

## International Humanitarian Law and the Siege of Gaza

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**Abstract:** The appropriate accomplishment of the objectives of international humanitarian law and its precise enforcement in conflict zones, such as Gaza, is contingent upon attainment of human rights. The latter has been the objective of the United Nations and other international humanitarian organisations' venture to a secure world through confronting challenges of maintaining human rights as an orientation point for international ethical policies.

This study aims to investigate violations of international humanitarian law in the besieged Gaza Strip, occupied Palestine. It reflects a methodical originality and hypothetical enquiry of an assignment with theoretical, descriptive, empirical and legal overviews. It demonstrates a contribution to the theoretical and empirical research in the field of international humanitarian law and human rights.

### القانون الدولي الإنساني والحصار على غزة

**ملخص:** ترتكز أهداف القانون الدولي الإنساني وتنفيذه في مناطق الصراع، مثل قطاع غزة، على تطبيق حقوق الإنسان. وهذا ما تحاول تحقيقه الأمم المتحدة وغيرها من المنظمات الدولية الإنسانية بالسعى إلى تحقيق الأمن الإنساني من خلال مواجهة التحديات المتمثلة في الحفاظ على حقوق الإنسان باعتبارها نقطة التوجه الأخلاقي للسياسات الدولية.

وتلتزم هذه الدراسة بالتحقيق في انتهاكات القانون الدولي الإنساني في قطاع غزة المحاصر. حيث تعكس التحقيق المنهجي، الوصفي والتجريبي والاستناد إلى القواعد القانونية الدولية. لذلك، فإن هذه الدراسة تعتبر مساهمة وإضافة نوعية إلى الأبحاث النظرية والتجريبية في مجال القانون الدولي الإنساني وحقوق الإنسان.

### Introduction:

This research examines the situation in the besieged Gaza Strip and considers whether the perception of international humanitarian law is applicable towards this case. This research will examine the impact and fundamental pressure exercised by the unipolar international political system of the US and its allies, characterised by political realism, on the humanitarian situation in the Gaza Strip.

This research establishes an understanding of international humanitarian law, taking into consideration the international conventions and protocols in this regard, such as the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions. In this regard, the International Committee of the Red Cross, as the guardian of the Fourth Geneva Convention, the UN and its agencies, other relevant international organisations, and the international community are key players to the implementation of the humanitarian law in situations of armed conflicts, such as the Gaza Strip.

This study investigates violations of human rights and breaches of international humanitarian law in the besieged Gaza Strip. Evidential substantiation of the crimes committed against the population of the Gaza Strip since 2006, under siege, and the breaches of international humanitarian law are the foundation and contribution produced through this research.

**Background:**

Hypothetically, there are actually influential relationship between international humanitarian law and human rights in conflict zones<sup>1</sup>. Human rights interconnected with democracy and human development, giving consideration to the protection of the vital core of human life<sup>2</sup>. The intention behind the formation of international humanitarian law was to protect and enhance individuals' responsibility and to protect the victims of armed conflicts such as wounded prisoners and civilians. The implementation of international humanitarian law represents preventive measures, state responsibility, and the prosecution of individuals responsible for war crimes in domestic and international courts<sup>3</sup>.

The Palestinian apprehension and lack of human rights were established by the Israeli occupation of Palestine which perpetuated the status of statelessness of the Palestinians. Both the occupation and the lack of an independent Palestinian

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<sup>1</sup> Babiker, Mohamed A. (2007). Application of international humanitarian and human rights law to the armed conflicts of the Sudan: complementary or mutually exclusive regimes?, Antwerpen : Intersentia,

<sup>2</sup> Evans, Kenya C. (1984). Human rights and humanitarian law in application to non-international armed conflicts: problems and solution. VUB University, Brussel. 67 pages.

<sup>3</sup> Zyberi, Gentian (2007). The humanitarian face of the International Court of Justice: its contribution to interpreting and developing international human rights and humanitarian law rules and principles. Antwerpen: Intersentia, 523 pages.

## **International Humanitarian Law and the Siege of Gaza**

state are inseparable<sup>4</sup>. The Palestinians of the Gaza Strip have experienced a protracted process of dehumanisation and deprivation of their human rights in a conflict zone. Although, the objectives of international humanitarian law entirely match the situation in Gaza, this branch of international law was never implemented neither by the international actors nor by the regional players, exposing the Palestinians to further violations<sup>5</sup>.

The Palestinian Authority, Israel, and the International Community are responsible for the protection of the Palestinians in Gaza. The more than 1.5 million Palestinians living in the Gaza Strip, one of the most densely places on earth, are deprived of basic conditions of human rights in an artificial catastrophe. This systematic process of human rights violations was intensified after January 2006, aftermath the Palestinian parliamentary election, where Hamas achieved victory<sup>6</sup>. Immediately, a political boycott was imposed by Israel, the US and the European community. Economic sanctions on the newly elected Palestinian Government and on the Palestinian population were succeeded, in June 2007, by hermitic siege on the entire Gaza Strip. This policy mounts to collective punishment against the entire population instigated by political motivations<sup>7</sup>.

The War on Gaza at the end of 2008 was ignited by the Israeli Occupation Forces led to a humanitarian catastrophe in Gaza<sup>8</sup>. The Israeli Government breached international humanitarian law by violating Palestinian human rights. The scandalous exploitation of Palestinians rights witnessed on TV screens across the world over 22 days, did not encourage most international official

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<sup>4</sup> Albasoos, Hani (2005), *The Security and Policing of Palestine*. PhD Thesis, Department of Peace Studies, University of Bradford, Bradford, UK

<sup>5</sup> Gordon, H., Gordon, R. & Shriteh, T. (2003) *Beyond the Intifada: Narratives of Freedom Fighters in the Gaza Strip*. London: Praeger.

<sup>6</sup> Shlomo Brom, (March 2006) *A Hamas Government: Isolate or Engage?* United States Institute of Peace, 1200 17th Street, NW, Suite 200 Washington D.C. Web Site [www.usip.org](http://www.usip.org)

<sup>7</sup> Gisha, Legal Centre for Freedom of Movement (Dec. 2008), *Gaza Closure Defined: Collective Punishment*. <http://gisha.org/UserFiles/File/publications/GazaClosureDefinedEng.pdf>. Pp. 1-2

<sup>8</sup> PHRMG (Dec. 2008 – Jan. 2009), *The War on Gaza: Documentation by the Palestinian Human Rights Monitoring Group*, Jerusalem. <http://www.phrmg.org/The%20War%20on%20Gaza.pdf>. Pp 3

institutions and states to take an action to stop the war<sup>9</sup>. Such silence by the international community raised many questions about the efficiency of international humanitarian law and the responsibility of the international actors to enforce this branch of law to protect individuals' rights from exploitation.

This study formulates a constructive analysis on the basis behind the silence of the international community and the unproductive methodology of hampering the implementation of international humanitarian law and humanitarian intervention to the Palestinians in Gaza. This is based on the hypothesis that the international role players adopted a double standard strategy towards the Israeli-Palestinian conflict, which significantly is influenced by the current international political system of unilateralism, a strategy adopted by the US to promote a unipolar political system characterised by political realism<sup>10</sup>, based on the fact that the USA is the only superpower left from the period of the Cold War, unilateralism became a synonym for US foreign policy in the last decade<sup>11</sup>.

#### **Legal Framework:**

##### **International Law**

International law is the term commonly used for referring to the system of implicit and explicit agreements that bind together states in adherence to recognised values and standards. It differs from other legal systems in that it primarily concerns states rather than private citizens<sup>12</sup>. However, the term "international law" can refer to public international law, which governs the relationships between entities or legal persons which are considered the subjects of international law, including sovereign nations, international

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<sup>9</sup> Sheets, Adam (Jan. 2009), The Facts about Israel's War on Gaza. Gaza Siege Organisation. [http://gzasiege.org/docs/jan09/TheFactsAboutIsraelsWarOnGaza\\_Jan12009.pdf](http://gzasiege.org/docs/jan09/TheFactsAboutIsraelsWarOnGaza_Jan12009.pdf)

<sup>10</sup> Yuriy Matsievsky (2009). The US and the International Political System: What Model for the Future? Department of Political Science, North Dakota State University, <http://www.uosa.uar.net/doc/polit/matsievsky/International.doc>

<sup>11</sup> William C. Wohlforth (2002) "U.S. Strategy in a Unipolar World," in *America Unrivaled: The Future of the Balance of Power*, G. John Ikenberry, ed., Ithaca, NY: Cornell University Press, 2002. Pages 98 – 118.

<sup>12</sup> Arnold, Roberta & Geert-Jan Alexander Knoops (Editor) (2006). *Practice and policies of modern peace support operations under international law*. Ardsley (N.Y.): Transnational Publishers, 303 pages

## **International Humanitarian Law and the Siege of Gaza**

organisations, and in some cases, movements of national liberation and armed movements<sup>13</sup>.

International law has existed since the Middle Ages, but much of its modern corpus began developing from the mid-19th century. In the 20th century, the two World Wars and the formation of the League of Nations contributed to accelerate this process and established much of the foundations of modern public international law. Other international norms and laws have been established through international agreements, including the Geneva Conventions on the conduct of war or armed conflict, as well as by agreements implemented by other international organisations<sup>14</sup>.

### **International Humanitarian Law**

The concept of International humanitarian law is defined as a set of principles and rules that limit the use of violence during armed conflicts and alleviates the consequences of wars. International humanitarian law is a distinct branch of international public law seeks to protect individual human beings from arbitrary action and abuse in situations of armed conflict, where human rights and humanitarian law both apply in a complementary manner<sup>15</sup>. It also aspires to protect collective human rights in the event of wars. This includes the protection of property and funds, of individuals, which are not related to military operations<sup>16</sup>. It also seeks to protect people who are directly involved or no longer participate in armed conflicts such as the wounded and prisoners of war<sup>17</sup>.

International instruments of international humanitarian law is designed to ensure that human beings in all circumstances be treated humanely during the war without discrimination on race, colour, religion or belief, sex, wealth, or any other similar criteria. Such instruments were initially based on Geneva

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<sup>13</sup> Chadwick, Elizabeth (1996). Self-determination, terrorism and the international humanitarian law of armed conflict. The Hague : Nijhoff, 221 pages

<sup>14</sup> Bassiouni, M. Cherif (Editor) (2000). A manual on international humanitarian law and arms control agreements. Ardsley (N.Y.) : Transnational Publishers, 844 p

<sup>15</sup> Carey, John, William V. Dunlap & R. John Pritchard (Editor) (2003-2006). International humanitarian law. New York : Transnational Publishers.

<sup>16</sup> Shahloul, Jamal (2009) International Humanitarian Law, Tunisia [http://www.ism-justice.nat.tn/ar/for\\_initiale/dih.doc](http://www.ism-justice.nat.tn/ar/for_initiale/dih.doc) Pp.1-3

<sup>17</sup> Henry J. Steiner Philip Alston, Ryan Goodman (2008) International Human Rights in Context: Law, Politics, Morals. 3<sup>rd</sup> Edition. Oxford University Press

Conventions and Protocols, developed under the auspices of the International Committee of the Red Cross, which was mainly concerned with the protection of war victims<sup>18</sup>. In addition to the Hague Regulations and the efforts of the United Nations to ensure respect for human rights during armed conflicts and to reduce the use of certain weapons to non-observance of human rights<sup>19</sup>.

The legislation of international humanitarian law originated with Geneva Convention 1864, followed by several significant agreements and protocols, such as the Universal Declaration of Human Rights, the European Convention on Human Rights and the International Covenant on Civil and Political Rights. International humanitarian law is available today on the international legal framework of the United Nations, the Geneva Conventions and Protocols, the Hague Regulations, etc<sup>20</sup>.

**Understanding the Concept of Siege:**

Siege is a method, rather than an objective, of land warfare, where the attacker encircle a defended place to capture it or wearing down the defenders through military means, including artillery and air bombardment and blocking off all outside sources of supplies<sup>21</sup>. Meanwhile blockade is a shutting off of a port or region of a belligerent state by the troops or ships of the enemy in order to prevent passage in or out in time of war...blocking action is designed to isolate another nation and cut off communication and commerce with it<sup>22</sup>.

Siege as a method intend to achieve one or more of the following:

- Gain control
- Overcome opposition
- Weaken authority under siege (subjugation)
- Provoke people to revolt against their local authority

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<sup>18</sup> Wilmshurst, Elizabeth & Breau, Susan (Editor) (2007). Perspectives on the ICRC study on customary international humanitarian law. Cambridge University Press

<sup>19</sup> Orford, Anne (2003), Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law. Cambridge University Press, Cambridge.

<sup>20</sup> Committee of the Red Cross [Geneva] (1987) Bibliography of international humanitarian law applicable in armed conflicts: International Henry Dunant Institute [Geneva] (Editor) 2nd ed. Geneva : International Committee of the Red Cross, 1987. 605 pages.

<sup>21</sup> Barry and Grant Encyclopedia Dictionary of International Law (2004). 2<sup>nd</sup> edition. Edited by John P. Brant and J. Craig Barker, Oceana Publications, INC. Dobbs Ferry, New York.

<sup>22</sup> Barry and Grant Encyclopedia Dictionary of International Law (2004).

## **International Humanitarian Law and the Siege of Gaza**

During the Early-Modern Age, siege warfare came to play an ever more significant role in war among European powers<sup>23</sup>.

There are different methods of siege such as:

- Prolonged control surrounds a place and isolates it
- Preventing supplies
- Obstructing medical support
- Incursions
- Starvation

### **The West Berlin Blockade: 24 June 1948 – 11 May 1949**

During World War II, the United States and the Soviet Union were allies against Germany. After the war, though, the Soviet Union struggled against the other Allies for control of conquered Germany. The country—and its capital city, Berlin—was divided into zones, one for each of the four Allies: the Soviet Union, the United States, Great Britain, and France<sup>24</sup>.

In March of 1948, the three other countries united their different occupation zones into a single administrative unit. The Soviets took this as a threat to their control of East Germany and responded with a blockade. They cut off all highway, water, and rail traffic to Berlin, hoping that the Western nations would surrender control of the city. Instead, American and British officials launched an airlift, supplying West Berlin's 2.1 million people with 2.3 million tons of food, fuel, and other supplies<sup>25</sup>.

### **The Siege of Sarajevo: 5 April 1992 – 29 February 1996**

Following the Republic of Bosnia declaration of independence from Yugoslavia on 3<sup>rd</sup> March 1992, on 5<sup>th</sup> April, the inhabitants of Sarajevo took to the streets en masse to peacefully defend its sovereignty. But the demonstration was attacked by snipers<sup>26</sup>.

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<sup>23</sup> Dunmore, Helen (2005), Background to the Siege 2, the Event at Leningrad, The Great Reading Adventure 2005 – Helen Dunmore and *The Siege*, pages 19-22.

<sup>24</sup> Middleton, Drew (1948), Berlin Siege On as Soviet Blocks Food, *New York Times 1857-Current*; Jun 26, 1948; ProQuest Historical Newspapers, The New York Times (1851 - 2001), pg. 1

<sup>25</sup> Weisel, Karl (2008), Berlin Airlift Open House June 29. *Herald Union* Vol. X, No. 18, *Serving the military communities of the U.S. Army Garrison Hessen* June 19, 2008.

<sup>26</sup> Knight, Timothy R. (Jan. 1998), Bosnia – Herzegovina: Basic Themes from A Complex Emergency, Timothy R., Feinstein International Famine Center, Tufts University

Serbian State that would include the territory of Bosnia and Herzegovina encircled Sarajevo with a siege force surrounding hills, from which they assaulted the city with weapons that included artillery, mortars, tanks, anti-aircraft guns, heavy machine-guns, multiple rocket launchers, rocket-launched aircraft bombs and sniper rifles. The Bosnian government defence forces were poorly equipped and unable to break the siege. The war lasted almost four years.

The images of brutally besieged cities and the reaction to so much barbarity took years to come, in which 300,000 people lost their lives and another two million became refugees and displaced persons<sup>27</sup>.

The Siege of Sarajevo is the longest siege of a capital city in the history of modern warfare<sup>28</sup>.

#### **The Siege of Gaza: since 2006**

Gaza Strip, 360 kilometres square, constitutes 1.3% of historic Palestine. It was occupied by the Israeli army in 1967. The population of Gaza are currently over 1.5 million Palestinians, most of whom are refugees living below poverty line in one of the most densely places on earth. They are undergoing a process of dehumanisation and deprivation of basic conditions of human rights<sup>29</sup>. In 2005, the Israeli military evacuated their illegal settlements, which were based on 40% of Gaza<sup>30</sup>. The Israeli army redeployed its troops on Gaza borders, blocking all crossing points and controlling airspace and seacoast, leaving Gaza under tighter control with least cost<sup>31</sup>.

The second Palestinian parliamentary election took place in January 2006. The Islamic Resistance Movement, Hamas, achieved a landslide victory and won the majority of the seats of the Parliament. The Palestinian Liberation

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<sup>27</sup> Zeco, M. (1996). The National and University Library of Bosnia and Herzegovina during the current war. *Library Quarterly*, 66(3), 294.

<sup>28</sup> Wikipedia, the free encyclopedia (2011), Siege of Sarajevo, [http://en.wikipedia.org/wiki/Siege\\_of\\_Sarajevo](http://en.wikipedia.org/wiki/Siege_of_Sarajevo)

<sup>29</sup> Negotiations Support Unit (August 2006), Israeli Violations of International Humanitarian Law in Gaza, Fact Sheet, NEGOTIATIONS AFFAIRS DEPARTMENT, PLO. <http://www.nad-plo.org/facts/gaza/29806.pdf>

<sup>30</sup> Canadians for Justice and Peace in the Middle East (June, 2008), Israel's ongoing status as a military occupation of Gaza, Factsheet Series No. 41, <http://www.cjpme.ca/documents/41%20En%20Gaza%20still%20Occupied%20v.2.pdf>

<sup>31</sup> Even, Shmuel (2009), Israel's Strategy of Unilateral Withdrawal, Strategic Assessment | Volume 12 | No. 1 | June 2009.



## **International Humanitarian Law and the Siege of Gaza**

Organisation, Israel, the United States, and other international actors did not anticipate such victory for Hamas<sup>32</sup>. Subsequent to Hamas victory in the election and the formation of the Palestinian Government by Hamas Movement, political and economic sanctions were imposed against this government causing uncertainty within Palestinian society concerning their political and humanitarian future. This is because the Palestinian Authority, since its establishment in 1994, is entirely dependant on international financial aid<sup>33</sup>.

Consequently, systematic methods were applied to politically isolate Hamas and to boycott its government by most countries in the world. The Israeli military abducted and imprisoned most Ministers and Members of Parliament from Hamas party in the West Bank in order to paralyse the legislative process. This action led to a political separation between the main Palestinian political parties, Fateh and Hamas, and thus division within Palestinian society<sup>34</sup>. The political and security tension escalated and led, in June 2007, to the take-over of Gaza by Hamas and the West Bank by Fateh. Consequently, further isolation, economic sanctions, and permanent curfew were enhanced as mechanisms to overthrow Hamas from power. This policy of impressive siege turned Gaza to be the biggest prison on earth<sup>35</sup>. The intention was to weaken Hamas and to encourage the Palestinian people to revolt against it. This policy harmfully affected the Palestinians of Gaza and considered as collective punishment, which was forbidden by article 33 of the Fourth Geneva Convention<sup>36</sup>, since it has resulted in human rights violation and a humanitarian crisis in the Strip.

Accordingly, it appears that the objectives of the siege of Gaza, as a warfare method, used by Israel are to:

- End Palestinian resistance
- Topple Palestinian government led by Hamas
- Bring a new government that is willing to cooperate with the Israeli military

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<sup>32</sup> Albasoos, Hani (Nov. 2010). The Rule of Hamas in Gaza: Reconstruction of Judicial Sector. IUG Academic Journal. Islamic University of Gaza. Palestine

<sup>33</sup> MIFTAH, (Feb. 2006), Fact Sheet: The Palestinian National Authority's Sources of Funding. [http://www.miftah.org/Doc/Factsheets/MIFTAH/English/PA\\_Sources\\_of\\_Funding2.pdf](http://www.miftah.org/Doc/Factsheets/MIFTAH/English/PA_Sources_of_Funding2.pdf)

<sup>34</sup> Brown, Nathan J. (2010), The Hamas–Fatah Conflict: Shallow but Wide. The fletcher forum of world affairs, vol.34:2 summer 2010

<sup>35</sup> (ECESG), EUROPEAN CAMPAIGN TO END THE SIEGE ON GAZA (2009), Introductory Guide, <http://savegaza.eu/eng/images/BrochSaveGazaSmall.pdf>

<sup>36</sup> See International Humanitarian Law – Treaties and Documents on ICRC website: <http://www.icrc.org/ihl.nsf/COM/380-600038?OpenDocument>

In an unexpected and unprecedented move, the Israeli army waged a war against the besieged Gaza Strip through a wide scale aerial offensive, which targeted dozens of police headquarters and stations, public and governmental buildings and security sites throughout the Gaza Strip<sup>37</sup>. On 27 December 2008, the air strikes started at 11:25 Jerusalem time, almost at the same time throughout the Gaza Strip. This timing indicated that an Israeli decision was taken to cause maximum casualties in the peak of daily activities. This explains the high number of victims killed and wounded in a few minutes on the bloodiest day of the Israeli occupation<sup>38</sup>. More than 200 Palestinians, many of whom were policemen were killed. Hundreds of others were wounded many of whom were in critical conditions. Dozens of the victims were unarmed civilians who were near the places that were attacked, the majority of which were located in civilian-populated areas. The dynamic of this operation was strategically planned by the Israeli army on phases to break down all resistance movements, especially Hamas, and to weaken all aspects of Palestinian life in an offensive based essentially on the imbalance of power between the Israeli army and Palestinian forces<sup>39</sup>.

This aggressive military operation in Gaza lasted 22 days and resulted in the death of hundreds and injury of thousands of civilians. The population of Gaza suffered from a psychologically trauma and were deprived from sleep and basic humanitarian needs for that period. Palestinian infrastructure and public institutions almost were completely destroyed. A million Palestinian had no access to electricity. Around half a million had no access to drinkable water<sup>40</sup>. Human rights organisations called upon the international community, particularly the High Contracting Parties to the Fourth Geneva Convention

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<sup>37</sup> Shaw, Martin (Jan. 2009) Israel's Politics of War. OpenDemocracy News Analysis (<http://www.opendemocracy.net>)

<sup>38</sup> PHRMG (Dec. 2008 – Jan. 2009), The War on Gaza: Documentation by the Palestinian Human Rights Monitoring Group, Jerusalem. <http://www.phrmg.org/The%20War%20on%20Gaza.pdf>

<sup>39</sup> Darweish, Marwan (2010), Human Rights and the Imbalance of Power: The Palestinian-Israeli Conflict Berghof Conflict Research/ Berghof Forschungszentrum für konstruktive Konfliktbearbeitung. Berghof Handbook Dialogue No. 9 – First launch June 2010, [www.berghof-handbook.net](http://www.berghof-handbook.net)

<sup>40</sup> PCHR, Palestinian Centre for Human Rights (2009), 23 Days of War, 928 Days of Closure: Life One Year after Israel's Latest Offensive on the Gaza Strip, 27 December 2008 – 18 January 2009 [www.pchrgaza.org](http://www.pchrgaza.org)

## **International Humanitarian Law and the Siege of Gaza**

Relative to the Protection of Civilian Persons in Time of War, and international organisations to immediately intervene to stop the killings of Palestinians, and to bring a cessation to the unprecedented deterioration in Palestinian human rights and humanitarian conditions in the besieged Gaza Strip<sup>41</sup>. Following the War on Gaza, violations of human rights and international humanitarian law are perpetuated with the siege and economic sanctions, which have been uninterrupted, despite the pledge of the international community to disburse six billion US dollars to rebuild Gaza<sup>42</sup>.

The permanent siege and sanctions unconstructively have affected the characteristic of Palestinian human rights and violated international humanitarian law. Palestinians have been disconnected from the outside world and reserved in obscurity, with restrictions on freedom of movement, shortage of commodities and lack of fuel and electricity<sup>43</sup>.

The effect of the siege on the population of Gaza includes almost every aspect of life, mainly the following:

- Construction and infrastructure sector
- Private sector (industrial and agricultural)
- Food products
- Water and sanitation sector
- Health sector
- Freedom of movement and crossings

### **Accountability under International Humanitarian Law:**

Systematic violations of human rights and international humanitarian law in Gaza have legal consequences. The conditions of human rights, predominantly on civilians, caught in the Gaza Strip and their susceptibility to violence influence the enforceability of international humanitarian law in Gaza and the role of international organisations in this field to implement and enforce this

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<sup>41</sup> Glasius, Marlies (March 2009) The ICC and the Gaza War: Legal Limits, Symbolic Politics. OpenDemocracy News Analysis (<http://www.opendemocracy.net>)

<sup>42</sup> Bindman, Geoffrey (March, 2008), Gaza: Unlock this Prison, OpenDemocracy News Analysis (<http://www.opendemocracy.net>)

<sup>43</sup> PCHR, Palestinian Centre for Human Rights (2009), 23 Days of War, 928 Days of Closure: Life One Year after Israel's Latest Offensive on the Gaza Strip, 27 December 2008 – 18 January 2009 [www.pchrgaza.org](http://www.pchrgaza.org)

branch of law in the Gaza Strips<sup>44</sup>. The legal responsibility is upon international actors including the United Nations and its agencies and the International Committee for Red Cross, which plays a humanitarian component and a significant role in assisting victims of armed conflicts<sup>45</sup>.

Consequently, violation of international humanitarian law concerning the siege of Gaza Strip is based on the following:

**Respect and Protection:** This is based on the provisions of the Huger Regulations, Geneva Conventions, and Geneva Protocols as follow:

- Respect and protection of military and civilian wounded and sick, religious and medical personnel, and military medical units and hospitals<sup>46</sup>.
- Cultural objects not used for military purpose (Article 27 of the 1907 Huger Regulations, 1954 Huger Convention for the Protection of Cultural Objects, Huger Peace Conference of 1899 and 1907 concerning Cultural Property Protection in Armed Conflict)<sup>47</sup>.
- Establishing a safety zone as a refuge to shelter the wounded and sick and certain civilians is stated by Art. 15 of the Fourth Geneva Convention and Art. 26 of the Huger Regulations. This requires from the offending party a warning before bombardment in order to give civilians an opportunity for evacuation<sup>48</sup>.

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<sup>44</sup> Posner, Eric (June 2010), The Gaza Blockade and International Law, The Wall Street Journal, J, A19 (Copyright (c) 2010, Dow Jones & Company, Inc.

<sup>45</sup> Falk, Richard (2009), UN General Assembly, A/HRC/10/20, 18 February 2009, Human Rights Council, Tenth Session, Item 7 of the provisional agenda, Human Rights Situation in Palestine and Other Occupied Arab Territories: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

<sup>46</sup> International Humanitarian Law – Treaties and Documents on ICRC website: <http://www.icrc.org/ihl.nsf/COM/380-600038?OpenDocument>

<sup>47</sup> International Humanitarian Law - Treaties & Documents, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. <http://www.icrc.org/ihl.nsf/WebART/195-200037?OpenDocument>

<sup>48</sup> International Humanitarian Law - Treaties & Documents, Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument>

## **International Humanitarian Law and the Siege of Gaza**

- Agreement on evacuation of protected persons when bombardment was planned is encouraged by Art.17 of the Fourth Geneva Convention. This however is rarely allowed when starvation is used to coerce surrender<sup>49</sup>.
- Art. 23, 55, 59, 60, 61 of the Fourth Geneva Convention requires the besieger, attacker, to prevent abuse, to allow free passage of relief supplies for the benefit of certain civilians who are incapable to making substantial contribution to the defence efforts. The besieger forces are obliged to ensure adequate medical and food supplies for protected civilians, furthermore, to arrange the relief aid if necessary<sup>50</sup>.

### **Starvation:**

- Art. 54 of Protocol I and Art. 14 of Protocol II (1977), additional to Geneva Conventions, forbid starvation of civilians as a method of warfare. In addition, prohibiting attacks against subsistence resources to the sustenance of the both civilians and combatants. Nonetheless, this does not apply where these resources are exclusively allocated to the armed forces<sup>51</sup>.
- Article 70 of Protocol I limit the right of the besieger to interdict the free passage of medical, food and other relief supplies intended for the needy civilians in the besieged area. All civilians in that area are entitled to relief actions, including labourers and civilians serving armed forces. However, the priority of supplies distribution is for the protected persons, who are not making a significant contribution to the military efforts, the wounded and sick, the children, expectant and nursing mothers, and the maternity cases<sup>52</sup>.

### **Bombardment**

- Article 51 of Protocol I (1977) forbids arbitrary attacks, including aerial bombardment of populated places if military objectives can be attacked separately. Article 51, Para. 4, forbids indiscriminate attacks. Para. 5, subject to the rule of proportionality, took into account incidental civilian losses during an attack against a military objective<sup>53</sup>.

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<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> International Humanitarian Law - Treaties & Documents, 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. <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>

<sup>52</sup> Ibid

<sup>53</sup> ibid

- The Hague Convention prohibits heavy civilian losses, which can occur even in the case of the so-called surgical bombardment. These rules apply with restrictions where only inasmuch as civilian persons are involved<sup>54</sup>.

**Accountability:**

The Israel military has been acting with impunity using sophisticated weaponry against the Palestinians in Gaza without discrimination<sup>55</sup>. Besides, the constant siege harmfully affected major aspects of Palestinian life. The Palestinian people lost faith in the international organisations responsible for the implementation and enforcement of international law, especially the United Nations and its agencies, which for most Palestinians adopted a double-standard policy and intolerance towards the Palestinians, believing that the United States, Israel's strongest ally, have taken meticulous political steps to influence the UN. The latter objectivity and impartiality are, consequently, influenced by such policy<sup>56</sup>.

The UN and its agencies have been criticized about their responsibility towards the Palestinians in Gaza. Accountability and commitment under international humanitarian law includes regional players, especially the Palestinian Authority, Egypt and Israel for their direct activities towards tightening the siege of Gaza causing maximum violation of Palestinians human rights<sup>57</sup>.

Violations of International Humanitarian Law by the Israeli occupation forces in the besieged Gaza Strip are based, particularly, on the Universal Human Rights Declaration, Geneva Conventions, and other international humanitarian law treaties and documents are related to the siege imposed on Gaza<sup>58</sup>. Consequently, Human Rights Intervention is needed by those responsible organizations to protect the Palestinians in Gaza. This includes the need for human dignity, respect and freedom of movement and from harm, which are

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<sup>54</sup> International Humanitarian Law - Treaties & Documents, Convention (IX) concerning Bombardment by Naval Forces in Time of War. The Hague, 18 October 1907. <http://www.icrc.org/ihl.nsf/FULL/220?OpenDocument>

<sup>55</sup> Ziai, Henny & Qureshi, Nabeel (April 2009) Israel's attack on Gaza: an unjust war? open Democracy News Analysis (<http://www.opendemocracy.net>)

<sup>56</sup> Posner, Eric (June 2010)

<sup>57</sup> Mohamed C. Othman (2005). Accountability for International Humanitarian Law Violations: the Case of Rwanda and East Timor, Springer

<sup>58</sup> O'Flaherty, Michael (2007). The human rights field operation: law, theory and practice. Aldershot : Ashgate. 467 p.

## **International Humanitarian Law and the Siege of Gaza**

imperative to human individuals and groups<sup>59</sup>. Palestinian human rights' enhancement is a fundamental requirement necessitates intervention by international actors. Such mechanism requires guarantees to compel actors in conflict zones to implement international humanitarian law<sup>60</sup>. This mechanism is based on surveillance process, sanctions, and rehabilitation under the auspices of an International Advisory Group made of the UN agencies, after reformation, and other international conscientious actors, with the support of a team of consultants appointed particularly for this purpose.

### **Conclusion**

In light of the above mentioned fact and the continued deterioration of human rights in the Gaza Strip, this research has examined violations of international humanitarian law by unprecedented Israeli siege and wide scale offensive, which targeted police stations, public and governmental buildings, hospitals, mosques and homes throughout the Gaza Strip at the end of 2008.

This Israeli move was considered by human rights organisations as collective punishment against Palestinian civilians, which is illegal under international humanitarian law. Israel was, furthermore, considered to be acting with impunity and full support from the United States, a United Nations Security Council Permanent Member, using sophisticated weaponry. Accordingly, the impartiality of the UN and its agencies was jeopardized because of its' behind schedule response to the crisis. Hence, this research has critically reviewed accountability conducted under the authority of the United Nations Security Council and other international actors concerning violations of international humanitarian law in Gaza.

This study recommends that the High Contracting Parties to the Fourth Geneva Convention should fulfill their legal and moral obligations under the Conventions to ensure respect for the Convention in Gaza and to provide immediate protection for Palestinian people. Immediate intervention can serve as an important mechanism for the guarantee and enforcement of international humanitarian law in Gaza. The international civil society organisations, including human rights organisations, bar associations and NGOs should participate in the process of exposing those accused of breaching international

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<sup>59</sup> Fukuda-Parr, S. (2003) New Threat to Human Security in the Era of Globalisation. *Journal of Human Development*, 4(2), 67-179. p.177

<sup>60</sup> Chesterman, Simon (2003). Just war or just peace?: humanitarian intervention and international law. Oxford : University Press, 295 p.

humanitarian law in Gaza and urge their governments to bring these people to justice.

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