

# The War with Hamas: Legal Basics

**Pnina Sharvit Baruch** | No. 1770 | October 16, 2023

1. The violent attack by Hamas that deliberately targeted Israeli citizens, civilians as well as soldiers, and the atrocities committed by Hamas and other terrorists – among them murder, torture, rape, abduction, looting, and many other crimes – constitute gross violations of international law, and in particular, of international criminal law. These horrific acts constitute the most serious crimes in international law defined as war crimes and crimes against humanity, and amount to the crime of genocide. Hamas has an absolute obligation to release immediately all those kidnapped to the Gaza Strip whose continued imprisonment is a serious and ongoing war crime.
2. Despite the horrific crimes committed by Hamas, Israel is obligated to respect the laws of armed conflict (LOAC, aka IHL). There is no principle of reciprocity in these laws.
3. According to the laws of armed conflict, it is permissible to direct attacks against military targets, whereas direct attacks toward civilians and civilian objects are forbidden and considered a war crime. The definition of "military targets" includes civilian objects that by their nature, purpose, location, or use make an effective contribution to military action and whose destruction offers a definite military advantage (Art. 52(2) of Additional Protocol I of 1977). Since Hamas places its military infrastructure in the heart of the civilian population in the Gaza Strip, including in residential houses, schools, mosques, and businesses, it is permissible to direct attacks toward these sites, as they have lost their civilian nature and have become legitimate military targets due to this use.
4. According to the laws of armed conflict, even when attacking a military target, it is forbidden to attack if the collateral damage expected from the attack to civilians and civilian objects is excessive in relation to the military advantage expected from the attack. Unless Hamas is deprived of its military capabilities, it will continue to pose an imminent threat that prevents the rebuilding of the destroyed villages and the return of citizens to their homes, thus de facto denying Israel the exercise of its sovereignty in the areas adjacent to the border with the Gaza Strip. In view of the enormous threat that Hamas currently poses to Israel, the denial of its military capabilities is expected to give Israel a great security advantage. Therefore, the destruction of each segment of its military infrastructure offers a significant military advantage. Hence, even if a considerable number of civilians might be harmed during the attack of such a target, this would not necessarily be excessive incidental damage and therefore would not be a disproportionate attack that is illegal.
5. According to the laws of war, there is an obligation to take feasible precautions to minimize harm to civilians when attacking military targets. However, there is

no specific legal obligation to warn an individual before an attack. Under the existing circumstances, giving a general warning to civilians to leave areas that are planned to be attacked by the IDF can certainly be considered a sufficient precaution. This is not a forcible transfer of civilians or ethnic cleansing. On the contrary, it is a precautionary measure taken for the benefit of the civilian population to spare their lives.

6. Hamas's use of Gaza residents as human shields for its military activities is a war crime. So are its actions to prevent civilians from moving away from danger zones.
7. The Gaza Strip [is not](#) under Israeli occupation. Israel withdrew from the Gaza Strip completely in 2005 and has no effective control over the territory. The ability of Hamas to carry out the sophisticated attack and to surprise Israel clearly illustrates this. Israel has no obligation to provide means to enemy territory, including electricity and water.
8. It is permissible to impose a blockade, including a naval blockade, on enemy territory. If there is a severe humanitarian shortage, aid agencies can request to allow the transfer of aid, and there will be reason to consider this.

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Editors of the series: Anat Kurtz, Eldad Shavit and Judith Rosen