th 1948, Israel announced its establishment as the British rule ends. The following day, sparked by Israel’s declaration of independence, the first Arab-Israeli War begins. Egypt (supported by Saudi Arabian, Sudanese, and Yemeni troops), Iraq, Jordan, Lebanon, and Syria invade Israel. The fighting continues until 1949, when Egypt, Israel, Jordan, Lebanon, and Syria sign armistice agreements.⁷²

⁷⁰ What’s the Israel Palestine conflict about? A simple-guide <https://www.aljazeera.com/news/2023/10/9/whats-the-israel-palestine-conflict-about-a-simple-guide>

⁷¹ Israeli-Palestinian Conflict Timeline <https://education.cfr.org/learn/timeline/israeli-palestinian-conflict-timeline>

⁷² Israel and the Palestinian: History of the conflict explained <https://www.bbc.com/news/articles/ckgr71z0jp4o>

3.1.5 UN Addresses Palestinian Displacement

Over the course of the 1948 Arab-Israeli War, at least seven hundred thousand Palestinian refugees flee their homes in an exodus known to Palestinians as the nakba (Arabic for “catastrophe”). Israel wins the war, retaining the territory provided to it by the United Nations and capturing some of the areas designated for the imagined future Palestinian state. Israel gains control of West Jerusalem, Egypt gains the Gaza Strip, and Jordan gains the West Bank and East Jerusalem, including the Old City and its historic Jewish quarter. In 1948, the UN General Assembly passes Resolution 194, which calls for the repatriation of Palestinian refugees. The Palestinians will later point to Resolution 194 as having established a “right of return” for Palestinian refugees and their descendants. The specific parameters of that return are debated in the decades that follow, including among many descendants from the 1948 refugees and the three hundred thousand Palestinians who will flee their homes during the June 1967 war.⁷³

3.1.6 The Naksa, or Six-Day War and the settlements

Israel and several of its Arab neighbors fight the Six-Day War from June 5, 1967 – June 10, 1967. Israel wins a decisive victory: it suffers seven hundred casualties; its adversaries suffer nearly twenty thousand. Israel emerges with control of the West Bank and the Gaza Strip—areas inhabited primarily by Palestinians—as well as all of East Jerusalem. Israel also takes control of Syria’s Golan Heights and the Sinai Peninsula, which is part of Egypt. Israel will stay in the Sinai Peninsula until April 1982. For some Palestinians, this led to a second forced displacement, or Naksa, which means “setback” in Arabic.

Settlement construction began in the occupied West Bank and Gaza Strip. A two-tier system was created with Jewish settlers afforded all the rights and privileges of being Israeli citizens whereas Palestinians had to live under a military occupation that discriminated against them and barred any form of political or civic expression.

3.1.7 UN Security Council Resolution Calls For Israeli Withdrawal

On November 22nd 1967 the UN Security Council passes Resolution 242 calling for Israeli “withdrawal ... from territories occupied in the recent conflict” and for the termination of

⁷³ Supra

“states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity, and political independence of every state in the area and the right to live in peace within secure and recognized boundaries.” The resolution establishes the concept of land for peace.⁷⁴

3.1.8 The Yom Kippur War

Another Arab-Israeli war, known variously as the Yom Kippur War, the Ramadan War, and the October War, is fought when Egypt and Syria attempt to retake the Israeli-occupied Sinai Peninsula and Golan Heights. Cold War tensions spike as the Soviet Union aids Egypt and Syria and the United States aids Israel. The Organization of the Petroleum Exporting Countries begins an oil embargo on countries that support Israel, and the price of oil skyrockets. The fighting ends after a UN-sponsored ceasefire (negotiated by the United States and the Soviet Union) takes hold. The UN Security Council passes Resolution 338, which calls for implementing UN Security Council Resolution 242.

3.1.9 The Camp David Accords

On 1st September 1978 Israel and Egypt sign the Camp David Accords, which establish a basis for a peace treaty between the two countries. The accords also commit the Israeli and Egyptian governments, along with other parties, to negotiate the disposition of the West Bank and the Gaza Strip.

3.1.10 Israel Withdraws from the Sinai Peninsula

Egypt and Israel sign a peace treaty, the first between Israel and one of its Arab neighbors. The treaty commits Israel to withdraw from the Sinai Peninsula and evacuate its settlements there. The termination of the state of war between Egypt and Israel leads to the normalization of diplomatic and commercial relations between the two countries. Israel's prime minister and Egypt's president exchange letters reaffirming their commitment—outlined in the Camp David Accords—to negotiate the disposition of the West Bank and the Gaza Strip.⁷⁵

⁷⁴ Israeli-Palestinian Conflict | Global Conflict Tracker <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>

⁷⁵ Israel and the Palestinian: History of the conflict explained <https://www.bbc.com/news/articles/ckgr71z0jp4o>

3.1.11 First Intifada

The first Palestinian Intifada erupted in the Gaza Strip in December 1987 after four Palestinians were killed when an Israeli truck collided with two vans carrying Palestinian workers. Protests spread rapidly to the West Bank with young Palestinians throwing stones at Israeli army tanks and soldiers.⁷⁶

A Palestinian cleric named Sheikh Ahmed Yassin establishes the militant group Hamas as an offshoot of the Muslim Brotherhood that engaged in armed resistance against the Israeli occupation. Hamas endorses jihad as a way to regain territory for Muslims. The Israeli army's heavy-handed response was encapsulated by the "Break their Bones" policy advocated by then-Defence Minister Yitzhak Rabin. It included summary killings, closures of universities, deportations of activists and destruction of homes.

The Intifada was primarily carried out by young people and was directed by the Unified National Leadership of the Uprising, a coalition of Palestinian political factions committed to ending the Israeli occupation and establishing Palestinian independence. In 1988, the Arab League recognised the PLO as the sole representative of the Palestinian people.

The Intifada was characterised by popular mobilisations, mass protests, civil disobedience, well-organised strikes and communal cooperatives. According to the Israeli human rights organisation B'Tselem, 1,070 Palestinians were killed by Israeli forces during the Intifada, including 237 children. More than 175,000 Palestinians were arrested. The Intifada also prompted the international community to search for a solution to the conflict.⁷⁷

3.1.12 The Oslo Years and the Palestinian Authority

The Intifada ended with the signing of the Oslo Accords in 1993 and the formation of the Palestinian Authority (PA), an interim government that was granted limited self-rule in pockets of the occupied West Bank and Gaza Strip. The PLO recognised Israel on the basis of a two-state solution and effectively signed agreements that gave Israel control of 60 percent of the West Bank, and much of the territory's land and water resources. The

⁷⁶ History of the Question of Palestine <https://www.un.org/unispal/history/>

⁷⁷ What's the Israel Palestine conflict about? A simple-guide <https://www.aljazeera.com/news/2023/10/9/whats-the-israel-palestine-conflict-about-a-simple-guide>

PA was supposed to make way for the first elected Palestinian government running an independent state in the West Bank and Gaza Strip with its capital in East Jerusalem, but that has never happened.

Critics of the PA view it as a corrupt subcontractor to the Israeli occupation that collaborates closely with the Israeli military in clamping down on dissent and political activism against Israel. In 1995, Israel built an electronic fence and concrete wall around the Gaza Strip, snapping interactions between the split Palestinian territories.⁷⁸

At the time the Oslo Accords were signed, just over 110,000 Jewish settlers lived in the West Bank, including East Jerusalem. Today, the figure is more than 700,000 living on more than 100,000 hectares (390sq miles) of land expropriated from the Palestinians.⁷⁹

3.1.13 The Second Intifada

The second Intifada began on September 28, 2000, when Likud opposition leader Ariel Sharon made a provocative visit to the Al-Aqsa Mosque compound with thousands of security forces deployed in and around the Old City of Jerusalem. The Palestinians view the visit as an effort to change the status quo at the holy site. The ensuing demonstrations turn violent, marking the beginning of a second intifada. It will last until 2005 and be markedly more violent than the first intifada. Four thousand Palestinians and one thousand Israelis die. The incident sparked a widespread armed uprising. During the Intifada, Israel caused unprecedented damage to the Palestinian economy and infrastructure.

Israel reoccupied areas governed by the Palestinian Authority and began construction of a separation wall that along with rampant settlement construction, destroyed Palestinian livelihoods and communities. Settlements are illegal under international law, but over the years, hundreds of thousands of Jewish settlers have moved to colonies built on stolen Palestinian land. The space for Palestinians is shrinking as settler-only roads and infrastructure slice up the occupied West Bank, forcing Palestinian cities and towns into

⁷⁸ Israeli-Palestinian Conflict Timeline <https://education.cfr.org/learn/timeline/israeli-palestinian-conflict-timeline>

⁷⁹ Ibid

bantustans, the isolated enclaves for Black South Africans that the country's former apartheid regime created.⁸⁰

3.1.14 The Palestinian Division and the Gaza Blockade

PLO leader Yasser Arafat died in 2004, and a year later, the second Intifada ended, Israeli settlements in the Gaza Strip were dismantled, and Israeli soldiers and 9,000 settlers left the enclave.

A year later, Palestinians voted in a general election for the first time. Hamas won a majority. However, a Fatah-Hamas civil war broke out, lasting for months, resulting in the deaths of hundreds of Palestinians. Hamas expelled Fatah from the Gaza Strip, and Fatah – the main party of the Palestinian Authority – resumed control of parts of the West Bank. In June 2007, Israel imposed a land, air and naval blockade on the Gaza Strip, accusing Hamas of “terrorism”.⁸¹

The besieged Gaza Strip and Palestinian enclave – home to some 2.3 million people – has been under an Israeli air, land and sea blockade since 2007.⁸²

3.1.15 The wars on the Gaza Strip

Israel has launched four protracted military assaults on Gaza: in 2008, 2012, 2014 and 2021. Thousands of Palestinians have been killed, including many children, and tens of thousands of homes, schools and office buildings have been destroyed. Rebuilding has been next to impossible because the siege prevents construction materials, such as steel and cement, from reaching Gaza.

The 2008 assault involved the use of internationally banned weaponry, such as phosphorus gas. In 2014, over a span of 50 days, Israel killed more than 2,100 Palestinians, including 1,462 civilians and close to 500 children. During the assault, called Operation Protective Edge by the Israelis, about 11,000 Palestinians were wounded, 20,000 homes were destroyed and half a million people displaced.

⁸⁰ What's the Israel Palestine conflict about? A simple-guide <https://www.aljazeera.com/news/2023/10/9/whats-the-israel-palestine-conflict-about-a-simple-guide>

⁸¹ Israel and the Palestinian: History of the conflict explained <https://www.bbc.com/news/articles/ckgr71z0jp4o>

⁸² Ibid

In 2021, the Israel-Hamas crisis is fueled by evictions of Palestinians in East Jerusalem and clashes at al-Aqsa Mosque spark conflict between Israel and Hamas. Over two hundred people in Gaza and at least ten in Israel die. The Joe Biden administration helps mediate a truce and restores some U.S. aid and diplomatic contact with the Palestinians. In 2022, Israel launches a counterterrorism operation in the West Bank in response to attacks by Palestinians against Jewish Israelis. The operation and resulting resurgence contribute to the deadliest year for both sides since 2005, an uptick in violence that only turned out to rise in 2023.’

3.1.16 Hamas and other Palestinian Armed Groups Launch a Surprise Attack on Israel

Hamas, supported by other Palestinian armed groups, launches an unprecedented surprise attack on Israel, leading to an explosion of violence. According to the Israeli government, the attack kills approximately 1,200 people, most of them civilians. Militants also take over two hundred hostages. It is the deadliest attack in Israel’s history. Israel responds by launching a deadly counter offensive aiming to eradicate Hamas in Gaza. International bodies, including the International Criminal Court and International Court of Justice, have since launched investigations into both Israeli and Hamas officials for violations of international law. Both parties reject those claims.⁸³

3.2 The Impact of the Conflict on Civilian Populations, Including Casualties, Displacement and infrastructure Damage.

In 2024, the Israeli military continued to kill, wound, starve, and forcibly displace thousands of Palestinian civilians in Gaza, and to destroy their homes, schools, hospitals, and infrastructure at a scale unprecedented in recent history. The Gaza Ministry of Health reported in late November that more than 44,000 people had been killed and 104,000 wounded since hostilities escalated on October 7, 2023. Nearly all Palestinians in Gaza were forcibly displaced, and all faced severe food insecurity or famine.⁸⁴

In November, the International Criminal Court (ICC) issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant, for war

⁸³ David J. Scheffer, What International Law has to say about the Israel-Hamas War, <https://www.cfr.org/article/what-international-law-has-say-about-israel-hamas-war>

⁸⁴ Human Rights Watch World Report 2025: Israel and Palestine <https://www.hrw.org/world-report/2025/country-chapters/israel-and-palestine>

crimes and crimes against humanity in Gaza from October 7, 2023, to May 20, 2024, when the ICC Prosecutor requested the warrants, and the leader of Hamas's military wing, Mohammed Deif, for the attacks in Israel on October 7, 2023, that included war crimes and crimes against humanity. The Prosecutor's request had also named Hamas leaders Ismail Haniyeh and Yahya Sinwar, whom Israel later killed.

In the West Bank, including East Jerusalem, the UN reported that Palestinians killed 6 Israeli settlers and 16 soldiers, while Israelis killed 719 Palestinians, from October 7, 2023, to October 7, 2024 – far more than in any other year since 2005, when the UN began systematically recording fatalities. The number of Palestinian dead stem from Israel's continued use of excessive lethal force, including airstrikes and drone-launched missiles.⁸⁵

In September, Israel escalated airstrikes in Lebanon, following attacks using booby-trapped pagers and walkie talkies distributed among Hezbollah members that killed at least 32 people and wounded more than 3,250. Israeli ground forces invaded Lebanon on October 1. From October 7, 2023, to mid-November 2024, there were 3,445 conflict-related deaths and 14,600 wounded in Lebanon, most after mid-September. Over 400,000 people fled to Syria.⁸⁶ Armed groups in the Gaza Strip killed 6 hostages from Israel and continued to hold an estimated 100, including over 30 people believed to have died during the hostilities. Since October 7, 2023, Hezbollah, Iran, the Houthis in Yemen, and Palestinian armed groups in Gaza launched 28,000 rocket, missile and drone attacks, mostly intercepted, that killed at least 29 civilians in Israel and in Israeli-occupied territory as of mid-October. Twelve children were killed by a rocket in the Israeli-occupied Golan Heights; Hezbollah denied responsibility. The attacks displaced tens of thousands of people from the Gaza Envelope and northern Israel.⁸⁷

The Israeli authorities continued to commit the crimes against humanity of apartheid and persecution through their repression of Palestinians. In July, the International Court of Justice (ICJ) issued an advisory opinion finding Israel's presence in the occupied

⁸⁵ Human Rights Watch World Report 2025: Israel and Palestine <https://www.hrw.org/world-report/2025/country-chapters/israel-and-palestine>

⁸⁶ Ibid

⁸⁷ Ibid

Palestinian territory is unlawful, that Israel is in breach of the prohibition on racial discrimination and apartheid, that it should evacuate and dismantle all settlements and make reparation to Palestinians, including compensation and allowing Palestinians it displaced after 1967 to return to their homes, and that other governments should cease any recognition of, trade or investment in settlements and work to bring the illegal situation in the occupied territory to an end.

The EU, UK, and other countries resumed funding to UNRWA, the key humanitarian agency for Palestinians. The US continued to withhold funding to UNRWA, while it approved over 100 arms sales and provided Israel an unprecedented \$17.9 billion in security assistance. Countries including the Netherlands, Canada, and the UK suspended some arms transfers or licenses to Israel due to a clear risk of their arms being used in serious violations of international law.

3.2.1 The Gaza Strip

The 44,000 deaths in Gaza due to the conflict reported by the Gaza Ministry of Health did not include many people who died from illness, disease, or who were buried under the rubble. The data on deaths and injuries do not include civilian status, but 70 percent of the 8,200 fatalities the UN Human Rights office (OHCHR) had verified by September were women and children.

3.2.2 Displacement of civilians

Israeli forces forcibly displaced nearly all of Gaza's population, often multiple times. In October 2023, Israel ordered more than 1 million people in northern Gaza to evacuate within 24 hours. By May 2024, more than half of Gaza's population was crammed into the southern city of Rafah, which the Israeli military then attacked, forcing more than 1.4 million people to flee again. Beginning in October 2024, Israel cut all aid to northern Gaza and again forcibly displaced people there. Most of Gaza's territory was under military evacuation orders, part of a system of forcible transfer of Palestinian civilians that amounts to a crime against humanity. Al-Mawasi, the Israeli-declared "humanitarian zone," lacked adequate shelter, water, sanitation, or other infrastructure, and had a population density of 88,000 people per square mile as of August. Israeli attacks and demolitions by combat engineers and military bulldozers destroyed or damaged 63

percent of all Gaza's buildings, rendering much of the Strip uninhabitable, clearly constituting ethnic cleansing in some areas and violating Palestinians' right to return.⁸⁸

3.2.3 Infrastructure damage and Civilian Casualties

More than 87 percent of all schools, and all universities in Gaza were damaged or destroyed, including in attacks that were apparently unlawful. Since October 7, more than 10,000 students and 441 educational staff were killed in Gaza.

The United Nations Satellite Centre (UNOSAT) has released the 9th update of its assessment of the damage inflicted on buildings in the Gaza Strip. This analysis, based on very high-resolution satellite imagery collected on 3 and 6 September 2024, shows that two thirds or 66 percent of the total structures in the Gaza Strip have sustained damage. UNOSAT compared imagery captured on 3 and 6 September 2024 with previous data, providing a comprehensive view of the evolution of the destructions.

Those 66% of damaged buildings in the Gaza Strip account for 163,778 structures in total. This includes 52,564 structures that have been destroyed, 18,913 severely damaged, 35,591 possibly damaged structures and 56,710 moderately affected. The most impacted region overall is the Gaza governorate, with 46,370 structures impacted. Gaza City has been notably affected, with 36,611 structures damaged, of which 8,578 are totally destroyed.⁸⁹

The United Nations Satellite Centre (UNOSAT), in collaboration with the Food and Agriculture Organization of the United Nations (FAO), has also released an update on the health and density of cropland in the Gaza Strip. Approximately 68% of the permanent crop fields in the Gaza Strip exhibited a significant decline in health and density in September 2024. Over this one year of conflict, UNOSAT has consistently provided humanitarian workers with up-to-date data to contribute to their situational awareness.

⁸⁸ Human Rights Watch World Report 2025: Israel and Palestine <https://www.hrw.org/world-report/2025/country-chapters/israel-and-palestine>

⁸⁹ 66% of the total structures in the Gaza Strip have sustained damage, UNOSAT's analysis reveals | UNITAR <https://unitar.org/about/news-stories/press/66percent-total-structures-gaza-strip-have-sustained-damage-unosats-analysis-reveals>

This includes for instance, road assessments, agricultural damage assessments, and detailed analysis of the level of damage inflicted on cultural heritage sites, and schools.⁹⁰

3.3 Application of the Principle of Distinction in the conflict, including Challenges and Controversies.

It is important to note that Israel has described the Gaza Strip as an “enemy entity” since 2007.⁹¹ This term implies that all Palestinians living in Gaza are enemies of Israel, and this regime believes it can take any hostile action against them.⁹² Following this approach, in the present case, senior political and military officials of Israel have generally not distinguished between Hamas and Palestinian civilians in their statements. The remarks of Isaac Herzog, the President of Israel, stating that all Palestinian civilians are responsible for supporting Hamas, also reflect this view.⁹³ It should be noted that while most civilians (as voters, etc.) play a role in the actions of their government, these sorts of roles cannot be interpreted direct participation in in armed conflicts. As a matter of fact, They are ordinary people who may protest against military occupation or support repressive policies but are not military objectives⁹⁴, as the elements of direct participation do not apply to them. Therefore, there is no doubt that, in general, Israeli attacks on the Gaza Strip, based on such approaches, violate the principle of distinction.

⁹⁰ Ibid

⁹¹ In this regard see:
www.amin.org

⁹² See for example:

Israel-Palestine war: 'We are fighting human animals', Israeli defence minister says | Middle East Eye

⁹³ In this regard see:

Law and Survival in Israel and Palestine (justsecurity.org)

⁹⁴ In this regard see: Conceptualizing Civilians: Beyond “Innocence” - Lieber Institute West Point

CHAPTER 4

CHALLENGES TO APPLYING THE PRINCIPLE OF DISTINCTION.

4.0 Introduction

This chapter offers an extensive analysis of the conflict in Gaza and its compliance with IHL, particularly concerning the protection of civilians and civilian objects such as hospitals and infrastructure. Multiple reports including those from Human Rights Watch, and the United Nations Office for Human Rights, allege that the Israeli Defense Forces actions, like the use of explosive weapons, drones and precision-guided munitions with wide area effects in densely populated areas, frequently violate the IHL principle of distinction, leading to unprecedented civilian casualties. It further accentuates individual incidents from October 7 till date of the aerial bombardment and military onslaught in the Gaza Strip and the challenges encountered by both warring parties in applying the principle of distinction.

4.1 Asymmetric Warfare and Strategic Incentive

Asymmetric warfare refers to strategies embraced by a force when the military capabilities of belligerent powers are not merely unequal but are so profoundly distinct that they cannot execute the same type of assaults on one another.⁹⁵

Instances of asymmetric warfare tactics encompass; guerilla warfare and terrorist approaches such as hijacking and suicide bombs. These tactics, combined with the strategic incentives of weaker parties to exploit legal protections, present significant difficulties to the Principle of Distinction in IHL.

Asymmetrical warfare's nature itself is a challenge towards enforcement of the Principle of Distinction in modern warfare. It involves conflicts between a powerful country and a less equipped non-state actor. The weaker party, unable to confront the superior force through conventional means often adopts irregular tactics like guerilla warfare, ambushes, and blending in with civilians.⁹⁶ These tactics that the weaker parties adopt

⁹⁵ Customary IHL , Human Shields, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule97> (accessed on 24 October 2025)

⁹⁶ Emily Crawford, *Identifying the Enemy: Civilian Participation in Armed Conflict* (Oxford University Press 2015) 48-50

have detrimental effects on civilians since they can be killed or injured in the process of belligerence, hence challenging the enforcement of the distinction principle in modern conflict. By operating in civilian areas, or using civilian infrastructure for military objectives, non-state armed groups create dilemmas for state actors who risk breaching IHL if they retaliate. This tactic increases the likelihood of civilian casualties therefore undermining the protective function of the Principle of Distinction.⁹⁷

In asymmetric conflicts, the strategic interests of weaker parties often encourage deliberate violations of the Principle of Distinction. While these violations do not negate the legal obligations of the stronger party, they pose practical, moral, and operational challenges that cannot be addressed through legal frameworks alone. This underscores the need for context-sensitive military doctrine, restraint, and enhanced IHL training even in legally ambiguous settings.

4.1.1 Complexities of urban warfare and asymmetric conflicts in applying the principle of distinction.

One must know who and what may be targeted and who and what may not, and what protection to afford depending on the category which a person belongs to. Indeed, the basic axiom underlying IHL, i.e. that even in an armed conflict the only acceptable action is to weaken the military potential of the enemy, implies that IHL has to define who that potential is deemed to comprise and who, therefore, may be attacked and participate directly in the hostilities, but may not be punished for such participation under ordinary domestic law. Under the principle of distinction, all involved in the armed conflict must distinguish between the persons thus defined (the combatants) and civilians. Combatants must distinguish themselves (i.e., allow their enemies to identify them) from all other persons (civilians), who may not be attacked nor directly participate in the hostilities.⁹⁸

Today, the axiom itself is challenged by reality on the ground, in particular by the increasing “civilianization of armed conflicts.” If everyone who is not a combatant is a civilian, in many asymmetric conflicts the enemy consists exclusively of civilians. Even if, in non-international armed conflicts, members of an armed group with a “continuous

⁹⁷ Michael N Schmitt, ‘Precision Attack and IHL’ (2005) 87 (859) International Review of the Red Cross 445

⁹⁸ <https://casebook.icrc.org/law/principle-distinction> (accessed 25 October 2025)

combat function”, according to the terminology proposed by the ICRC, are not to be considered as civilians,⁹⁹ it is in practice very difficult to distinguish them from the civilian population. Furthermore, private military and security companies, whose members are usually not combatants, are increasingly present in conflict areas. On all these issues of “civilianization”, the concept of direct participation in hostilities is crucial, because civilians lose their protection against attacks while they so participate and may therefore be treated in this respect like combatants.

“Civilianization” is not the only phenomenon challenging the principle of distinction. First, everyone - without any distinction - in the power of a party benefits from fundamental guarantees of human treatment. Second, some States have adopted the concept of ‘unlawful combatants’, according to which these persons who directly participate in hostilities, when they have no right to do so, are neither civilians, and therefore are not protected by Geneva Convention IV, neither combatants, and therefore not protected by Geneva Convention III. Third, there is a tendency in an increasing number of asymmetric IACs, and even more in NIACs, for members of armed groups not to distinguish themselves from the civilian population. This leads some authors to even contend that the principle of distinction cannot realistically be applied in NIACs because in such conflicts non-State armed groups in particular rely on ordinary civilians for certain tasks. Finally, if the aim of the conflict is “ethnic cleansing”, the parties will logically and of necessity attack civilians and not combatants.

However, it is noteworthy that the scale of human death and destruction wrought by Israel's bombing of Gaza since October 7 2023, has been immense. According to the Israeli Air Force, between October 7 2023 and February 19 2024 over 29,000 targets in Gaza were attacked.¹⁰⁰ The rate at which Palestinians were killed in Gaza during this reporting period was reportedly higher than in any recent conflicts globally.¹⁰¹ As of 13th

⁹⁹ <https://casebook.icrc.org/node/20644#loss-of-protection> *Conduct of Hostilities II. The protection of the civilian population against the effects of hostilities, 7. Loss of protection: The concept of direct participation in hostilities and its consequences*

¹⁰⁰ <https://twitter.com/IAFsite/status/1759981689843925345> ; <https://breakingdefense.com/2024/02/israeli-air-force-struck-31000-targets-in-fourmonths-of-war/> ; <https://www.iaf.org.il/9737-61798-he/IAF.aspx>

¹⁰¹ <https://www.oxfam.org/en/press-releases/daily-death-rate-gaza-higher-any-other-major-21st-century-conflict-oxfam> ; The Israeli Army Has Dropped the Restraint in Gaza, and the Data Shows Unprecedented Killing - Israel News - Haaretz.com

June 2024, according to the Gaza Ministry of Health, 37,232 Palestinians have been killed, with over 85,000 Palestinians injured. In addition, several thousand are likely buried under rubble with more than 60 per cent of housing units destroyed or seriously damaged.

The conflict has also witnessed many tragic instances of entire families killed together, from infants to grandparents, many while in their homes (128,904 housing units have been damaged from October 7, 2023 to April 1, 2024) or in other places they had sought safety.¹⁰² According to the Gaza Ministry of Health, as of May 3rd, 2024, more than 3,129 families have been killed or injured together.¹⁰³

4.1.2 The Role of Non-State Armed Groups

The involvement of non-state armed groups presents a major challenge to the enforcement of the Principle of Distinction. Non-state armed groups are individuals or groups that are wholly or partially independent of governments and which threaten or use violence to achieve their goals.¹⁰⁴ The non-state armed groups often operate without formal military structures, uniforms or visible insignia, making it difficult for the opposing forces to identify who is a lawful combatant.¹⁰⁵ Many of the Non-state Armed Groups also deliberately blend into civilian populations, using homes, schools, or hospitals to launch attacks.¹⁰⁶

The growing involvement of non-state armed actors in contemporary armed conflicts greatly hinders the practical application of Principle of Distinction. The growing involvement of non-state armed actors in contemporary armed conflicts greatly hinders the practical application of the Principle of Distinction. Their unconventional methods such as using people as human shields, along with their frequent violations underscores the importance of context-sensitive approaches.¹⁰⁷

¹⁰² UNITAR/UNOSAT, Occupied Palestinian Territory-Gaza Strip, Imagery Analysis 01 April 2024 (19 April 2024).

¹⁰³ <https://t.me/MOHMediaGaza/5397>

¹⁰⁴ Hofmann & Schneekener 2011, p.2-3, Thomas Ward (2021), The new dogs of war: Non-state actor violence in international politics, Cornell University Press. ISBN 978-1-5017-5890-4. OCLC 1236896058

¹⁰⁵ Sandesh Sivakumaran, The law of Non-International Armed Conflict (Oxford University Press 2012) 234-236

¹⁰⁶ Ryan Goodman, 'The Detention of Civilians in Armed Conflict' (2009) 103 AJIL 48.

¹⁰⁷ Customary IHL, Human Shields, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule97> (accessed on 25 October, 2025)

4.1.3 The Use of Military Technologies, Such as Drones and Precision-Guided Munitions and Their Implications for Civilian Protection.

Israel's military arsenal includes a range of advanced weaponry designed for precision and impact.¹⁰⁸ A critical aspect of understanding the scale and impact of the conflict lies in examining the weapons and military technologies employed by Israel during these retaliatory operations.¹⁰⁹ Israel has been accused of testing new and potentially harmful weapons in Gaza, with claims that the region is being used as a testing ground for such weaponry.¹¹⁰ The use of weapons and military actions in Gaza has indeed raised significant concerns regarding IHL and the practical applicability of the Principle of Distinction. Israel's military operations in Gaza have been scrutinized for their impact on civilians, including attacks on hospitals, clinics, schools and residential areas, as well as indiscriminate use of weapons.

Hi-tech retaliation refers to the deployment of cutting-edge military technologies, cyber warfare, unmanned aerial vehicles (drones), AI, and precision-guided missiles to counter perceived threats or acts of aggression.¹¹¹

Hi-tech weaponry, including precision-guided munitions, cyber-attacks, and autonomous drones, has caused significant damage beyond physical destruction in Gaza. These advanced technologies have completely destroyed critical infrastructure, paralyzed communication networks, and compromised essential services such as water, electricity, and food. In addition to being distinct in several respects from conventional terrorism, hi-tech weapons have features that distinguish them from other types of weaponry. Hi-tech weapons, such as cyber tools, autonomous drones, and precision-guided munitions, operate with a level of sophistication and precision that conventional weapons cannot match.¹¹² Unlike traditional explosives or firearms, these advanced technologies can be

¹⁰⁸ Vohra, Anchal. 2023. "Israel's Military-Technology Complex Is One of a Kind." *Foreign Policy*, December 19. (<https://foreignpolicy.com/2023/12/19/israels-military-technology-complex-is-one-of-a-kind/>).

¹⁰⁹ Slesinger, Ian. 2022. "The limits of control: Technological agency, urban terrain, strategy and the state in the 2014 Gaza War." *Political Geography* 93: 102530.

¹¹⁰ Fouché, Gwladys. 2009. "Norwegian doctors call for investigation into weapons used on Gaza." *British Medical Journal* 338: B170.

¹¹¹ Balmuş, Cătălin, Ioan Cramar, and Andreea-Alexandra Cramar. 2022. The Impact of Technology on Warfare. *International Scientific Conference "Strategies XXI"* 18(1): 171–178.

¹¹² Zamprónha, Daniel and Aline Albuquerque. 2024. "Cheaper Precision Weapons: An Exploratory Study about the HESA Shahed 136." *Advances in Aerospace Science and Technology* 9(1): 40–59

deployed remotely, reducing the risk to operators and enabling strikes from great distances.¹¹³

Moreover, the psychological impact of hi-tech weaponry can be profound.¹¹⁴ The unpredictability and invisibility of cyber-attacks or the silent, precise strikes of drones can instill fear and uncertainty far beyond the immediate area of conflict.¹¹⁵ This aspect of hi-tech weapons creates a pervasive sense of vulnerability, as targets may feel defenseless against unseen and sophisticated threats.¹¹⁶ Many families have been displaced multiple times, fleeing from one area to another in search of safety, only to find themselves under attack again. Reports indicate that some civilians sought refuge in designated safe zones or shelters, only to be bombed in those locations as well.¹¹⁷

This repeated displacement has deepened the psychological trauma experienced by Gazans, as they are left with no sense of security or stability. The constant fear of bombardment, coupled with the loss of homes, loved ones, and community networks, has created a pervasive sense of vulnerability and despair among the population.¹¹⁸

4.2 EMBLEMATIC INCIDENTS OF VIOLATION OF PRINCIPLE OF DISTINCTION

The Al-Aqsa Storm operation, the Jabalya market, the Taj3 Tower Gaza City, the Jabalya Refugee Camp, the Al Breij Camp, the Al Buraq School and Ash Shujai'jei Gaza City events constitute incidents where the principle of distinction was challenged or violated.

¹¹³ Gilli, Andrea and Mauro Gilli. 2016. "The Diffusion of Drone Warfare? Industrial, Organizational, and Infrastructural Constraints." *Security Studies* 25(1): 50–84

¹¹⁴ Bøgg, Martin, Trine Filges, and Anne Marie Klint Jørgensen. 2018. "Deployment of personnel to military operations: impact on mental health and social functioning." *Campbell Systematic Reviews* 14(1): 1–127.

¹¹⁵ Coyne, Christopher J. and Abigail R. Hall. 2018. "The Drone Paradox: Fighting Terrorism with Mechanized Terror." *The Independent Review* 23(1): 51–67.

¹¹⁶ Yaacoub, Jean-Paul A., Hassan N. Noura, Ola Salman, and Ali Chehab. 2022. "Robotics cyber security: vulnerabilities, attacks, countermeasures, and recommendations." *International Journal of Information Security* 21(1): 115–158.

¹¹⁷ Al-Mughrabi, Nidal. 2024. "Israel steps up strikes across Gaza, orders new evacuations in north." Reuters, April 23. (<https://www.reuters.com/world/middle-east/israel-military-strikes-northern-gaza-heaviest-shelling-weeks-2024-04-23/>) Kekatos, Mary. 2023. "Hospitals in southern Gaza are at 'breaking point,' international organizations say." ABC News, December 5. (<https://abcnews.go.com/amp/International/hospitals-southern-gaza-breaking-point-international-organizations/story?id=105382793>).

¹¹⁸ Ahmed, Kaamil, Damien Gayle, and Aseel Mousa in Gaza. 2024. "'Ecocide in Gaza': Does scale of environmental destruction amount to a war crime?" *The Guardian*, March 29. (<https://www.theguardian.com/environment/2024/mar/29/gaza-israel-palestinian-war-ecocide-environmental-destruction-pollution-rome-statute-war-crimes-aoe>).

4.2.1 Jabalya market, 9th October 2023

Between 1030 and 1130 hours, massive explosions took place at Al Trance Street in Jabalya Refugee Camp, North Gaza - Gaza's largest refugee camp and an especially densely populated area. Al Trance Street forms part of Jabalya market and, as usual on a weekday, was packed with people. The explosions destroyed two multi-story buildings and severely damaged many other surrounding buildings. OHCHR verified that at least 42 people were killed, including 14 children and one woman¹¹⁹, and received information of an additional 18 fatalities. Reportedly, no warnings were issued, much like the four other incidents summarized below, which is consistent with people going about their regular business in the market at the time.

4.2.2 Taj3 Tower, Gaza City, 25th October 2023

At around 1630 hours, large explosions rocked a number of residential buildings, including Taj3 Tower – a new upscale seven-floor residential building in Al Yarmouk Street, Gaza City. An area of 5,700 square metres was essentially flattened, with at least seven structures, including Taj3 Tower, completely destroyed and three other structures showing signs of significant damage. OHCHR has verified that 105 people were killed, including 32 women and 47 children, and received information of an additional seven fatalities.

4.2.3 Jabalya Refugee Camp, 31st October 2023

At around 1420 hours, the IDF struck a residential block in densely populated Jabalya Refugee Camp. The strike completely flattened an area of at least 2,500 square metres, destroying 10 structures. It impacted across an approximate diagonal span of 75 metres, causing damage to at least 10 more buildings. OHCHR verified 56 people killed, including 12 women and 23 children, with information of an additional 43 fatalities. The IDF confirmed that they had undertaken the strike, claiming to have “killed Ibrahim Biari, the Commander of Hamas’ Central Jabaliya Battalion”, who was allegedly involved in the 7 October attack. Additionally, the IDF stated that “a large number of terrorists who were with Biari were killed” and that the “underground terror infrastructure” beneath the ground “collapsed after the strike.”¹²⁰

¹¹⁹ Fatalities are assessed based on OHCHR global methodology on casualty recording.

¹²⁰ Telegram: Contact @idfofficial. <https://t.me/idfofficial/4826> (accessed on 25 October 2025)

4.2.4 Al Bureij Camp 2nd November 2023

At around 1330 hours, a massive explosion struck a residential block in Al Bureij Camp, Middle Gaza, which was similar to Jabalya Refugee Camp in population density. The strike impacted an area of approximately 6,000 square metres, destroying at least 12 buildings and severely damaging at least 9 others. OHCHR verified 15 people killed, including 5 women and 9 children, with information of an additional 7 fatalities. The IDF has not mentioned Al Bureij Camp specifically before or after the incident. Several hours after the incident, the IDF stated that they “struck a number of military command and control centres used by senior Hamas terrorist operatives”, without making any specific reference to Al Bureij Camp.¹²¹

4.2.5 Al Buraq school, 10 November 2023

In the morning hours, the IDF struck a northern corner of Al Buraq School, in Al Nasr area, Gaza City. The attack happened while many internally displaced persons were reportedly sheltering inside the school. OHCHR received information that at least 34 people were killed. The strike destroyed a two-story section of the school, consisting of the ground floor and the two floors above, covering an area of 75 to 80 square metres. On 11 November, the IDF stated that “IDF aircraft struck Ahmed Siam, a company commander of the Naser Radwan Company of the Hamas terrorist organization... while hiding in the ‘al Buraq’ school, where additional terrorists” were also allegedly hiding.¹²²

4.2.6 Ash Shujai’yeh neighbourhood, Gaza City, 2 December 2023

At 1312 hours, the IDF hit structures in two neighbouring residential blocks on Abu Al Atham street in Ash Shujai’yeh area, Gaza City - one of the most densely populated residential areas in Gaza. The explosions caused destruction across an approximate diagonal span of 130 metres, destroying 15 buildings and damaging at least 14 other buildings at the site. OHCHR received information that at least 60 persons were killed. Several hours after the incident, at around 2130 hours, the IDF announced that the strike had killed Wissam Farhat, Al Qassam commander responsible for Ash Shujai’yeh

¹²¹ <https://t.me/idfofficial/4895> (accessed on 25 October 2025)

¹²² <https://t.me/idfofficial/5116>

Brigades, without mentioning any other targets or armed Palestinians killed in the incident.¹²³

4.3 Legal Analysis of the Foregoing Emblematic Incidents.

In order for an object or building to be considered a military objective it must meet two cumulative criteria; namely that (1) by its “nature, location, purpose or use [it] make[s] an effective contribution to military action” and, (2) the object’s “total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite military advantage.”¹²⁴

For the strikes on Jabalya market on 9 October, Taj3 Tower on 25 October, and Al Bureij Camp on 2 November, the IDF has not specified publicly what the military objective was, raising serious concerns over targeting. OHCHR monitoring indicates that IDF took an expansive approach to targeting, apparently considering members of de facto civilian administration and Hamas political structures not directly participating in hostilities, as well as civilian objects belonging to de facto authorities, as legitimate targets, in violation of the principle of distinction.¹²⁵ The IDF has also claimed that they had undertaken 10,000 airstrikes on Gaza, a relatively small and densely populated area, by 3 December, further raising concerns regarding the identification of targets.¹²⁶ Such policy or consistent practice¹²⁷ raises concerns as to systematic violation of the principle of distinction.

In furtherance of the Principle of Distinction, IHL prohibits indiscriminate attacks: which (a) are not directed at any specific military objective; (b) employ a method or means of combat which cannot be directed at any specific military objective; or (c) employ a method

¹²³ <https://twitter.com/AvichayAdraee/status/1731038138225602628>

¹²⁴ Rule 8, ICRC Study; AP I art 52(2)

¹²⁵ <https://t.me/idfofficial/3791> and <https://bit.ly/3rzUk6V>; <https://t.me/idfofficial/3942>; <https://x.com/IDF/status/1712489646536482827>; <https://t.me/idfofficial/4549>; see also <https://www.972mag.com/lavender-ai-israeli-army-gaza/>; <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/> (accessed on 25 October 2025)

¹²⁶ <https://t.me/idfofficial/5633> (accessed on 25 October 2025)

¹²⁷ The International Criminal Court has found that a policy can be inferred from facts that demonstrate that “the attack follows a regular pattern,” and that, “[t]he policy need not be formalised. Indeed, an attack which is planned, directed or organized - as opposed to spontaneous or isolated acts of violence - will satisfy this criterion.” Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424, para. 81. See also ICTY, Prosecutor v. Tadic, Case No. IT-94-1-T, Judgement, 7 May 1997, para. 653.

or means of combat the effects of which cannot be limited as required by IHL; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.¹²⁸

Examples of possible indiscriminate attacks monitored by OHCHR include the IDF's use of explosive weapons with wide area effects on Jabalya Refugee Camp on 31 October, on Al Buraq school on 10 November and Ash Shujai'yeh on 2 December.¹²⁹ The mere presence of one commander, or even several combatants, or of several distinct military objectives in one area, does not render an entire neighbourhood a military objective.¹³⁰ The use of weapons with wide area effects in densely populated areas may also amount to an attack employing a method or means of combat, the effects of which cannot be limited as required by international humanitarian law.¹³¹

¹²⁸ A/HRC/29/CRP.4, para. 415

¹²⁹ A/HRC/29/CRP.4, para. 226, ICRC, Customary International Humanitarian Law, Vol. 1, Rules 11 and 12; Additional Protocol I, art. 51(4). See for example ICRC, Explosive Weapons with Wide Area Effects: A Deadly choice in populated areas, p. 93, "the use in populated areas of large-calibre or high-payload munitions, which have a large destructive radius even when precision-guided, raises serious concerns... [regarding indiscriminate attacks] when the military objective is significantly smaller than the weapons' destructive radius, because in such situations the weapons' effects can be foreseen to be extensive both in terms of impact area and the magnitude of civilian harm likely to be caused."

¹³⁰ A/HRC/29/CRP.4, para. 293; see Aurel Sari, <https://lieber.westpoint.edu/israeli-attacks-gazas-tower-blocks> (accessed on 25 October 2025) / for the assessment that, "co-located structures that are functionally and perhaps even physically connected, but structurally distinct," do not amount to a single military objective, even where one of the buildings does.

¹³¹ A/HRC/29/CRP.4, para. 415

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS.

5.0 Introduction

The Israeli/Palestinian conflict has inflicted a profound toll on civilian populations, accentuating significant challenges in applying the principle of distinction in accordance with IHL. This study has examined the complexities of applying the principle of distinction in this particular contemporary armed conflict, analyzing the legal framework, challenges and implications for civilian protection. This chapter summarizes the main findings, offers recommendations for improving civilian protection, and discusses broader implications for IHL and the protection of civilians in modern armed conflicts.

5.1 SPECIFIC CONCLUSIONS

This study has demonstrated that the principle of distinction, a cornerstone of international humanitarian law, is frequently challenged in the Israeli/Palestinian. The analysis of case studies and incidents highlights significant challenges in applying the principle, resulting in civilian casualties and infrastructure damage. The study also found that while the Geneva Conventions and their Additional Protocols offer a solid legal foundation, they were designed with traditional, state centric warfare in mind. As a result, existing legal frameworks struggle to effectively govern contemporary asymmetrical conflicts and emerging technologies. Jurisdictional limitations further constrain accountability, especially when violations involve non-state actors or powerful states.

5.1.1 CHAPTER ONE

The Chapter plays a foundational role as it sets the stage for the preceding chapters and foreshadows what the study elucidates upon. It gives a detailed background of the research bringing to light the law of armed conflict and its fundamental principles, chief among them, the principle of distinction. Moreover, this chapter highlighted the research questions which aid to address the statement of the problem by providing solutions to the problem. This chapter in a nutshell gives the literature review and the methodology of study.

5.1.2 CHAPTER TWO

This Chapter's empirical review highlights the non-legal aspects affecting the enforcement of distinction in modern warfare. The enforcement of the Principle of Distinction in modern warfare is undermined by illicit challenges such as urban warfare, technological advancements, the behaviors of rebel militias, and asymmetric strategies. These factors complicate the identification of lawful targets and expose civilians to greater risks. Addressing these issues requires not only legal regulation but also practical, ethical, and strategic responses tailored to the realities of contemporary warfare. The rise of non-state armed groups further disrupt traditional IHL enforcement mechanisms. These actors often operate outside formal military structures, wear no uniforms, and integrate into the civilian population. Their deliberate use of tactics such as blending into civilian environments undermines the legal clarity needed to distinguish between combatants and protected persons.

5.1.3 CHAPTER THREE

This Chapter provides an overview of the Israeli-Palestinian conflict, including its history, key events and current status. Discuss the impact of the conflict on civilian populations, including casualties, displacement, and infrastructure damage. Finally the study will analyze the application of the principle of distinction in the conflict, including challenges and controversies.

5.1.4 CHAPTER FOUR

This Chapter discusses the complexities of urban warfare and asymmetric conflicts in applying the principle of distinction. In addition it examines the role of non-state actors, such as Hamas, and their impact on civilian populations and finally analyzes the use of military technologies, such as drones and precision-guided munitions, and their implications for civilian protection. The evolution of hi-tech weaponry has profoundly shaped modern military strategies and geopolitical dynamics. Hi-tech retaliation refers to the deployment of cutting-edge military technologies, cyber warfare, unmanned aerial vehicles (drones), AI, and precision-guided missiles to counter perceived threats or acts of aggression. This type of retaliation leverages recent technological developments to enhance the precision, impact, and efficacy of military actions. Additionally the proliferation of advanced military technologies, autonomous weapons systems, cyber

operations, and drone warfare, poses novel obstacles. These tools can function with minimal or no human oversight and may lack the cognitive capacity to make judgments about civilian status or military necessity. Consequently, the risk of violating the principle of distinction through disproportionate or misdirected attack is amplified.

5.2 RECOMMENDATIONS

5.2.1 GENERAL RECOMMENDATIONS

Strengthening compliance mechanisms for the principle of distinction by enhancing domestic military manuals and operational protocols to integrate clearer rules on the principles of distinction and proportionality. Establishing independent review processes for targeting decisions (internal or hybrid civilian–military bodies) and the Promotion mandatory post-strike reviews with public annual reporting to increase transparency.

5.2.2 Policy and Legal Reforms

At the international level, the legal framework should be modernized to be able to fulfill its role in changing means and methods of combat. International Humanitarian Law treaties and protocols should be updated to specifically address new forms of warfare such as cyber operations and the use of autonomous weapons.

Enhancing IHL training and accountability by ensuring that all parties to the conflict receive training on IHL principles, including the principle of distinction, and hold individuals accountable for violations. Accountability mechanisms should also be strengthened. The jurisdiction and support for institutions like the International Criminal Court should be expanded to pursue violations involving failure to distinguish between civilians and combatants.

Promotion of transparency and cooperation from all parties to the conflict, including non-state actors in order to enhance civilian protection. The establishment of independent investigation and reporting mechanisms to document incidents and ensure accountability for civilian casualties.

5.2.3 Protection of Civilians

Implementation of measures to minimize civilian harm, such as warning civilians of impending attacks and providing safe passage for civilians. In furtherance the protection

accorded to designated safe zones such as hospitals, schools and critical infrastructure should be enhanced in order to epitomize the protections and insulation envisaged by the principle of distinction.

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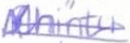
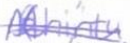
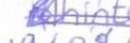
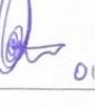
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DECLARATION I, Mauzhya Kenneth Shilukobo Chintu, declare that
this dissertation entitled PROTECTING CIVILIANS DURING ARMED
CONFLICT: A CRITICAL ANALYSIS OF THE PRINCIPLE OF DISTINCTION
IN THE ISRAELI/PALESTINIAN CONFLICT which is hereby submitted
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