

**Gaza, Israel and International Law** by *Sir Vincent Fean* and *Mike Scott-Baumann* (15<sup>th</sup> December 2023)

As the crisis in Gaza, Israel, and the West Bank intensifies daily, **it is vital for the international community to stop this war, uphold international law**, support Israelis and Palestinians and work towards lasting peace in Israel and the Occupied Palestinian Territories (OPT). The well-being of all those in the region is at stake, **and their safety can never be achieved by violence**. Four points of international law need emphasising; they are explained in the [Open letter to the PM, Foreign Secretary and Defence Secretary on 26 October 2023 from lawyers and others](#).

First, the actions of Hamas in Israel – the murder of hundreds of civilians and many other atrocities – are crimes against humanity.<sup>1</sup> They are also war crimes, as is the taking of hostages. **Under the Geneva Conventions, Hamas' actions cannot be justified by any previous acts of war by Israel. Furthermore, under international law, Hamas' actions do not justify crimes by Israel** ([UK lawyers' letter](#), p. 5).<sup>2</sup>

**Second, in international law, Israel is the occupying power in Gaza**, as in the rest of the Occupied Palestinian Territories, with responsibilities of care for the occupied people. **Israel's responses must distinguish between civilians and combatants and, therefore, avoid such blanket techniques as area bombardment and the damage of civilian infrastructure such as hospitals.**

**Third, in armed conflict, the civilians of Gaza have the right to protection according to the framework that governs how nations respond to attack.** Whatever the provocation, every nation is bound to comply with the rules of war ([UK lawyers' letter](#), p. 6). These were established to limit the harm that can be inflicted on other human beings, however strong the desire for retribution. The complete siege of Gaza, the evacuation orders and the population transfers are violations of international law.<sup>3</sup> **Depriving over two million civilians (almost half of whom are children) of food, water and fuel is a war crime.**<sup>4</sup>

**Fourth, the UK itself must not violate international humanitarian law.**<sup>5</sup> This means the UK must be gravely concerned about, and not encourage, aid, or assist, such violations. Furthermore, UK nationals who aid and abet international crimes are liable for prosecution both in the UK and before the ICC.<sup>6</sup> **We call on all peers and MPs to urge HM Government to fulfil its obligations under the Geneva Conventions, condemn the killing of all civilians and to support all measures required to prevent further killings.**<sup>7</sup> These must include:

- **an immediate humanitarian cease-fire by all belligerents**
- **the release of all hostages**
- **provision of unrestricted aid to civilians in Gaza – fuel, clean water, food, medical support and supplies**
- **protection of the human rights of both Israelis and Palestinians, including guaranteeing the right of forced transferees to return home**
- **collaboration with partners for a definitive resolution of the conflict realising the Palestinian right to self-determination and mutual security for both peoples.**

<sup>1</sup> ICRC Customary International Humanitarian Law Database rule 1 (Principle of Distinction between Civilians and Combatants); also rules 7, 11 and 71.

<sup>2</sup> Ibid., rule 146 (Belligerent reprisals against persons protected by the Geneva Conventions are prohibited); see also GCI, Art 46; GCII, Art 47; and GCIII, 13.

<sup>3</sup> ICRC Customary International Humanitarian Law Database rule 129 and rule 131 (The Act of Displacement and Treatment of Displaced Persons).

<sup>4</sup> Ibid., rule 55 (Access for Humanitarian Relief for Civilians in Need).

<sup>5</sup> 1949 Geneva Conventions, Common Art 1.

<sup>6</sup> Geneva Conventions Act 1957 and International Criminal courts Act 2001.

<sup>7</sup> ICRC Protocol to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), 8 June 1977, 1125, UNTS3.

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