

Serious Violations of Human Rights in Gaza (2008-9) Under International Humanitarian Law

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Abstract

The inhuman acts of Israel in the Gaza Strip (2008-9) have seriously violated the international humanitarian law. International documents such as the Geneva Convention (IV) and Additional Protocol to the Geneva Conventions (II) relating to protecting civilians during armed conflicts have clearly indicated violation of humanitarian law during Israeli's deadly offensive at the turn of the year.

Under these laws and other documents such as Convention on the Rights of the Child, the crimes and violence against Gaza's children created a particular form of inhuman acts. Also, in accordance with the statute of International Criminal Court, the Israeli onslaught can be called as war crimes and genocide.

Considering the violation of fundamental human rights of Gazans in all circumstances, the prosecution of persons who committed the crimes are possible regardless of their nationality or ratification of treaties and conventions.

Keywords: Human rights, Humanitarian law, Gaza, Israel, Violation of basic rights

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Introduction

The Israeli attacks on the Gaza Strip violate important rules of human rights and international humanitarian law, such as International Covenant on Civil and Political Rights, Convention on the Rights of the Child and the Geneva Conventions. The obligations of an occupying power to protect an occupied population, and the broader requirements of the laws of war that prohibit specific acts and generally human rights bindings were violated in the Gaza.

The violations created a collective punishment against the entire 1.5 million people who live in the Gaza Strip and the children who form the majority of the population there. Israel's claim that it was responding to Palestinian rocket attacks is spurious. Because, that rocket fire, illegal or not, does not give Israel the right to punish the entire population for those actions which prohibit the Geneva conventions [1].

Key human rights officials, particular the UN's Special Rapporteur for Human Rights in the Occupied Territories, Richard Falk, as well as Father Miguel d'Escoto, President of the General Assembly, have issued statements identifying Israeli violations of international law as well as the UN's obligations to protect the Palestinian population. Under the statement, those violations include:

-Collective punishment: the entire 1.5 million people who live in the crowded Gaza

Strip were being punished for the actions of a few militants.

-Targeting civilians: the airstrikes were aimed at civilian areas at one of the most crowded stretches of land in the world, certainly the most densely populated area of the Middle East.

-Disproportionate military response: the attacks not only destroyed every police and security office of Gaza's elected government, but killed and injured hundreds of civilians.[2]

The Israeli actions, specifically the complete sealing off of entry and exit to and from the Gaza Strip, led to severe shortages of medicine and fuel (as well as food), resulting in the inability of ambulances to respond to the injured, the inability of hospitals to adequately provide medicine or necessary equipment for the injured, and the inability of Gaza's besieged doctors and other medical workers to sufficiently treat the victims. [1]

On 12 January 2009, the Human Rights Council concluded its ninth Special Session on the grave violations of human rights in the Occupied Palestinian Territory, including the recent aggression of the occupied Gaza Strip, and adopted a resolution in which it strongly condemned the ongoing Israeli military operation in Gaza, which had resulted in massive violations of human rights of the Palestinian people, and demanded the occupying power, Israel, to immediately

withdraw its military from Gaza. The Council also demanded that the occupying power stop targeting civilians and medical facilities and staff as well as the systematic destruction of cultural heritage. It demanded further that the occupying power lift the siege and open all border crossings. It also requested the Secretary-General of the United Nations to investigate the targeting of UNRWA facilities in Gaza, including schools, that resulted in the killing of tens of Palestinian civilians, including women and children [3].

Also UNICEF Executive Director Ann M. Veneman issued the statement regarding the humanitarian situation in Gaza. Under the statement, "Each day more children are being hurt, their small bodies wounded, their young lives shattered. These are not just cold figures. They talk of children's lives interrupted. No human being can watch this without being moved. No parent can witness this and see their own child being killed. This is tragic. This is unacceptable. Humanitarian access to all, especially to the most vulnerable, must be unhampered. The crisis in Gaza is singular in that children and their families have nowhere to escape, no refuge. The very thought of being trapped in a closed area is disturbing for adults in peace times. What then goes through the mind of a child who is trapped in such relentless violence?"

Together with its partners, UNICEF was doing all it could to assist them, despite the

difficult conditions. New resources were made immediately available to provide children and their families with their urgent needs: water, educational and resuscitation kits, among many other assistance items.

Beyond the immediate needs of the children who have lost their homes, have no access to water, electricity and medicine, beyond the horrific physical scars and injuries however, are the deeper psychological wounds of these children. For these children, psychological and social healing will be long and difficult. UNICEF has called on all parties to take every measure to protect children." [4]

However, civilians in the Gaza Strip suffered greatly during the three-week carnage, with more than 1,300 killed and 5,000 wounded according to the latest Gaza Ministry of Health figures. They continue to be at risk today, despite the ceasefire. "The fact that Gaza is one of the most densely populated areas in the world, makes the problem of unexploded munitions even more acute," warned Antoine Grand, head of the ICRC office in Gaza. [5]

It is real that more than third of those killed and wounded were children. On 20 January, two children were killed by unexploded ordnance in the Shaaf area, near Jabaliya, east of Gaza City. "Most children stayed at home during the past three weeks because there was no let-up in hostilities. Now that the fighting is over and they are venturing out into the streets

again, they run the risk of being killed or maimed by these remnants of war," explained ICRC staff member Imad Abou Hasirah.[5]

1. General Rules: Violations to Protected Persons

Under legal rules, in the case of armed conflict, persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth. Some acts are and shall remain prohibited at any time and in any place whatsoever with respect to the protected persons, such as violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture and outrages upon personal dignity, in particular humiliating and degrading treatment [6,Art.3-1].

In accordance with Geneva Conventions, the wounded and sick shall be collected and cared for [6,Art.3-2] and expectant mothers shall be the object of particular protection and respect [6,Art.16].

Israel violated all the above obligations in Gaza. There were many expectant mothers and children when Israel attacked the Gaza strip [7,p.2].

Laws of war are clear in the case of hospitals and medical teams. Civilian hospitals organized

to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attacks but shall at all times be respected and protected by the parties to the conflict.[6,Art.18].

Israel may under Art. 19 of the Geneva Convention(IV) claim that the protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy.

But firstly Israel couldn't demonstrate this claim and secondly it must be considered the protection may cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded [6,Art.19] and Israel has certainly violated the latter obligations.

Furthermore, the same convention stresses that persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected [6,Art.20] and convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner [6,Art.21].

The Israeli smart attacks on hospitals, ambulances and above persons are serious violence of international humanitarian law.

The Israeli acts in Gaza involve international crimes, Crimes against humanity, War crimes and Genocide. Statute of ICC¹ has defined the crimes:

1. Crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture; ...
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ...
- (i) Enforced disappearance of persons; ...
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[8,Art.7]

2. Under the statute, war crimes means:

1. International Criminal Court.

(a) Grave breaches of the Geneva Conventions of 12 August 1949, indicates, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; ...
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, as follows:
 - (i) Intentionally directed attacks against the civilian population as such or against individual civilians not taking part in hostilities directly;
 - (ii) Intentionally directed attacks against civilian objects, i. e., objects which are not military objectives;
 - (iii) Intentionally directed attacks against personnel, installations, material, units or vehicles involved in humanitarian assistance or

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peacekeeping missions in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack with the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion; ...

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;...

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, ...

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;...

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;... [8,Art.8]

3. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring

about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.[8,Art.6]

A great crime that Israel committed to the population of Gaza was the siege and closing all borders. This inhuman act deprived them of food and medical supplies.

In accordance with Geneva Conventions, the Occupying Power has the duty of ensuring the food and medical supplies to the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate. The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods [6,Atr.55].

Also the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical

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personnel of all categories shall be allowed to carry out their duties [6,Art.56]. For this purpose, the Additional Protocol(II) of the Geneva Conventions has declared that starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.[9,Art.14]

2. Particular Rules: Violation to Children

Legal rules and international conventions have provided special protections to the children.

In accordance with Geneva Conventions, each contracting party shall allow the free passage of all consignments of medical and hospital, stores and objects necessary for religious worship intended only for civilians of another contracting party, even if the latter is its adversary. It shall, likewise, permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases [6,Art.23].

Also, the parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the

war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition. The parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the protecting powers.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means [6,Art.24].

The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. They shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.[6,Art.50]

Under Additional Protocol (II) of Geneva Conventions, children shall be provided with the care and aid they require, and in particular, they shall receive education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care; all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.[9,part ii,Art.4-3]

Israel didn't respect any of the above rights. The Occupying State committed collective punishment by non-separating children from others.

On the other hand, Convention on the Rights of the Child provides protections to children in all circumstances .

Convention's States Parties take all appropriate measures to ensure that the child is protected against all forms of punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents or family members [10, Art.2-2].

They shall ensure to the maximum extent possible the survival and development of the child [10, Art. 6-2].

Also, States/Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may

be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.[10,Art.9]

However, no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. [10,Art.16]

States/Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

They shall pursue full implementation of this right and, in particular, shall take appropriate measures to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care and appropriate pre-natal and post-natal health care for mothers [10, Art. 24].

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement [10, Art. 25] .

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They recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. [10,Art.27]

Under Article 37 of the Convention, States/ Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment, without possibility of release, shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty, unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the

right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Finally, the Convention stresses that states/ parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child [10,Art.38]and they shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.[10,Art.39]

The above rules and articles are mythic law for children of Gaza and they don't believe that the international conventions are enforceable in their life.

Conclusion

Undoubtedly, Israel committed many serious violations and international crimes against people and children of the Gaza Strip. These crimes have been highlighted by International organizations, NGOs and many other institutes and persons.

Under Geneva Convention (IV), the high contracting parties undertake to enact any

legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the Convention.

They shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another high contracting party concerned, provided such Party has made out a prima facie case [6.Art.146].

In accordance with the Convention , grave breaches, if committed against persons or property protected by the Convention , are: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.[6.Art.147]

Also, the International Criminal Court may exercise its jurisdiction if:

(a) A situation, in which, one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime [8,Art.13].

However, under the international humanitarian law and human rights, the violated rights and obligations in Gaza have been considered as fundamental rights and they can never become necessary to derogate from these rights even during a state of emergency [11].

On the other hand , the fundamental human rights, as the international norms and general principles, are binding upon all states even if a state hasn't ratified a treaty or convention. [12,p.155]

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نقض فاحش حقوق بشر در غزه (۲۰۰۸-۹)

بر اساس حقوق بشردوستانه بین المللی

سیامک ره پیک^۱

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اقدامات غیر انسانی اسرائیل در نوار غزه (۲۰۰۸-۹) قواعد ومقررات حقوق بشردوستانه بین المللی را به طور آشکار و جدی نقض نمود. اسناد بین المللی به ویژه کنوانسیون چهارم ژنو و پروتکل دوم الحاقی به کنوانسیون های ژنو در خصوص اشخاص مورد حمایت در زمان درگیری های مسلحانه اقدامات اسرائیل را نقض فاحش حقوق بشردوستانه تلقی کرده اند. بر اساس این مقررات واسنادی مانند کنوانسیون حقوق کودک، درجنايات وخشونت ها علیه کودکان غزه، اشکال ویژه ای از اقدامات ضد بشری قابل مشاهده می باشد. همچنین از نظر اساسنامه دیوان کیفری بین المللی اعمال اسرائیل با عناوین جرایم علیه بشریت، جرایم جنگی و نسل کشی تطبیق می کند. از آنجا که حقوق نقض شده در غزه از جمله حقوق بنیادین بشر تلقی می شوند که در هر شرایطی، نقض آنها نامشروع می باشد، بنابراین تعقیب ومحاكمه جنایتکاران صرف نظر از ملیت یا الحاق وعدم الحاق یک دولت به معاهدات وکنوانسیون های بین المللی امکان پذیر می باشد.

واژگان کلیدی: حقوق بشر دوستانه، حقوق بشر، غزه، اسرائیل، نقض فاحش

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