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# GAZA DESTROYED

International Legal Obligations and  
Property Destruction





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SOHRI works within the framework of the principles established in the Universal Declaration of Human Rights and other international human rights instruments regardless of the identity or affiliation of the victim or violator. We research and document human rights violations, relying on primary sources and our extensive networks within various civil society to investigate and report on cases and issues of pressing concern.

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## INTERNATIONAL LEGAL OBLIGATIONS AND PROPERTY DESTRUCTION

In the context of armed conflict between Israel and Palestinian armed groups in the Gaza Strip, the principles of international humanitarian law, specifically the laws of war, dictate the conduct of both parties. This legal framework applies universally, encompassing states and non-state armed groups involved in the conflict. The Israeli government, in justifying its actions during the recent military operation following October 7th, cited various reasons for the destruction of property in Gaza.

According to official statements, the buildings targeted were believed to be used by Hamas, potentially booby-trapped, concealing entrances to tunnels, or strategically positioned for future attacks near the armistice line with Israel. The accuracy of these claims will be subject to further examination in a separate report, prompting critical legal considerations. The Swedish Observatory for Human Rights Information (SOHRI) asserts that the extensive destruction of property by Israel contravenes its international legal obligations.

International humanitarian law is designed to address the legality of conduct during armed conflict (*jus in bello*) rather than the decision to go to war (*jus ad bellum*). While the Hague Regulations of 1907 and the First Additional Protocol of 1977 to the Geneva Conventions (Protocol I) govern the methods and means of warfare, their formal applicability to the Gaza conflict is debated. Nevertheless, most of their provisions are considered reflective of customary law. Additionally, Common Article 3 of the Geneva Conventions and provisions of the Fourth Geneva Convention of 1949 regarding occupied territories are pertinent. A fundamental tenet of the law regulating hostilities is the principle of distinction, mandating parties to differentiate consistently between combatants and civilians. Military operations must exclusively target combatants and other military objectives, with civilians and civilian objects exempt from direct attack.

Civilian objects, defined as those not serving military purposes, enjoy protection from attack. Military objectives, on the other hand, are objects that contribute effectively to military action and offer a definite military advantage. Objects normally dedicated to civilian purposes, like homes, schools, places of worship, and hospitals, are presumed immune from attack. This safeguard continues unless such civilian objects transition into military objectives. Once a civilian object ceases to contribute to the adversary's military goals, it regains its immunity from attack.

Prohibited under international humanitarian law are deliberate, indiscriminate, or disproportionate attacks against civilians and civilian objects. Attacks are considered indiscriminate when they lack a specific military objective or involve methods or means of warfare incapable of targeting military objectives or controlling their effects. A disproportionate attack occurs when the expected incidental loss of civilian life and damage to civilian objects surpasses the military advantage anticipated, and such excess is both concrete and direct.

In the course of military operations, parties to a conflict must exercise constant care to shield the civilian population and civilian objects from the impact of hostilities. It is incumbent upon them to adopt precautionary measures, aiming to prevent and, in any case, minimize incidental loss of civilian life, harm to civilians, and damage to civilian objects.

Before launching an attack, parties involved must undertake all feasible measures to ascertain that the targets are military objectives rather than civilians or civilian objects. According to the International Committee of the Red Cross (ICRC) in its Commentary to Protocol I, the term "feasible" implies that those conducting an attack must take necessary steps to identify the target as a legitimate military objective "in good time to spare the population as far as possible."

The United Kingdom military manual illustrates this principle, clarifying that mere suspicion, without supporting evidence, is inadequate to justify an attack on a facility like a schoolhouse, even if it is strategically positioned.

The Hague Regulations expressly forbid the unnecessary destruction of the enemy's property during hostilities. The Geneva Conventions go further, categorizing the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" as a grave breach. In the context of occupation, Article 53 of the Fourth Geneva Convention specifically prohibits the occupying power from destroying property except when deemed absolutely necessary by military operations. This prohibition against "wanton destruction" traces its roots back to the US Lieber Code of 1863, representing one of the earliest codifications of the laws of war.

The principle of military necessity, articulated in the Lieber Code and subsequently endorsed by the International Committee of the Red Cross (ICRC), stipulates that only measures indispensable for securing the ends of war and lawful under modern law and usages of war are considered necessary. Importantly, military necessity cannot serve as a justification for violating explicit provisions of international humanitarian law (IHL), as these rules already incorporate the requirements of military necessity. This concept reinforces the legal obligation to differentiate between military objectives and civilian objects, allowing attacks solely on the former and prohibiting destruction of civilian property if the anticipated harm to civilians is disproportionate to the expected military advantage.

The concept of military necessity categorically rejects measures intended to justify an otherwise unlawful attack, those not aimed at defeating the enemy, or actions that excessively damage civilian objects in relation to the concrete and direct military advantage anticipated from the attack. While military planners enjoy significant autonomy in determining appropriate tactics for military operations, this autonomy is subordinate to the laws and customs of war.

Based on findings and on-the-ground investigations in Gaza, the Swedish Observatory for Human Rights Information (SOHRI) determined that the destroyed properties did not qualify as military objectives in the widely accepted sense. Even when the Israel Defense Forces (IDF) cited a military rationale for the destruction, the objects failed to meet the requirements for a military objective and, consequently, were not justified targets for attack or destruction. SOHRI distinguishes such cases from instances where civilian property served as a legitimate military objective, such as when employed by Palestinian armed groups for deploying fighters, storing ammunition or other materiel, or booby-trapping, thereby making them susceptible to targeting.

As highlighted, a civilian object transforms into a military objective subject to attack if it makes a tangible contribution to military action and its destruction, given the prevailing circumstances, offers a clear military advantage. These criteria play a pivotal role in determining the legality of property destruction. According to the regulations outlined in the US army field manual concerning destruction in the context of hostilities, a "reasonably close connection between the destruction of property and the overcoming of the enemy's army" must exist.

Instances identified by the Swedish Observatory suggest that property was destroyed both for its historical use as a military objective (possibly for punitive reasons) and for its anticipated future use in a military capacity (for anticipatory reasons). International humanitarian law explicitly prohibits the punitive destruction of property and imposes strict limitations on what qualifies as a military objective's future use.

The destruction of property that is no longer or was previously used as a military objective is not permissible. The UK military manual addresses this in the context of recently captured areas, stating that once a defended locality has surrendered or been captured, only further damage necessitated by the exigencies of war is allowed. This includes actions such as removing fortifications, demolishing military structures, destroying military stores, or implementing measures for the defense of the locality. It is expressly prohibited to destroy a public building or private house simply because it was defended. Respected academic commentators have criticized, as a matter of law, the IDF's destruction of houses for punitive purposes.

The distinction between the destruction of houses as a legitimate integral part of military operations and the demolitions carried out post-combat as a punitive measure is crucial. Israel has employed punitive measures in its counter-terrorism efforts in occupied territories, arguing that if a house is used for combat purposes, such as hurling hand grenades or preparing attacks, it transforms into a military base. According to this perspective, there is no distinction between an immediate military reaction leading to its destruction and later demolition as a punitive measure. However, it is a misconception to believe that a civilian object, like a residential building, is permanently tainted as a military objective once used for combat purposes. During ongoing combat, the destruction of property, even in occupied territories, is permissible if deemed necessary by military operations. However, post-military operations, the destruction of property is no longer compatible with modern law of international armed conflict[1].

The status of a civilian object as a military objective hinges on the concrete advantage it provides at the time, especially of an anticipatory nature. For instance, a military unit can destroy a house that would obstruct fields of fire during an expected enemy attack. Nevertheless, the presumption persists that a civilian object is not a military objective. Acting solely on the basis of potential enemy intentions is insufficient grounds for attacking a civilian object. As the commentator notes, field intelligence revealing that the enemy intends to use a particular school as a munitions depot does not justify an attack against the school as long as the munitions have not been moved in. He emphasizes that purpose is predicated on intentions known to guide the adversary, not on those hypothetically figured out in contingency plans based on a 'worst-case scenario'[2].

The ICRC's authoritative Commentary on Protocol I emphasizes that "it is not legitimate to launch an attack which only offers potential or indeterminate advantages." Similarly, the authors of the New Rules for Victims of Armed Conflicts stress that the military advantage must be "concrete and perceptible" and not "hypothetical and speculative."

In a relevant case, the Eritrea Ethiopia Claims Commission, addressing the destruction of civilian property by Ethiopian forces retreating from occupied territory, expressed disagreement with the notion that denial of potential future use of properties, which are not directly usable for military operations like bridges or railways, could ever be justified under Article 53 on the destruction of property.

As highlighted by the commentator, "Certain objects are normally (by nature) dedicated to civilian purposes and, as long as they fulfill their essential function, they must not be treated as military targets"[3]. Objects such as civilian dwellings and schools may be deemed military objectives only when they are making an "effective contribution to military action." The dominant consideration should be "the circumstances ruling at the time"[4].

Some academic commentators stress that the criterion that civilian objects be considered as offering a definite military advantage in the circumstances ruling at the time "is crucial." Without this limitation to the actual situation at hand,

the principle of distinction would be meaningless, as every object could, in abstracto and under possible future developments, become a military objective. It would suffice that in the future, enemy troops could occupy a building and transform it into a military objective[5].

SOHRI's investigation into many incidents of demolitions indicates an expansion by the IDF of the "buffer zone" between Israel and Gaza. While the law of occupation allows certain security measures – an occupying power can take preventive measures to enhance the security of its forces, such as patrols, fortifications, checkpoints, and taking control of private property – the law concerning the destruction of civilian property remains the same. According to the ICRC Commentary to the Fourth Geneva Convention, the "prohibition of destruction contained in [article 53 dealing with the law of occupation] may be compared with the prohibition of pillage and reprisals." There is no exception under the Fourth Geneva Convention to Article 53, which limits the destruction of property to that which is absolutely necessary for "military operations."

In conclusion, SOHRI finds that IDF doctrine appears to inappropriately conflate military operations linked to fighting with security measures intended to reduce the general risk to the occupying power. This expansive interpretation of military operations, with a broader latitude for destruction, has led to the incremental expansion of the buffer zone and excessive destruction.

Moreover, where destruction is permitted as a matter of imperative military necessity, it must not be disproportionate. It cannot be expected to cause damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated. As the Commentary to the Fourth Geneva Convention states, "whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantage gained with the damage done."

In terms of individual responsibility, war crimes encompass serious violations of international humanitarian law committed with criminal intent. Grave breaches of the Fourth Geneva Convention include the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." Criminal intent involves violations committed intentionally or recklessly.

Individuals may be criminally liable for attempting to commit a war crime, as well as assisting, facilitating, aiding, or abetting one. Additionally, those planning or instigating the commission of a war crime can face responsibility. Commanders and civilian leaders may be prosecuted for war crimes under the principle of command responsibility if they knew or should have known about the commission of war crimes and failed to take sufficient measures to prevent or punish those responsible.

The Rome Statute of the International Criminal Court designates wanton destruction as a war crime. The International Criminal Tribunal for the former Yugoslavia (ICTY) defined the elements of this war crime, requiring: (i) large-scale destruction of property; (ii) absence of justification by military necessity; and (iii) intentional acts or reckless disregard for the likely destruction. The ICTY emphasized that "devastation of property is prohibited except where justified by military necessity," and for it to be punishable, it must be intentional or a foreseeable consequence of the accused's actions.

International humanitarian law imposes a duty on states to investigate war crimes allegedly committed by their armed forces or individuals within their jurisdiction. Those found responsible should be prosecuted in courts meeting international fair trial standards or transferred to another jurisdiction for a fair trial. The laws of war also mandate states to provide full reparations, including direct compensation to individuals, for losses resulting from violations of these laws.

## The Gaza Blockade and Israeli Obligations under the Laws of Occupation

The issue of the Gaza blockade and Israeli obligations under the laws of occupation is particularly pertinent to the humanitarian situation in Gaza. The Fourth Geneva Convention of 1949, to which Israel is a party, governs the law on occupied territories. Despite Israel's withdrawal of military forces and settlers from the Gaza Strip in 2005, it still maintains control over Gaza's airspace, sea space, land borders, as well as essential services such as electricity, water, sewage, telecommunications networks, and population registry.

According to Article 55 of the Fourth Geneva Convention, occupying powers have a duty to ensure the security and well-being of the civilian population under their control. This includes obligations to guarantee the food and medical supplies of the population and to permit and facilitate the provision of humanitarian relief. Even though Israel's blockade of the Gaza Strip continues, depriving the population of essential items such as food and fuel, it constitutes a form of collective punishment, contravening Article 33 of the Fourth Geneva Convention.

Customary international humanitarian law prohibits actions such as attacking, destroying, removing, or rendering indispensable objects for the survival of the civilian population. Simultaneously, it mandates parties to a conflict to allow and facilitate the rapid and unimpeded passage of impartially distributed humanitarian aid to the population. Starvation of the civilian population as a method of warfare is strictly prohibited. Belligerent parties are obliged to permit the free passage of food relief to civilians at risk and cannot arbitrarily refuse consent for relief operations. While they can control the content and delivery of humanitarian aid to prevent the inclusion of weapons, a deliberate refusal to grant access to these supplies in response to military action can constitute a form of collective punishment or an illegal reprisal against the civilian population.



## Recommendations:

### 1. To Israel:

- **Review and Adjust Military Operations:** Israel should critically review its military operations in the Gaza Strip, ensuring that they adhere strictly to the principles of proportionality and distinction as outlined in international humanitarian law.
- **Facilitate Humanitarian Access:** Israel should take immediate steps to ease restrictions on the entry of humanitarian aid into the Gaza Strip, addressing the pressing needs of the civilian population. Ensuring the rapid and unimpeded passage of essential supplies is crucial for upholding human rights and fulfilling its obligations under international law.

### 2. To the International Community:

- **Promote Dialogue and Diplomacy:** The international community, including key stakeholders and regional players, should actively promote diplomatic efforts and engage in constructive dialogue to address the root causes of conflicts in the region. Sustainable peace requires a commitment to resolving underlying issues through peaceful means.
- **Humanitarian Assistance and Rebuilding:** International actors should coordinate efforts to provide substantial humanitarian assistance to affected populations in conflict zones, with a focus on rebuilding infrastructure, healthcare, and educational facilities. Support for post-conflict reconstruction is essential for fostering stability and resilience.

### 3. To the United Nations:

- **Ensure Accountability:** The United Nations should play a central role in ensuring accountability for violations of international humanitarian law. It should conduct thorough investigations into reported war crimes and hold responsible parties accountable, irrespective of their affiliations. This will contribute to a culture of accountability and justice.
- **Enhance Conflict Mediation:** The UN should intensify efforts in conflict mediation and resolution, leveraging diplomatic channels to bring conflicting parties to the negotiating table. Strengthening UN mediation capacities can contribute to preventing and mitigating the impact of conflicts.

### 4. To the European Union:

- **Leverage Diplomatic Influence:** The European Union should utilize its diplomatic influence to encourage dialogue between conflicting parties and support initiatives aimed at peaceful resolution. Diplomatic engagement can contribute significantly to de-escalation and the restoration of stability.
- **Human Rights Advocacy:** The EU should actively advocate for the protection of human rights in conflict zones, leveraging diplomatic and economic tools to incentivize compliance with international humanitarian law. Prioritizing human rights considerations in foreign policy decisions can foster a global culture of respect for fundamental freedoms.

## REFERENCES

- [1] See Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, pp. 218-19 (citations omitted).
- [2] *Ibid.*, p. 90.
- [3] Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, pp. 90-91.
- [4] *Ibid.*, p. 91.
- [5] Marco Sassoli and Lindsey Cameron, "The Protection of Civilian Objects – Current State of the Law and de lege ferenda," in Natalino Ronzitti and Gabriella Venturini (eds), *The Law of Air Warfare: Contemporary Issues* (Utrecht: Eleven Int., 2006), p. 48.

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