

What are the principles of civilian immunity in war? A scholar of justice in war explains

theconversation.com/what-are-the-principles-of-civilian-immunity-in-war-a-scholar-of-justice-in-war-explains-220732

J. Toby Reiner



About 1 in 100 Gazans have been killed since the start of the Israel-Hamas war, according to the Palestinian Ministry of Health's [Jan. 8, 2024, update](#). More than [24,000 people have died](#), an average of 250 each day. The Israel Defense Forces' own figures acknowledge that [two-thirds of those killed are civilians](#).

The magnitude of the death toll has led to widespread criticism of Israeli military action in Gaza. [Human rights groups](#) have accused it of committing war crimes. South Africa has accused it of [genocide at the International Court of Justice](#).

Analysis of the Israeli invasion, however, has largely focused on whether it is a [proportionate response](#) to the Hamas attacks of Oct. 7, 2023.

Proportionality, understood by philosophers as using the [minimum force](#) necessary to achieve military objectives, is indeed one of the crucial principles of [justice in war](#). But another principle that has received less attention is what ethicists call discrimination, which

involves distinguishing between legitimate and illegitimate targets. The crucial aspect of discrimination is known as “noncombatant immunity.” This principle, enshrined in international law, stipulates that military forces must never deliberately target civilians.

Just-war theory, the philosophy of morality in war, also insists that civilians are not legitimate targets. This means that civilians are, morally speaking, immune from deliberate attack.

As a just-war theorist, I argue that the principle of civilian immunity is even more basic than proportionality. Whereas the principle of proportionality focuses on how much force may be used, the principle of civilian immunity deals with whether a target may legitimately be attacked at all.

Civilian immunity in Gaza

As philosophers of justice in war such as Jeff McMahan and David Rodin argue, principles of justified killing in war should start with the view that all people are initially immune from attack.

There has been debate among philosophers recently about how civilians may render themselves liable to harm.

There is, however, widespread agreement that mere support for a government does not make civilians legitimate targets. Moreover, the Israeli government has frequently accepted that it has duties not to attack civilians and to minimize civilian deaths.

It is also important to note that the majority of Gaza’s population is young. The median age is just 18. Thus, the majority of Gazans are not legitimate targets of deliberate attack. Yet more than 9,000 children have died in the war.

The large number of children killed in Gaza does not, however, prove that Israel has violated civilian immunity.

Moral immunity

Civilian immunity does not provide blanket protection from harm. Rather, it forbids deliberate attacks on civilians. Just-war theorists have long held that civilian casualties that are an unintended consequence of attacks on legitimate military targets may be permissible. This is true even if such casualties are foreseen. This principle is called the “doctrine of double effect.”

Under conditions of modern warfare, military forces and civilians often cannot be separated. This is especially true in Gaza, which is densely populated and in which military forces sometimes base themselves in civilian facilities in urban areas. A principle that forbids any civilian casualties would make waging war impossible.

Israel thus argues that its attacks on Shifa Hospital, Gaza's largest medical facility, and the Jabaliya refugee camp were justified. The Israeli government claims Hamas used the hospital as a command center and entrance to its tunnel network and stored weapons in Jabaliya, making them legitimate targets.

Hospitals are civilian facilities – as such, the principle of civilian immunity makes them impermissible targets. If a hospital is a mixed facility that is also used for military purposes, it may be attacked. However, international law requires that such an attack must proceed as carefully as possible, avoiding targeting doctors and patients .

Avoiding civilian casualties

Political theorist Michael Walzer's 1977 classic book "Just and Unjust Wars" argues that combatants owe civilians a duty of "due care" to avoid harming them. Walzer likens this obligation to dangerous occupations in civil society, such as firefighting.

Similarly, the laws of armed conflict require that combatants exercise "constant care" to ensure that they minimize harm to civilians.

Taking due care requires that combatants take risks to minimize harm to civilians. In Walzer's famous example of the bombing of a munitions factory in a built-up urban area, due care requires that bombers fly as low as possible. Even though this makes bombers more likely to be hit by anti-aircraft fire, it makes their aim more accurate.

Taking such risks is especially important in Gaza, given that the civilian targets are not merely adjacent to military ones but in the same facilities as them. This makes Israeli use of unguided bombs particularly concerning.

A December 2023 New York Times investigation found that Israel routinely used 2,000-pound bombs in south Gaza. Such large bombs are especially destructive. Moreover, some of these bombs were dropped in areas to which civilians had been told to flee.

Even if attacks on hospitals and refugee camps that are being used as military facilities may be permissible under the doctrine of double effect, the requirement to protect civilians prohibits their destruction. As Walzer notes, "Infrastructure, even if it is necessary to modern war-making, is also necessary to civilian existence." In January 2024, Walzer added that attacks on Gazan infrastructure can "only hurt the civilian population," not Hamas.

Civilian immunity requires that military forces use an absolute economy of force against mixed targets, doing whatever possible to avoid disrupting their functioning.



A scene outside the entrance of Shifa Hospital in Gaza City following an Israeli airstrike on Nov. 3, 2023.
AP Photo/Abed Khaled

Hospital administrators and aid groups report that the Israeli bombardment of Shifa shut off electricity and power supplies, as well as access to food, water and medical supplies. Israel claims that Hamas reroutes such resources for its own benefit. However, its attack caused significant damage to civilians, including the death of many babies and increased pressure on an already overwhelmed medical infrastructure.

A difficult standard

If Hamas is using hospitals and refugee camps for military operations, then it is violating international law. Combating Hamas thus presents grave dilemmas for opposing forces that want to fight justly.

But fighting in accordance with principles of justice in war is a difficult standard to meet. As historian and former Canadian politician Michael Ignatieff notes, a just military force must “fight with one hand tied behind its back.” Sometimes, this means not attacking sites that it would be militarily advantageous to attack, because of the harms such attacks would cause civilians.

Respecting the moral equality of all civilians, regardless of their nationality, is a vital principle of justice in war. If Israel were to take as much care to protect Palestinian civilians as it does its own, that would constitute the best possible defense against the charge of genocide.