

Operation Protective Edge: Identifying IHL violations

During four weeks of hostilities between Israel and Palestinian armed groups, strong charges of violations of international humanitarian law (IHL) and possible war crimes were made against all parties to the conflict.¹ It should be noted that an independent investigation and a comprehensive judicial process are required to definitively identify war crimes. That said, it is possible to highlight concerning trends that are particularly alarming from an IHL perspective. Each of the following cases,² while based on initial reports, could amount to war crimes. They deserve international, credible and impartial investigation with a view to ensuring accountability.

Core principles of IHL

All parties to the conflict must fully respect IHL at all times, particularly bearing in mind the core principles of IHL in the conduct of hostilities:

- **Distinction:** Parties to the conflict must distinguish at all times between legitimate military objectives and civilians or civilian objects. Only military objectives are a lawful target of attack;³

- **Proportionality:** An attack on a military target that may be expected to cause loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited;⁴
- **Precaution:** All feasible measures must be taken to limit the harm caused to civilians. This refers to warnings given, the choice of weaponry used and the time chosen to launch the attack.⁵

If information comes to light changing the assessment under any of the principles in a manner that might lead to their violation, then the strike must be suspended.

In addition to the core principles, there are several crucial points that should be remembered when analysing the cases below, and others of a similar nature:

- The presence of individual fighters in a civilian population does not affect the civilian status of the population.⁶
- Attacks that do not distinguish between civilians and military objectives qualify as indiscriminate attacks.⁷

¹ [‘UN human rights body to investigate claims of Israeli violations in Gaza’](#), The Guardian (23 July 2014).

² [‘Attacks on medical facilities and civilians add to war crime allegations’](#), Amnesty International (21 July 2014).

³ This list is by no means exhaustive. Rather it is a sample, based on initial reports, of some of the most alarming incidents during the latest round of hostilities.

⁴ Rule 8 International Committee of the Red Cross (ICRC) Customary IHL Rules; Article 52(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. “In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military

action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

⁵ Rule 14 ICRC Customary IHL Rules. See also Israel’s Manual on the Rules of Warfare (2006): “Proportionality must be maintained: an act must not be performed if the damage to civilians/the environment exceeds the concomitant military benefit.”

⁶ Rule 15 ICRC Customary IHL Rules.

⁷ Practice relating to Rule 5 ICRC Customary IHL Rules. See also *Prosecutor v. Galic* (ICTY, Trial Chamber, 2003) Para 50. In the event that fighters are present in civilian areas or objects, warring parties are still bound by the core principles of IHL.

- Both the launching of indiscriminate attacks and direct attacks on civilians are prosecutable as war crimes under IHL.⁸
- An attack launched with the expectation that it would cause death or injury to civilians and/or damage to civilian objects that would be clearly excessive in relation to the concrete military advantage anticipated is considered a prosecutable war crime.
- When in doubt as to whether an object is being used for military purposes, it must retain its civilian status and may not be attacked.⁹
- The failure of civilians to adhere to warnings to leave certain locations does not mean they lose their civilian status. Warnings, while welcome, in no way absolve warring parties of their responsibilities under IHL.

Six Illustrative Cases

1. Abu Jame' family

Twenty-five people were killed when the Israeli military struck the Abu Jame' family home on Sunday, 20 July. Nineteen children and five women were among the dead. Three of the five women were pregnant. According to [reports](#), the likely target of the attack was alleged Hamas operative Ahmad Suliman Sahmoud, who was also killed in the attack. The same reports claim that no prior warning of attack was given.

This attack is problematic for a number of reasons and raises serious questions about Israel's adherence to the core principle of

distinction between civilian objects and military targets. The mere presence of a fighter does not automatically mean that a civilian home becomes a legitimate military target.

Even if we were to assume that the home has lost its civilian status, which would be unlikely in the circumstances, the attack is also extremely alarming from the point of view of both proportionality and precaution, given the number of civilian casualties. Was the death of 24 civilians excessive in relation to the military advantage gained from the elimination of one Hamas fighter? Similarly, could the fighter have been targeted at a different (later or earlier) time or place that would have resulted in less civilian death and injury?

A significant number of Israeli attacks against civilian homes have resulted in large numbers of civilian deaths. Attacks against the [al Batsh](#), [al Qassas](#) and [al Najjar](#) families as well as the [a-Dali](#) building, which killed 35 people including 18 children, raise concerns similar to those in the Abu Jame' case. These examples, when combined with [statements](#) made by Israeli officials, point to a systematic trend of targeting civilian [homes](#). More than 10,500 homes have been [destroyed](#) or severely damaged by Israel since the beginning of the current hostilities.

2. Al-Aqsa Hospital, medical staff and medical transport

Five people were killed and seventy wounded when Al-Aqsa Hospital was shelled by the Israeli military on 21 July. According to [reports](#), ambulances tried to remove patients and those injured in initial blasts but continuous shelling prevented them from accessing the hospital. Palestinian officials stated that no prior warning was given, and the hospital came under direct

⁷ Rule 11, 12 ICRC Customary IHL Rules.

⁸ Rule 156 ICRC Customary IHL Rules.

⁹ Rule 6 ICRC Customary IHL Rules.

fire at least four times. The [ICRC](#), amongst others, condemned the attack.

Deliberate attacks against hospitals, medical staff, or medical transport are serious violations of IHL and are prosecutable as war crimes. Due to their inherent humanitarian character, the circumstances in which medical facilities may lose their protection are exceptional.¹⁰ IHL is very clear on the extremely limited circumstances when they may be attacked;

“The protection to which civilian hospitals are entitled shall not cease unless they are used to commit...acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.”

Beyond adherence to the principle of distinction, these attacks pose serious questions about Israel’s respect for the principles of proportionality and precaution. While it would depend on the exact circumstances of each case of an attack on a hospital, it is difficult to imagine that the proportionality test would be satisfied, bearing in mind the long-term damage to the civilian population, the limited availability of medical supplies and the ongoing closure of Gaza that prevents the development and repair of essential infrastructure. Furthermore, it is important to determine exactly what precautions were taken and warnings given prior to any attack on a medical facility.¹¹

¹⁰ Rule 35 ICRC Customary IHL Rules.

¹¹ While the period of ‘reasonable time’ associated with warnings of attacks on hospitals is not specified, it must be long enough to

At least 17 hospitals and 7 PHC clinics were [damaged](#) during the hostilities. In addition, at least 19 health workers have been killed and 22 ambulances [damaged](#) in Israeli attacks. Twelve of these were severely damaged or destroyed. The ICRC also [condemned](#) the targeting of ambulances as a serious violation of IHL.

For more detailed analysis of the protection afforded to hospitals under IHL, please see Diakonia’s [Operation Protective Edge: Medical facilities and IHL](#).

[3. Jabaliya UN Elementary School](#)

At least 15 people were killed and more than 100 injured when three Israeli shells struck the Jabaliya Elementary A&B UN [School](#) in the north of the Gaza Strip on 30 July. According to UNRWA, the exact coordinates of the school had been communicated to the Israeli military 17 times, with the most recent communication coming hours before the shelling. Some 3,300 internally displaced persons were sheltering in the school after having been warned by Israeli forces to leave their homes.

Given the number of civilians present, and bearing in mind that no allegations have been made that weapons were fired from within the school, the UN school cannot have been considered a legitimate military target. To strike such a civilian object represents a flagrant disregard for the principle of distinction, one of the fundamental rules of IHL. The shelling may amount to an indiscriminate attack due to the inherent nature of the weapons used, representing a [serious](#) violation of IHL and one that is prosecutable as a war crime.

allow the hospital to respond to unfounded accusations, to cease the unlawful acts and retain its protected status, or to remove the hospital patients to safety before an attack.

Six UNRWA schools acting as shelters have been [directly](#) fired upon by Israel during the current hostilities.

[4. Shuja'ia neighbourhood](#)

Israel's sustained bombardment of Shuja'ia over a period of several days has leveled entire sections of the neighbourhood, resulting in hundreds of civilian deaths and vast damage to civilian objects. In one specific example, at least three shells or airstrikes hit the busy Shuja'ia bazaar area where civilians were shopping for foodstuffs on Wednesday, 30 July. Seventeen people were killed and some 200 injured in the attack.

The large-scale use of indiscriminate weapons – including [flechettes](#), artillery and tank shells – in densely populated urban areas represents a violation of the core principle of distinction, as these weapons cannot differentiate effectively between civilians and fighters. Beyond this, the application of the principles of proportionality and precaution should also be examined in the case of Shuja'ia. The attack on Shuja'ia bazaar took place during a ceasefire,¹² when it should be expected that more civilians would be present in the market due to the lull in hostilities. Choice of weapons, timing and locations of attacks and the excessive numbers of civilian death and injury, in addition to the devastation that was wreaked on the Shuja'ia neighbourhood, all raise serious concerns about Israel's compliance with the three core principles of IHL.

Khan Younis, Khuza'a, Beit Hanoun and Rafah are examples of other civilian neighbourhoods in Gaza that suffered widespread destruction

under Israeli bombardment and raise similar concerns to the attack on Shuja'ia. According to [reports](#), the 'Hannibal Directive', which advocates the "massive use of force" in order to prevent the capture of an Israeli soldier, was fully implemented in Rafah. The implementation included the use of tank shells, artillery bombardment and airstrikes in a densely populated area, resulting in the death of more than 130 Palestinians, and again indicates a serious violation of the core principles of IHL by Israel.

[5. Gaza Power Plant](#)

On Tuesday, 29 July, an Israeli airstrike destroyed Gaza's only power plant, leaving close to 1.8 million people without electricity. Crucially, the attack has also left hospitals and other essential civilian infrastructure, including sewage treatment and water supply, reliant on generators.

A power plant is an inherently civilian object. As such, it cannot be the object of attack. Even if we were to accept that a power plant is used for military purposes in addition to civilian (a dual use target), it is highly unlikely that an attack on a territory's sole power plant would be deemed proportionate in light of the excessive negative impact that this would have on civilians. This is especially relevant in Gaza, given the lack of sustainable alternative power supplies, the chronic shortage of fuel, the lack of material for repair and the ongoing closure of the Gaza Strip. According to initial [reports](#), repair of the plant could take at least twelve months.

The attack on the plant again raises doubts about Israel's adherence to the core principles of IHL. In this case, serious questions should be asked with regard to respect for the principle of

¹² Israel did not include the Shuja'ia neighbourhood in the area covered by the ceasefire. Nonetheless, the point about precautions and timing of attack still stands.

distinction as well as the principle of proportionality. Gaza's power plant has previously been targeted by the Israeli military, including in a 2006 attack that B'Tselem [highlighted](#) as a possible war crime.

6. Palestinian rocket attacks

Since the beginning of the current round of hostilities, Palestinian armed groups have [launched](#) over 3,500 rockets and some 800 mortars into Israel, [killing](#) two Israeli civilians and a Thai national. The launching of indiscriminate attacks violates the core principle of distinction, amounts to a serious violation of IHL and is prosecutable as a war crime.

Furthermore, Palestinian armed groups must not [situate](#) military assets in UN buildings¹³ or in densely populated civilian areas, nor should they launch attacks from these areas.

Core Principles of IHL – How do we identify violations?

In each of the cases identified above, there are key questions that help to ascertain the legality of the strikes.

Necessity

- What was the military advantage sought?
- Was there any other way of securing the same military advantage?

Distinction

- Was the target a legitimate military target?
- What was the intended military objective of the attack?
- How was the military objective/target determined?
- Was the target a civilian object that lost its protected status? If so, how did it lose its

protected civilian status? What was the clear, effective contribution it was making to military action?

- Was there any doubt as to the military nature of the target?
- Can the weapons used distinguish effectively between civilian and military targets?

Proportionality

- How gravely did the attack harm civilians?
- What civilian objects were expected to be harmed?
- Was the harm anticipated excessive in relation to the concrete military advantage gained?

Precaution

- Was there sufficient military intelligence available on the target?
- What precautions were taken to minimise civilian casualties? Based on previous experience, were they likely to have been effective?
- What types of weapons were used to carry out the attack? Why was this weapon chosen?
- What effective methods of warnings were issued to the civilian population?
- Could the military advantage have been gained by using different weapons or by launching the attack at a different time/location that would have resulted in less civilian harm?
- Did the military verify if civilians were heeding the warnings issued? How?
- Have any revisions been made to precautions taken on account of the massive number of civilian death and injury?

Specific questions in the case of attacks on medical facilities, transport, personnel

- Why did the hospital lose its protected status?
- What was the primary target?

¹³ On at least two separate occasions, UNRWA has [found](#) rockets hidden in vacant schools in Gaza.

- What was the anticipated military advantage? Could this have been achieved in other ways?
- What warning was provided?
- What time limit was provided?
- What was the response from the hospital to the warning?
- How many civilians and civilian objects were harmed/damaged?
- What is the expected long-term harm to civilian objects and the civilian population?
- What effective precautions were taken to minimise civilian harm?

Accountability

Based on the initial reports of [Palestinian](#), [Israeli](#) and [international](#) human rights organisations, as well as statements from the [UN](#) and the [ICRC](#), it is clear that serious, widespread violations of IHL were perpetrated between the 7 July and the beginning of the current ceasefire on 5 August. Those responsible for violations, particularly war crimes, must be held accountable.

In order to address the current climate of impunity and absence of rule of law in Israel and the occupied Palestinian territory (oPt), Diakonia recommends that the international community give its full support to – and ensure the credibility and impartiality of – the Commission of Inquiry [established](#) by the UN Human Rights Council.