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Israel-Hamas war: How international humanitarian law applies to the conflict - Sasha Borissenko

**Sasha Borissenko**

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Palestinians recover the bodies of the al Meghari family, who were killed in the Israeli bombardment of the Gaza Strip in Bureij refugee camp, Gaza, on November 14. Photo / AP

OPINION

As protests continue across the country over the indescribable atrocities and rising death toll in Gaza, Israel, and

the West Bank, you can almost taste the discomfort among the country's leading politicians as they awkwardly dance around drawing a line in the sand.

By sand, I'm referring to [a recent poll by Talbot Mills Research](#), which found 60 per cent of respondents want the Government to call for an immediate ceasefire in Israel and Palestine to prevent further civilian deaths.

The United Nations defines a "humanitarian pause" as a "temporary cessation of hostilities purely for humanitarian purposes".

A "ceasefire" is broader, requiring fighting to stop and to "allow parties to engage in dialogue, including the possibility of reaching a permanent political settlement".

Contrast this to news the United Nations Security Council finally [backed a resolution calling for a humanitarian pause](#) in Gaza last week, following four unsuccessful attempts since October.

Let's look at this "humanitarian pause" and humanitarian international laws in greater detail.

The framework centres around the four Geneva Conventions (and Additional Protocols), which prescribe the rules around war and promote respect for life and the dignity of individuals.

The Geneva Conventions


The First Geneva Convention updated earlier versions created in 1864, 1906, and 1929. Linked to the Red Cross, the 64 articles define and protect civilians, medical and religious personnel, impartial humanitarian organisations, and injured or sick soldiers in land-based war zones.

It also highlights the role of hospitals and cemeteries and prohibits the misuse of the Red Cross or "Geneva Cross" emblem - in other words, soldiers can't wear Red Cross uniforms under false pretenses.

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The Second Geneva Convention replaced the 1907 Hague Convention and similarly protects wounded and sick soldiers in wartime, but in a maritime context. It extends to seas, where shipwrecked military personnel are protected, for example.

The Third Geneva Convention speaks to prisoners of war and replaced the Prisoners of War Convention of 1929. It requires prisoners of war to be treated humanely and prohibits acts of violence, intimidation, insults, public curiosity, and physical and mental torture.

Prisoners of war must also be permitted to wear badges of rank and nationality, and there are special provisions relating to judicial proceedings and labour. Once a conflict has ceased, prisoners of war must be released and repatriated without delay, for example.

The Fourth Geneva Convention's inception is unique as the tragedies experienced in World War II revealed civilians in occupied territories had no meaningful protections. Today, 159 articles describe what can and can't be done, and how civilians must be treated.

Specifically, civilians must not be targeted deliberately or indiscriminately, which is defined as: "incidental loss of civilians, damage to civilian objective, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated".

Essentially, it sets the bar for how much collateral damage is permissible.

What's the UN doing?

In theory, the International Criminal Court (ICC) is mandated to investigate, charge and put on trial people suspected of crimes against humanity, genocide, and war crimes committed after July 2002.

However, its jurisdiction is limited to crimes in territories of countries party to the International Criminal Court Treaty. There are other pathways, but a major issue is Israel isn't a member of the ICC and disputes its jurisdiction, saying Palestine isn't a sovereign state.

Instead, the UN Human Rights Council mandated the Independent International Commission of Inquiry in 2021 to investigate all alleged violations and abuses of international human rights law in the Occupied Palestinian Territory and Israel leading up to and since April 2021.

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On October 10 this year - days after Hamas launched an attack on Israel and Israeli forces responded with airstrikes in Gaza - the commission released a statement saying there was clear evidence war crimes "may" have been committed.

"The commission is intent on ensuring legal accountability, including individual criminal and command responsibility. To that end, the commission is committed to investigating current events and identifying those responsible for violations of international law on all sides, both those directly committing international crimes and those in positions of command responsibility," the commission said in a statement.

What's New Zealand doing?

In a statement to the United Nations Security Council in October, New Zealand was among 120 countries calling for a humanitarian pause - not a ceasefire - in Gaza. It was a bold move, seeing as the US voted against the resolution at the time.

"We are appalled by Hamas's brutality, their targeting of civilians, and the taking of hostages, which are in clear violations of international law. We call for the immediate and unconditional release of all hostages," Prime Minister

Chris Hipkins said.

“New Zealand supports the right of Israel to defend itself against Hamas’s terrorist attacks, but the way it does so matters. It must abide by international law, exercise restraint, and prioritise the protection of civilians.”

While the statement may seem bold to some, and offensive to others, it’s a perfect illustration of a political party trying to toe the international party line, but revealing the legal framework’s limitations in the process.

Which is to say, international law sets standards and outlines consequences for breaching those standards, but the framework fails to effectively determine whether wars are justified or how to stop the madness.

Wellington-based freelancer Sasha Borissenko did a law degree at Otago University followed by a Master’s (Hons) in journalism at Massey University.