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# Civilians at war: focusing on the Israeli-Palestinian conflict and scrutinizing the doctrine of non-combatant immunity

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The principle of non-combatant immunity was codified in the Code of International Law and developed into an important foundation for the doctrine of just war, whose origins can be traced to the moral imperative of religious support. The doctrine advocates that persons deemed innocent should be protected from the threat of war, and it is the most widely recognized and deeply rooted moral constraint on the conduct of war. However, the principle of non-combatant immunity has not really deterred the outbreak of war, leaving the international community committed to utopian ideals. In the contemporary context of the Israeli-Palestinian conflict, the principle of non-combatant immunity has been rendered ineffective as civilians are forced to be on the frontlines of both sides of the war. The principle of “just war” seems to have taken on a new basis, with self-defense becoming the pretext for justifying war, and the international community unable to rescue civilians from the flames of war amidst the outcry. There is an urgent need for the international community to re-examine and re-evaluate the immunity of non-combatants, and to limit the use of war as a “legitimate” means of resolving international conflicts. This article calls for a critical assessment of the normativity and effectiveness of the existing law on the principle of non-combatants, and a rethinking of how to construct a more rational and high-level principle to enhance the protection of non-combatants.

## KEYWORDS

war, non-combatant civilian, non-combatant immunity, legitimate, just war

## 1 Introduction

The protection of civilians in war is a long-discussed moral issue, and ethicists have relied on the principle of non-combatant immunity (PNCI) as the theoretical fulcrum for the protection of civilians in war (Hough, 2023). This principle has been codified in international law, the Hague Draft Rules of Air War, the Additional Protocol to the Rules of Air War, the Geneva Convention, etc., all of which reflect the international community’s efforts to explicitly protect and assist non-combatants (Cross, 2010). In the social construction of popular culture and political discourse, the term “non-combatant” is equated with the term “civilian.” It is well understood that civilians are defined as non-military personnel, which loosely means innocent, vulnerable, and in need of protection (Alexander, 2007). Thus, the principle of non-combatant immunity, which protects civilian from intentional attacks in war, is the most widely recognized and deeply rooted moral constraint on the conduct of war. However, in today’s context, war seems to have become a “legitimate” means of resolving international disputes, and the number of non-combatants

being attacked by war is increasing day by day, so the principle of non-combatant immunity has been seriously challenged and provoked (Abumere, 2020). This article taking the past and present of the Israeli-Palestinian conflict as a case study, the paper explains the persecution of civilians in war and the violation of the principle of non-combatant immunity. It calls on the international community to urgently improve the principle of non-combatant immunity and to urgently construct a moral code to limit the harm of war on civilians.

## 2 The evolution of the doctrine of non-combatant immunity

For centuries, the doctrine of non-combatant immunity has been the touchstone of human warfare. Every time a new tactic or technology involves non-combatants in a war, the post-war period leads to another iteration of the doctrine (Schindler and Toman, 2004). Before examining the current legal framework incorporating non-combatant immunity, it is important to understand its ideological background, from its inception in the religious writings of St Augustine, through the thought-provoking effects of the Great War, to the modern situation where it is a hopeful but not universally realized principle.

### 2.1 Just war theory

Violence is inherent in human beings and exists in nature, but war is not. War is a political term that gives violence a certain status and connotation and is an attempt by state actors to legitimize and formalize their participation in violence. The protection of civilians in wartime is an important aspect of the justification of war by states. As Walzer (1977) emphasized that limiting the deterioration of war and assisting non-combatant victims of war are the primary conditions for distinguishing war from murder. In just war theory, the justification of war is achieved by examining the law of war and the law of combat. Walzer calls these terms the “ends of war” and the “means of war.” In traditional state-to-state warfare, *ius ad bellum* refers to whether a particular war is just and morally acceptable, i.e., whether the war is in pursuit of a just cause and was initiated by a legitimate authority with the right intentions. The principle of non-combatant immunity is an important component of this war: the protection of “innocents” from harm, or the prevention of grave injustice, generally constitutes a necessary condition for the legitimization of a just war (Walzer, 2015).

### 2.2 The principle of non-combatant immunity

The idea of “war immunity” has strong religious roots, like the concept of humanitarian aid itself. Its place in the theory of just war is crucial, for without it the theory of just war would lose its coherence and scientific character (McKeogh, 2002). Before the principle of the immunity of non-combatants was codified in international law, St Thomas Aquinas, in the *Summa Theologica*,

Article 40, II-II, laid down three conditions for just war: proper authority, just cause and right intention, which are still used in the discussion of the right to war. Aquinas (2009) pointed out that the just use of force against the innocent was a moral judgement and that it was a crucial step toward codified non-combatant protection. The principle of non-combatant immunity was developed during the American Civil War and continues to be a firm principle of international warfare. The ideology behind non-combatant immunity is succinctly stated in the Lieber Code: “Unarmed citizens shall be protected in person, property, and honor. “Later, the norm of non-combatant immunity appeared in the Laws of War on Land of 9 September 1880, Article VII, which “prohibits the ill-treatment of the non-offensive population” (Brough, 2004). The Hague Convention of 1907 states in Article 25 that “it is prohibited to attack or bombard in any manner whatsoever undefended towns, villages, dwellings or buildings.”

The First World War had a profound effect on the concept of civilian immunity in war, as civilians suddenly became the primary targets of war attacks. Despite previous codification, there was still very little protection for non-combatants at the start of the First World War. New weapons and tactics increased civilian casualties in war (McMahan, 2006). In response, the Hague Draft Rules of Air Warfare were adopted in 1923, which prohibited the use of airplanes for aerial bombardment to intimidate civilians and, for the first time, clearly delineated between civilians and military personnel. These provisions demonstrate the recurrence and prevalence of the norm of non-combatant immunity in international consciousness (Hough, 2023).

The tactics used in World War II shocked the world. The furious aerial bombardment of London, Dresden, Hiroshima and Nagasaki claimed the lives of thousands of civilians. Nazi state-sponsored genocide culminated in the Holocaust. To ensure the protection of non-combatants and civilians, the international community has called for legal remedies and the institutionalization of legal agreements. This led to the Nuremberg Principles, of which Principle 6 is particularly important as it defines crimes against humanity: “murder, extermination, enslavement, deportation and other inhumane acts directed against any civilian population” (Coates, 2016). This is a manifestation of the evolving norm of civilian protection, which explicitly prohibits inhumane acts against civilians.

The most extensive definition of non-combatant immunity and codification of the protection of civilians appears in the first Additional Protocol to the Geneva Convention of 1949, Article 48 adopts the basic rules for the protection of civilians, while Article 51 provides in part that “the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations” (Galtung, 1969). Section 8(2)(b)(i) of the Rome Statute of the International Criminal Court 1998 defines war crimes as offenses involving “intentional attacks against civilian objects, i.e., objects which are not military objectives” and further defines crimes against humanity as “any act committed as part of a widespread or systematic attack directed against any civilian population” (Cadwalader, 2011). According to Johnson, principle of non-combatant immunity restrictions on certain means of warfare, and weapons of war, such as chemical, biological and nuclear weapons as well as conventional weapons with indiscriminate

effects, prevention of genocide, and the protection of cultural property (Johnson, 2000).

Although the definition of non-combatants and the protection of civilians have been codified in international law, they represent an idealistic or even utopian view of war (Waldron, 2008). Looking at the international community, the uncertainty of war and the unpredictability of wartime have posed unprecedented challenges to the international law on the protection of non-combatants (Cadwalader, 2011). The Israeli-Palestinian conflict is a good example.

On 7 October 2023, the Palestinian militant group, Hamas, launched an unprecedented attack in which militants raided several towns in southern Israel, killing more than 800 Israeli personnel. Israel then declared war on the Gaza Strip, and the eyes of the world were once again focused on the Israeli-Palestinian conflict. Tens of thousands of people have died, and millions have been displaced from their homes as a result of the conflict, but what happens in a matter of days and weeks is a re-sprouting of the seeds left behind in history. Since the Hamas attack inside Israel, which killed more than 1,400 people, Israel's full-scale siege of Gaza by bombing and air strikes has led to an escalation of the Israeli-Palestinian conflict.

According to the Arabic channel of Al-Jazeera TV, firstly, Israeli Air Attacks on Gaza, including an air strike on a shopping mall in the central Nuseirat refugee camp, which is estimated to have killed nine people and injured dozens more. The air strikes also sparked fires that destroyed several shops. In another deadly Israeli attack overnight, three people, including two women and an eight-year-old child, were killed in an air strike on a house in central Khan Younis in southern Gaza. Most particularly painful and shocking was the Israeli attack on the Al-Ahli Arab Hospital in Gaza City, which killed some 470 people. As the war continues to spread, Israel has declared a blockade of the Gaza Strip, stopping the supply of water, food, fuel and other necessities to the already besieged enclave.

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has warned the international community that the Gaza Strip is about to run out of potable water, which could lead to a health and environmental catastrophe for the more than two million people living in the area, who are struggling under siege and the weight of war, and who have no other recourse but to use contaminated wells, which, due to the presence of many pathogens, will only worsen the situation.

### 3 The military logic behind Israel's "total" siege of Gaza

Israel has cut off water, electricity and fuel supplies to the Gaza Strip in order to defend itself in a way that imposes collective punishment, using self-defense as a starting point. This is an act that goes beyond the reasonable bounds of self-defense, and clearly violates the international norms of human rights approved by the United Nations, as well as human rights law (Ronzitti, 1985).

What will happen to the more than 2 million people who are trapped without food, water, electricity or medicine in a land that is fast becoming a wasteland? Indeed, hunger is a great weapon of war. According to Hough (2023) stated that forced starvation is one of the tools of mass murder, as well as an effective means

of mass murder. No matter how much aid is allowed into Gaza without being "blocked" by Israel, death by starvation remains a living threat.

Israel terminated all supplies into Gaza and cut off water and electricity, the closure of border crossings prevented aid from reaching the enclave, and air strikes and orders to withdraw from the north fuelled the despair of the people of Gaza. Under the Rome Statute of the International Criminal Court (ICC) the offense of intentionally targeting civilian objects, i.e., objects that are not military objectives, is a war crime (Arsanjani, 1999). However, the President of the European Commission, Frederik von der Ley, has publicly stated that he supports all measures taken by Israel in "self-defense." This gives legitimacy to what Israel is doing.

## 4 The passive attitude of the international world toward the condition of Palestine

The international community's concerns about Palestine are multifaceted, including a wide range of humanitarian, political and human rights issues. One of the main concerns is the continued Israeli occupation and its impact on the rights and wellbeing of the Palestinian people. Secondly, the blockade of drinking water and food in the Gaza Strip, coupled with restrictions on the movement of people, has resulted in a serious humanitarian situation. The persistence of human rights violations and the lack of progress toward a just and lasting resolution of the conflict has prompted calls from the international community for renewed efforts to address the root causes of the conflict and promote peace and stability in the region.

### 4.1 Political rhetoric and practical steps

The United Nations Secretary-General said: "The situation in Gaza is catastrophic." "WHO has also reiterated its call for a ceasefire and for the release of all hostages and the achievement of a lasting peace." Leaders of many countries around the world have used speeches, international forums and election campaigns to vocal support for Palestinian rights and statehood. They have pledged to advocate for justice, equality and self-determination for the Palestinian people. However, there is often a wide gap between these words and the concrete actions taken by these leaders to advance the cause of Palestinian rights. For example, leaders may vow to uphold international law and support the two-State solution as the path to peace in the Middle East, yet their governments continue to provide diplomatic, economic and military support to Israel, even in the face of Israeli human rights violations and illegal settlements. There are also leaders who condemn the violence against Hamas in their rhetoric but fail to take meaningful steps to hold those responsible for these acts accountable. This lack of accountability or the undermining of international law perpetuates a culture of impunity and undermines efforts to achieve justice and reconciliation. Fundamentally, despite the rhetoric of concern for the Palestinians, there is a lack of concrete action.

## 4.2 Humanitarian crisis

Palestinians face severe water shortages and water contamination, which pose serious challenges in terms of drinking, sanitation and agriculture, and the lack of basic safeguards for public health and wellbeing. WHO team has arrived at two hospitals in Gaza City to conduct assessments and deliver life-saving supplies, a United Nations spokesman said. “Due to the lack of antiseptics, doctors have had to sprinkle salt and vinegar on people’s wounds, when in fact no antiseptics exist,” said Mr. Duharik, a WHO personnel. Israel’s comprehensive closures and actions restrict access to health care, leading to preventable deaths and human suffering. School closures, military checkpoints and raids on educational facilities threaten the academic performance, literacy rates and prospects of Palestinian youth. Israeli restrictions on the freedom of movement of Palestinians, including checkpoints, roadblocks and the separation wall, limit access to basic services, disrupt daily life and perpetuate a vicious cycle of poverty and dependency (UN News, 2024). Regarding international aid efforts, the contribution of humanitarian organizations in aiding with Palestinians was significant. However, these efforts often fail to respond to the scale and complexity of humanitarian crises due to underfunding, bureaucratic obstacles and political commonalities (Ghaboun, 2021).

## 4.3 Normalization of the occupation

The international community’s negative attitude toward Israel’s continued occupation and colonization of Palestinian land, and its failure to actively condemn it, has effectively normalized it on the global stage. Such normalization perpetuates the status quo and entrenches the occupation and colonization, making it acceptable and even legal. Secondly, the international community’s failure to hold Israel accountable for its violations of international law indirectly legitimizes Israel’s continued expansion of settlements, confiscation of land and displacement of Palestinian communities. This normalization entrenches power imbalances and injustices and undermines efforts to achieve a just and lasting solution to the conflict (Barghouti, 2006). Moreover, the normalization of the Israeli occupation and colonization erodes the credibility of international norms and institutions established to maintain peace, security and human rights. It sends a dangerous message that the powerful can recklessly disregard the rights and sovereignty of the weak without meaningful consequences (UN News, 2024). The international community’s passive stance on the question of Palestine thus not only perpetuates injustice but also undermines the prospects for a peaceful settlement.

## 5 The prudent non-combatant immunity doctrine

Can one stop killing by killing? How can the use of force stop the use of force? Is it worth sacrificing hundreds of lives to pursue those responsible for massive, systemic violence? More importantly, they are ordinary civilians (Nagel, 2012). The international community must recognize the multifaceted and

complex nature of war. In conflict zones, myriad variables often prevent authorities from ensuring the continued protection of non-combatants. In this context, how can ordinary civilians be protected from the harms of war (Galtung, 1969).

If the persecution of non-combatants in war is accepted, it risks transforming the international legal order into a system based on chaos, hegemony and control, and may force a return to a long-gone era in which the power of the stronger Law rather than the force of law (Gade, 2010). Non-combatant immunity and restrictions on the use of war as a “legitimate” means of resolving international conflicts need to be re-examined and re-evaluated. This assessment requires a rigorous assessment of existing legal frameworks, military strategies and international norms to ensure that they are effectively prioritized. Consider the protection of civilians in armed conflict (McKeogh, 2002). It also requires a reassessment of the roles and responsibilities of State and non-State actors in conflict zones, including their compliance with human rights standards and accountability for violations (Brown, 2017). By conducting such an assessment, the international community can identify gaps, shortcomings and areas for improvement in the protection of non-combatants, thereby laying the groundwork for stronger and more effective measures to safeguard civilian lives in times of war (Frowe, 2011). In addition, it emphasizes the need for proactive and concerted action to prevent and mitigate the humanitarian impact of armed conflict, ultimately contributing to the goal of peace and security for all (Lazar, 2014). Until this is realized, it needs to be done through a more transparent and open discussion of the facts of conflict and combat, rather than through false promises of protection to non-combatant norms.

## 6 Conclusion

In today’s new wars, the policies established by the international community to protect non-combatants are not respected or enforced, in violation of the existing legal framework. Therefore, legal systems and practices that protect civilians will need to be rebuilt in the future. The article emphasizes the urgent need for a thorough re-evaluation of these legal frameworks, recognizing their shortcomings and inadequacies in adequately protecting non-combatants in conflict zones. In addition, the article emphasizes the need to rethink and reconstruct more reasonable and higher-level principles, and the international community needs to recognize the changing nature of war conflicts and the need to adjust legal norms to effectively respond to contemporary challenges and strengthen the protection of non-combatants.

## Data availability statement

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author.

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## Conflict of interest

The author declares that the research was conducted in the absence of any commercial or financial relationships

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