

**GAZA ON TRIAL: INTERNATIONAL HUMANITARIAN LAW AND
COMPARATIVE INSIGHTS FROM ENGLISH AND EU LAW**

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ABSTRACT

The recent hostage crisis in Gaza, where civilians have been caught in an escalation of military activities, has seen urgent negotiations by international powers spearheaded by Egypt and the United States. These attempts, although aimed at the release of hostages, prominently pose serious questions concerning adherence to International Humanitarian Law (IHL) and the safeguarding of civilians under the Geneva Conventions. The act of hostage-taking is a war crime, and the breach of both state and non-state actors underscores the continuing difficulties in applying legal requirements in asymmetric warfare. This article will take a closer look at the international law approach to the crisis, the culpability of the involved parties, and the culpability of the mediators, as well as the implications of the crisis on civilian protection in general. English and EU law comparative insights highlight how national and supranational structures can support international standards, providing tools of prosecution, sanctions, and policy restructuring. This paper aims to shed light on the relationship between the humanitarian pillars, the legal responsibility and the interplay between diplomatic bargaining by examining the Gaza hostage crisis. It highlights the necessity of enhanced control measures and considerate policy-based interventions to reduce damage, safeguard civilians, and improve the efficiency of international law norms in future conflicts.

Keywords: Gaza hostage crisis, International Humanitarian Law, Geneva Conventions, hostage-taking, war crimes, asymmetric warfare, civilian protection, state responsibility, non-state actors, command responsibility, English law, European Union law, comparative law, mediation liability, counter-terrorism, armed conflict.

I. INTRODUCTION

The prolonged hostage issue in Gaza, characterised by the capturing of civilians in the midst of heightened military action, has received a lot of international concern.¹ Recent talks between Israel, Hamas, and third-party negotiators like Egypt and the United States have concentrated on ensuring the release of hostages and trying to curb civilian deaths. Nevertheless, this has not stopped the crisis, but has signified the multicultural and humanitarian issues of modern armed conflicts, especially in large, high-population cities. The International Humanitarian Law obligates parties in conflict to ensure the safety of civilians and avoid hostage-taking, which is a serious violation in the Fourth Geneva Convention and customary international law.²

The laws of war enforce rigid restrictions on the nature of hostilities and provide mechanisms of accountability on violation, which may include prosecution of war crimes.³ In addition to the humanitarian issues at hand, these norms are used to maintain the overall principles of human dignity and legality during periods of conflict.⁴ This article aims to analyse the Gaza hostage crisis in relation to international law with an emphasis on the legal responsibilities of both the state and non-state actors. In order to contextualise the current issues and investigate the possible lessons of the modern conflict resolution, comparative references will be made to English and EU legal frameworks, specifically, the treatment of hostages, civilian protections, and the responsibility of the parties involved in the violation case.⁵

II. INTERNATIONAL HUMANITARIAN LAW OBLIGATIONS

Protecting civilians in times of armed conflict is a fundamental element of International Humanitarian Law, which is codified mainly in the Geneva Conventions of 1949 and in its Additional Protocols.⁶ The Fourth Geneva Convention, specifically, calls on the parties that are involved in a conflict to protect civilians against violence, hostage-taking, and coercion.⁷ The hostage taking as witnessed in Gaza is a serious violation in violation of Articles 147 of

¹ *Israel PM Benjamin Netanyahu Hopes to Announce Release of All Hostages from Gaza 'in Coming Days'*, The Hindu (Oct. 5, 2025), <https://www.thehindu.com/news/international/israel-pm-benjamin-netanyahu-hopes-to-announce-release-of-all-hostages-from-gaza-in-coming-days/article70127282.ece> (last visited Oct. 5, 2025).

² Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 34, Aug. 12, 1949, 75 U.N.T.S. 287.

³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 8(2)(c)(iii).

⁴ Antonio Cassese, *International Law* 420 (2d ed. 2005).

⁵ Geoffrey Corn et al., *The Law of Armed Conflict: An Operational Approach* 352 (3d ed. 2024).

⁶ Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3.

⁷ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War arts. 27, 34, Aug. 12, 1949, 75 U.N.T.S. 287.

the Fourth Geneva Convention and considered a war crime in customary international law.⁸ In addition to treaty obligations, customary IHL enshrines the core values including distinction, proportionality, and necessity which have the effect of limiting the nature of hostilities in order to safeguard non-combatants. The International Committee of the Red Cross highlights the fact that armed forces, along with non-state actors like armed groups, are obliged by these norms in order to hold them accountable regardless of their recognition as a state.⁹

In comparison, English law authorises the prosecution of a violation of IHL by incorporating war crimes into domestic criminal law, such as the Geneva Conventions Act 1957.¹⁰ Although it is mainly used in cases involving British citizens or offences that occur within the jurisdiction of the UK, these provisions illustrate how international norms are enforced domestically. Also, the EU law covers human-rights considerations in war situations, specifically in the Charter of Fundamental Rights of the European Union, which declares the right to life (Article 2) and the ban on torture and inhuman treatment (Article 4).¹¹ These frameworks are complementary to IHL requirements, with an emphasis on civilian protection and accountability at the domestic and supranational levels.

This article also highlights the difficulty of applying IHL to asymmetric warfare, where the line between combatants and civilians continues to grow more blurred. The disparity between legal norms and their application is evident in reports by the United Nations and Human Rights Watch of frequent violation of the principle in Gaza, such as indiscriminate attacks and hostage-taking.¹² Comparative approach reflects that, although international law establishes global norms, their enforcement in practice depends on national internalisation and powerful surveillance systems.

III. HOSTAGE-TAKING AND ACCOUNTABILITY

International Humanitarian Law categorically prohibits hostage-taking, and is a war crime under both treaty and customary law.¹³ Article 147 of the Fourth Geneva Convention explicitly refers to the act of hostages taking as a severe violation, requiring the protection of criminals by the states through prosecution or extradition.¹⁴ Hostage-taking is enshrined further in the Rome Statute of the International Criminal Court as a war crime in an international or non-international armed conflict, and the principle of individual criminal

⁸ Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law* (Vol. I: Rules) Rule 96 (2005).

⁹ Int'l Comm. of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* 13 (2023).

¹⁰ Geneva Conventions Act 1957, 5 & 6 Eliz. 2, c. 52, § 1 (U.K.).

¹¹ Charter of Fundamental Rights of the European Union arts. 2, 4, 2012 O.J. (C 326) 391.

¹² U.N. Hum. Rts. Council [UNHRC], Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel ¶¶ 42–46, U.N. Doc. A/HRC/56/26 (2024).

¹³ Int'l Comm. of the Red Cross, Customary IHL Database, Rule 96: Taking of Hostages, <https://ihl-databases.icrc.org>.

¹⁴ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 147, Aug. 12, 1949, 75 U.N.T.S. 287.

responsibility of both leaders and combatants.¹⁵ The kidnapping of civilians in the course of active hostilities in Gaza constitutes a direct contravention of these norms, which outlines legal and ethical demands of responsibility.

It lies in the hands of state and non-state. The state of Israel, being a recognised state party to the Geneva Conventions, has an obligation to safeguard civilians during occupation, and ensure that military action is taken in accordance with IHL.¹⁶ On the other hand, the non-state armed group Hamas is, however, bound to respect customary IHL and not commit acts that amount to war crimes, such as hostage-taking.¹⁷ The principle of command responsibility assumes that both parties may charge their leaders with the responsibility to order, condone or close their eyes to illegal activities of subordinates. The international community has intensified the prosecution of those who commit such violations through mechanisms like the ICC regardless of the state affiliation.

English law criminalises hostage-taking by the Taking of Hostages Act 1982 instituting the International Convention of the Taking of Hostages of 1979.¹⁸ British nationals or crimes committed on UK territory can be tried in English courts to enhance domestic responsibility. Other laws also targeted at countering terrorism, including the Terrorism Act 2000, make threats, kidnappings, and any action meant to intimidate a government or people a criminal offense.¹⁹ The EU law also covers hostage-taking in counter-terrorism directives, stipulating that member states must impose penalties against offenders and provide protection to victims.²⁰ This comparative framework indicates how international standards can converge with domestic legal frameworks to combat crimes involving hostages, which highlights the potential of enforcement mechanisms operating at several levels in an attempt to increase compliance and accountability.

IV. ROLE OF MEDIATORS AND STATE RESPONSIBILITY

An important role in conflict resolution is undertaken by third-party states and mediators, but their intervention is limited by the commitments of international law. Other states like the United States and Egypt, which have mediated between Israel and Hamas regarding hostages in Gaza, should respond to neutrality, non-intervention, and the illegality of aiding the breach of the international humanitarian law. Mediators can use political and logistical leverage, but not legitimise or promote actions that are against international law, such as holding hostages or carrying out indiscriminate attacks against civilians. International law acknowledges that

¹⁵ Rome Statute of the International Criminal Court arts. 8(2)(a)(viii), 8(2)(c)(iii), July 17, 1998, 2187 U.N.T.S. 90.

¹⁶ Int'l Comm. of the Red Cross, State Parties to the Geneva Conventions of 1949 and Their Additional Protocols, <https://www.icrc.org>.

¹⁷ Int'l Comm. of the Red Cross, Customary IHL Database, Rule 149: Responsibility of Commanders and Other Superiors, <https://ihl-databases.icrc.org>.

¹⁸ Taking of Hostages Act 1982 (U.K.); International Convention Against the Taking of Hostages, G.A. Res. 34/146, U.N. Doc. A/RES/34/146 (Dec. 17, 1979).

¹⁹ Terrorism Act 2000, §§ 1–3 (U.K.).

²⁰ Council Directive 2017/541, of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism, arts. 5–7, 2017 O.J. (L 88) 6.

there can be secondary responsibility on the part of states where they offer substantial support or assistance or direction to parties that engage in unlawful acts. It is clear that aiding or assisting the commission of an internationally wrongful act can attract the liability of a state as explicated in the Articles on the Responsibility of States to Internationally Wrongful Acts (2001) of the International Law Commission, even in instances where the act is perpetrated by non-state actors.²¹ When it comes to Gaza, mediating states have to walk a very fine line within these legal realms so that as they facilitate negotiations, they do not accidentally break their obligations or undermine accountability.²²

By comparison, English law limits liability of domestic actors involved in foreign diplomatic mediation, in most cases under statutes dealing with terrorism, hostage-taking, or complying with sanctions. Likewise, EU law requires member states to respect international commitments in pursuing diplomatic or mediation efforts such as the observance of the resolutions of the United Nations Security Council and the observance of human rights standards and norms.²³ These principles strengthen the notion that states serving a mediating role must do what is necessary to resolve conflicts, but do not violate legal standards, and that their actions should not involve a legal or moral responsibility of perpetrating the violations committed by parties to the conflict.

V. IMPLICATIONS AND FUTURE CHALLENGES

The Gaza hostage crisis highlights the ongoing enforcement issues associated with International Humanitarian Law (IHL). Although there are strong prohibitions against hostage-taking and protecting civilians, the application of these in asymmetric wars that feature non-state actors in addition to states remains elusive. These restrictions have made the prosecution of violations difficult due to limited access to conflict zones, political limitations, and the inability to ascribe responsibility, which leads to a notable discrepancy between legal standards and the application of the law. These challenges in enforcement give rise to lessons in English and EU law. The English legislation, including the Geneva Conventions Act 1957 and other counter-terrorist laws, shows that it is crucial to incorporate international norms domestically to make prosecution and responsibility possible.²⁴ In a similar manner, EU structures facilitate compliance with the human rights requirements and the application of penalties, which offer a well-organised approach to reinforce international law.²⁵ These reveals domestic and supranational mechanisms, how local enforcement can be used to reinforce larger international initiatives, as well as making sure that legal obligations are not just aspirational.

²¹ Int'l Law Comm'n, *Responsibility of States for Internationally Wrongful Acts*, art. 16, U.N. Doc. A/56/10 (2001).

²² U.N. Charter art. 2(7); Int'l Comm. of the Red Cross, *Commentary on the First Geneva Convention* (updated 2016).

²³ Consolidated Version of the Treaty on European Union art. 21, Mar. 13, 2012, 2012 O.J. (C 326) 13.

²⁴ Geneva Conventions Act 1957 (U.K.); Terrorism Act 2000 (U.K.).

²⁵ Charter of Fundamental Rights of the European Union arts. 2,4, 2000 O.J. (C 364) 1; Council Directive 2017/541, *supra* note 20.

Looking forward, the crisis in Gaza implies that there is a necessity to reinforce legal systems, develop new surveillance systems, and take proactive initiatives in formulating policies. Reforms may involve broadening jurisdictional authority to war crimes, increased responsibility of non-state actors and use of related lessons in other legal systems to strengthen civilian protection. Also, there should be long-term international cooperation and mediation practice which strongly focuses on IHL adherence to reduce the upcoming crisis. Through examining these implications, policymakers and legal academics can devise measures that, in addition to strengthening the normative capacity of international law, can enhance its positive impact on the effectiveness thereof in protecting vulnerable populations.

VI. CONCLUSION

The Gaza hostage crisis demonstrates the lasting importance of International Humanitarian Law (IHL) to govern armed conflict and protect people. The existence of hostage-taking, non-selective attacks, and intrusions by both state and non-state actors explains the importance of strong enforcement mechanisms and accountability structures. The English and EU law comparatives emphasise the importance of domestic and supranational integration of international norms and how local legal systems can be used to supplement world norms to ensure adherence and punish its breach. Moving ahead, the crisis highlights the need to enhance monitoring, increase legal redress to victims, and improve mediation guidelines to match IHL principles. Through these lessons, policymakers and law scholars can be better equipped to tackle humanitarian issues and increase the normative and practical efficacy of international law in modern conflicts.