

**ISRAEL, HAMAS AND THE LAWS OF WAR****The Hindu**

Paper - II (International Relations)

On October 7, Hamas, a Palestine-based terrorist group, launched an attack on Israel, killing hundreds of civilians and taking many hostage. Israel has retaliated with all its might, triggering a war in West Asia.

**What are the laws of war?**

There are two separate and independent international law questions related to wars. First, under what conditions or when can countries use force in their international relations? This is known as jus ad bellum, regulated by the United Nations (UN) Charter.

Second, how is a war to be fought, that is, what military actions are permissible? This is known as jus in bello. Assuming a country is justified under the UN Charter to use force, it still must ensure that it satisfies jus in bello obligations. Justification to use force does not relieve a country of its obligations to use such force in accordance with international law.

The 'how' of using force or the law of war is known as international humanitarian law (IHL), which provides the rules that must be followed during an armed conflict. IHL is contained in customary international law, the Geneva Conventions of 1949 and the Additional Protocols of 1977.

It regulates the conduct of the parties or groups engaged in an armed conflict. Its primary objective is to protect civilians and reduce the suffering a war unleashes. No matter how just the cause of fighting a war, warring parties must comply with IHL.

**Do the laws of war apply to the ongoing military conflict?**

Yes, because the military conflict between Israel and Hamas is an armed conflict. As was held by the International Criminal Tribunal for former Yugoslavia in the Prosecutor versus Dusko Tadić case, an armed conflict in international law exists when "there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State".

International law classifies armed conflicts into two categories — international armed conflict (IAC) and non-international armed conflict (NIAC). According to Common Article 2 of the Geneva

Conventions, IAC includes all cases of declared war or any other armed conflict between two or more countries. NIAC includes non-governmental forces ( Hamas ) involved in battle with governmental forces ( Israel ).

Common Article 3 of the Geneva Convention applies to NIAC. Thus, Israel and Hamas are obliged to abide by IHL.

### **What about civilian killings?**

The primary objective of IHL is that during an armed conflict, a distinction is always made between combatants and civilians. War parties can only attack combatants and military targets, not civilians and civilian objects. Indiscriminate attacks that fail to distinguish between combatants and civilians are forbidden and thus illegal.

Accordingly, the killing of civilians by Hamas is illegal. Israel's illegal and belligerent occupation of the Palestinian territory since 1967 does not allow Hamas to kill, injure, abduct, or torture Israeli civilians or target civilian installations. Also, any military attack that causes disproportionate harm to civilians, when judged against the expected military benefit, is barred.

Israel reportedly dropped 6,000 bombs on Gaza, causing widespread destruction and death. This is a disproportionate use of force. Hamas's horrific attack on Israel does not justify Israel inflicting disproportionate harm on the civilian population in Gaza. All this amounts to grave breaches of the 1949 Geneva Conventions and constitutes as war crimes.

### **Is hostage-taking legal?**

Hamas has taken Israelis hostage. This is illegal. Hostage-taking is specifically recognised as a war crime by Article 8 of the Rome Statute — a treaty establishing the International Criminal Court. Article 1 of the International Convention Against the Taking of Hostages recognises hostage-taking as a crime.

### **What about the Gaza Strip blockade?**

Israel's plan to block the supplies of food, electricity, water, and fuel in the Gaza Strip, where close to two million people live, amounts to collective punishment — retaliating against a group for the conduct of individual/s said to belong to that group.

This action will exacerbate the already harsh air and sea blockade of the Gaza Strip since 2007. Such an action violates a fundamental tenet of IHL that no person should be punished for actions they didn't commit.

Punishing all Gaza Strip residents for Hamas's actions is illegal and a war crime. Additionally, under IHL, warring parties must give advance warning to civilians to evacuate before attacking, which should be effective. If civilians are not given adequate time to evacuate, the warning will be ineffective.

Israel's warning to the residents of the Gaza Strip is not effective. Given the air and sea blockade, the civilians do not have a realistic possibility of moving to safe places. In any case, civilians who do not move out despite the warning must also be protected.

Both sides need to respect their IHL obligations and an investigation should be launched into the war crimes committed.

### Expected Question

**Que. Consider the following statements in the context of The international humanitarian law (IHL)-**

1. The law of war is called international humanitarian law.
2. This law is enshrined in customary international law and the Geneva Conventions of 1949.

**Which of the statements given above is/are correct?**

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Answer : c**

### Mains Expected Question & Format

**Que.: "Which international laws apply in case of war between two countries? What is the role of the United Nations in these?"**

**Answer Format :**

- ❖ In the first part of the answer, discuss the international laws applicable in case of war between two countries.
- ❖ In the second part, discuss the role of the United Nations during the war.
- ❖ Finally give a conclusion showing the way forward.

**Note:** - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.