

Civilian Protection in the Gaza Conflict: A Comparative Analysis of International Humanitarian Law and Fiqh Siyar

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Abstract

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The Israeli–Palestinian armed conflict, particularly the hostilities in the Gaza Strip since October 2023, has resulted in extensive civilian casualties and severe humanitarian suffering, raising persistent concerns regarding compliance with International Humanitarian Law (IHL). Although IHL provides a comprehensive legal framework for the protection of civilians, its effectiveness is frequently undermined by enforcement limitations and accountability gaps. This study examines civilian protection in the Gaza conflict through a comparative normative analysis of International Humanitarian Law and Islamic international law (Fiqh Siyar). Employing a normative doctrinal legal research method, with descriptive and historical approaches, the research analyzes treaty law, customary IHL, international jurisprudence, and classical and contemporary Islamic legal sources. This study contributes to the existing literature by moving beyond predominantly positivist analyses of IHL and introducing Fiqh Siyar as a complementary normative framework for evaluating civilian protection in contemporary armed conflicts. The findings demonstrate substantive convergence between IHL and Fiqh Siyar on core humanitarian principles, including civilian immunity, proportionality, limitations on the means and methods of warfare, and the primacy of humanity over military necessity. At the same time, the study highlights structural differences in normative authority and compliance mechanisms, with Fiqh Siyar emphasizing ethical accountability grounded in maqāṣid al-sharī‘ah, particularly the protection of life (ḥifẓ al-naḥs). Practically, the findings indicate that integrating ethical principles derived from Fiqh Siyar into humanitarian discourse and civilian protection frameworks may enhance normative internalization, compliance, and legitimacy, especially in contexts where formal enforcement of IHL remains politically constrained.

Keywords:

Civilian Protection, Fiqh Siyar, Gaza Conflict, International Humanitarian Law

INTRODUCTION

The Israeli–Palestinian armed conflict remains one of the most protracted and multifaceted international armed conflicts in contemporary international relations. The escalation of large-scale military operations in the Gaza Strip from October 2023 through 2025 marked one of the deadliest phases of the conflict, involving extensive ground and aerial campaigns by Israel against Hamas that resulted in unprecedented civilian casualties and widespread destruction of infrastructure. According to the Gaza Health Ministry and United Nations reporting, total Palestinian deaths in Gaza since the outset of the conflict have reached over 70,000, with more than 171,000 injuries, while violations of the ceasefire continue to cause fatalities and injuries even after truce agreements (Nation, 2025). These conditions not only raise concerns about compliance with International Humanitarian Law but also expose structural limitations in its enforcement and accountability mechanisms, underscoring the need to explore complementary normative frameworks for civilian protection.

Despite a ceasefire declared on 10 October 2025, the truce has proven fragile. Local health authorities report that hundreds of Palestinians have been killed and more than a thousand injured due to continued Israeli fire and airstrikes during the ceasefire period, reflecting ongoing hostilities and disputes over compliance (AJLabs, 2025). The suffering continues to deepen as living conditions deteriorate, with civilians facing acute shortages of shelter, healthcare, and humanitarian assistance under harsh winter conditions, leading to indirect deaths from cold, disease, and lack of medical care (Guardian, 2025). From a legal perspective, these ongoing hostilities underscore the gap between the normative protections guaranteed by IHL and their practical realization.

Such staggering human costs underscore the disproportionate impact of the conflict on civilians and raise profound concerns regarding compliance with the core principles of International Humanitarian Law (IHL), especially distinction and proportionality. These concerns are heightened by the asymmetry of force and the wide gap between military and civilian harm in Gaza (B. R. Cross, 2025).

Historically, the Israeli–Palestinian conflict’s origins trace back to territorial restructuring initiated in 1917 and subsequent occupation, settlement expansion, and cycles of violence. Israel’s control over approximately 26,790 square kilometers of historical Palestinian land and repeated military operations in densely populated areas have exacerbated humanitarian suffering and displacement throughout the conflict’s trajectory (Hana, 2026). One of the most alarming episodes occurred in Rafah, previously designated as a humanitarian safe zone for displaced civilians, which was struck by military operations that reportedly killed dozens of non-combatants and injured many more. These events have drawn intense scrutiny and condemnation from international actors and human rights organizations, raising legal questions about compliance with IHL obligations to protect civilians and displaced persons.

International Humanitarian Law, grounded in the 1899 and 1907 Hague Conventions and the 1949 Geneva Conventions, is the principal body of norms governing the conduct of hostilities and the protection of non-combatants in armed conflict (Smith et al., 2018). However, the persistent challenges of enforcement and accountability in contemporary conflicts particularly within internationalized disputes influenced by major power politics reveal structural limitations in the operationalization of IHL and its protective aims (Rosyid, 2012).

Scholarly analyses of the Israeli Palestinian conflict through the lens of IHL have documented widespread violations by all parties. Hengky Ho, for example, highlights breaches of core humanitarian norms by both Israeli and Palestinian actors, particularly in relation to civilian protection (Ho, 2019). Similarly, Zeldi Farah Ardiata and colleagues emphasize the deficiencies in IHL implementation during hostilities, while Tri Mahwati and Ana Risma Nanda call for mechanisms to strengthen civilian protections in asymmetrical conflicts (Farah et al., 2022). Yet existing literature remains largely rooted in positivist international legal frameworks and often does not explore alternative normative legal traditions that may enrich the understanding and application of humanitarian norms.

Long before modern international law emerged in Europe, Islamic legal civilization developed a comprehensive legal system governing warfare and intercommunity relations, known as Fiqh al-Siyar. Classical Islamic scholars such as Imam Muhammad ibn al-Hasan al-Shaybani articulated principles related to legitimate uses of force, the protection of non-combatants, and rules of engagement as early as the eighth century (Muhammadin & Azzahra, 2022). His work is recognized in *The Oxford Handbook of the History of International Law* alongside foundational figures like Hugo Grotius (Beham, 2016).

Contemporary Islamic legal scholars have emphasized that Fiqh al-Siyar offers ethical and normative foundations capable of complementing modern international law. Fajri Matahati Muhammadin argues that the moral imperatives embedded in Islamic international law can contribute to humanitarian legal discourse, while research by Muhammadin and Shania Dwini Azzahra underscores the need to revitalize Fiqh al-Siyar to address normative stagnation in international law-making (Muhammadin & Azzahra, 2022).

Islamic legal doctrine restricts warfare to strictly ethical conditions primarily self-defense and rigorously prohibits the killing of women, children, the elderly, and other non-combatants, as well as the unnecessary destruction of property and the environment (Az-Zuhaili, 2011). These principles demonstrate substantive normative convergence with the core values of International Humanitarian Law, particularly in the areas of civilian protection and limitations on the means and methods of warfare.

METHODOLOGY

This study employs a normative legal research method, also referred to as doctrinal legal research. Normative legal research focuses on the examination of legal norms, principles, doctrines, and rules as contained in authoritative legal sources, and views law as a prescriptive system that regulates human behavior (Amiruddin; Asikin, 2004). This method is particularly appropriate for analyzing legal frameworks governing armed conflict, including International Humanitarian Law and Islamic international law (Fiqh al-Siyar).

In order to contextualize the legal norms under examination, this research adopts a descriptive and historical approach. The descriptive approach is used to systematically describe and analyze existing legal principles and scholarly interpretations related to International Humanitarian Law and Fiqh al-Siyar, while the historical approach is employed to trace the development of these legal norms as well as the historical evolution of the Israeli Palestinian conflict (Amiruddin; Asikin, 2004). This combination allows the research to situate normative legal analysis within its broader socio-historical background without departing from its doctrinal focus.

The object of this research is the Israeli–Palestinian armed conflict, with particular emphasis on the application of International Humanitarian Law and Fiqh al-Siyar in regulating hostilities and protecting civilians. This study seeks to explore the extent to which Fiqh al-Siyar provides normative principles that may complement contemporary International Humanitarian Law in addressing humanitarian challenges arising from the conflict. This research is conducted through library-based legal research using qualitative data. The legal materials examined are categorized into primary and secondary legal sources.

Primary legal materials include classical and contemporary sources of Islamic international law and international legal theory, such as the works of Muhammad ibn al-Hasan al-Shaybani on Fiqh al-Siyar, Qur’anic verses, hadith literature, and tafsir related to the ethics and regulation of warfare. These sources are chosen for their authority in Islamic legal tradition and their clear relevance to the regulation of warfare and civilian protection. The works of Muhammad ibn al-Hasan al-Shaybani are among the earliest and most systematic articulations of Fiqh Siyar. They are widely recognized as foundational for Islamic international legal thought. Contemporary Islamic legal scholarship is also included to show the ongoing relevance and interpretive development of Fiqh Siyar principles in modern armed conflicts. In addition, foundational works of modern international law, including the writings of Hugo Grotius on natural law and the law of war, are analyzed to provide a comparative normative perspective. Secondary legal materials consist of scholarly books, peer-reviewed journal articles, legal commentaries, and other academic publications relevant to International Humanitarian

Law, Islamic international law, and the Israeli–Palestinian conflict. These materials function to support, interpret, and critically assess the primary legal sources.

The data collection method applied in this research is qualitative. In qualitative legal research, the researcher acts as the primary research instrument, responsible for determining the research focus, selecting relevant legal materials, assessing their validity, and interpreting the data in accordance with the research objectives (Sugiyono, 2016). Legal materials were chosen for their doctrinal authority and direct relevance to civilian protection and hostilities. Only sources recognized in legal scholarship were included. Each source was assessed for its normative influence, its alignment with core legal principles, and its suitability for the study’s comparative objectives.

The data analysis method used in this study is qualitative descriptive analysis. The analysis is conducted through several stages: first, identifying and describing the relevant principles of International Humanitarian Law and Fiqh al-Siyar applicable to armed conflict; and second, conducting a comparative analysis to examine the similarities and differences between these two legal frameworks, particularly in relation to civilian protection, limitations on the conduct of hostilities, and ethical constraints on warfare (Sugiyono, 2016). The study uses both classical and contemporary sources from each legal tradition to ensure a comprehensive and representative analysis. This approach allows examination of both doctrinal continuity and contextual adaptation. A comparative evaluation identified where principles of civilian protection and ethical restraints on warfare align or diverge across sources.

Through this analytical process, the research aims to provide a normative evaluation of the relevance of Fiqh al-Siyar in complementing International Humanitarian Law in addressing contemporary armed conflicts

RESULT AND DISCUSSION

1. Historical-Conceptual Context as Theoretical Foundation

Any legal assessment of the Israeli Palestinian conflict requires an understanding of its historical formation, particularly the contestation over Jerusalem as a city of overlapping sacred claims. Jerusalem’s status as a holy site for Judaism, Christianity, and Islam has made it not only a territorial dispute, but also a theological and political struggle that intensifies cycles of violence and hardens identity-based narratives (Armstrong, 1996).

The long historical layers shaping the city ranging from ancient Israelite kingdoms, Roman and Byzantine governance, to the Islamic caliphate period are central to understanding why Jerusalem has remained a persistent flashpoint. Classical historical accounts and modern historiography underline that political authority over Jerusalem has repeatedly shifted, often accompanied by competing claims of legitimacy and “holy entitlement” (Kuncahyono, 2008).

Within Islamic governance history, the conquest of Jerusalem under Caliph Umar ibn al-Khattab (637 AD) is frequently presented as a precedent of security guarantees and religious tolerance, reflected in historical narrations describing treaties and protections extended to local populations (Shalabi, Muhammad; Harahap, Khoirul Amru; Faozan, 2008). This historical narrative functions as a normative reference in Islamic legal thought that war and governance even in conquest—remain bounded by ethical constraints and duties of protection (Ferguson, 1999).

Following the decline of Islamic political authority and especially after World War I, the Palestinian issue increasingly became an “internationalized” question. The Balfour Declaration and the political consolidation of Zionism, supported by European political interests and financial networks, accelerated the project of establishing a Jewish homeland in Palestine, intensifying Arab Jewish tensions and contestation over land and sovereignty (Mahajan, 2023).

The conflict then transformed into a series of armed confrontations and diplomatic initiatives, including UN Resolution 181 (1947), the 1948–1949 war and subsequent displacement, the 1967 war, and later peace attempts such as the Camp David process each producing legal consequences related to occupation, self-determination, territorial acquisition by force, and civilian protection (Aliya Nadita Ifara et al., 2024).

Finding 1 (theoretical implication): the Israeli–Palestinian conflict is not simply episodic warfare but a historically cumulative contestation with recurring patterns of occupation, displacement, and identity-based claims conditions that heighten the relevance of humanitarian protection norms and alternative normative traditions such as Fiqh Siyar when international enforcement mechanisms falter.

2. International Humanitarian Law Framework and Its Application to Gaza Hostilities

International Humanitarian Law (IHL) is designed to regulate the conduct of hostilities, limit methods and means of warfare, and protect those not taking part in hostilities. In doctrinal terms, IHL rests on treaty norms (notably the 1949 Geneva Conventions and Additional Protocols), customary international law, and general principles recognized by international tribunals (Solis, 2012).

From the theoretical framework, the core operational principles relevant to this case are: (i) military necessity constrained by humanity, (ii) distinction between civilians and combatants, and (iii) proportionality in attack. The principle of humanity recognized historically through international criminal accountability and later reflected in ICJ jurisprudence functions as the normative limit to what “necessity” can justify (Schmitt, 2010).

2.1. Distinction and Protection of Civilian Objects

Under Additional Protocol I, civilian objects may not be the object of attack unless they become military objectives; Article 52 provides the baseline rule protecting civilian infrastructure (Hudson et al., 2023). Likewise, the definition and protection of civilians are reinforced by Additional Protocol provisions on civilian status (Anthonetha Susanti Henukh et al., 2024). In Gaza, the study's findings highlight recurring allegations and documentation of attacks affecting civilian objects, including hospitals and medical infrastructure objects that enjoy heightened protection under IHL (Abadi, 2023).

These patterns become legally salient because attacks on medical facilities can trigger grave breach questions when carried out unlawfully or without meeting strict conditions for loss of protection (HRW, 2024). When civilian infrastructure is repeatedly struck, the burden shifts to demonstrate military necessity and compliance with feasible precautions, particularly in densely populated areas (ICRC, 1949). In the Gaza context, the repeated damage to medical facilities and civilian infrastructure illustrates how the principle of distinction has been practically challenged, particularly in densely populated areas where civilian and military objects are closely intertwined.

2.2. Proportionality, Means and Methods of Warfare

IHL prohibits attacks expected to cause incidental loss of civilian life excessive in relation to the concrete and direct military advantage anticipated (Alam & Regan, 2023). In the Gaza context, the use of unguided munitions in a significant proportion of strikes reported by major investigative journalism raises additional proportionality concerns because such weapons increase the likelihood of indiscriminate effects in densely populated environments (Staff, 2024).

The reported use of white phosphorus also engages both treaty and customary restrictions due to the risk of severe burns and broad-area harm, particularly when used near civilian concentrations (ICC, 2021). This intersects with the Hague Regulations' prohibition on weapons or methods causing unnecessary suffering, as well as customary limitations reflected in ICRC studies on customary IHL (Wittich, 2014).

These practices raise serious concerns regarding the practical application of proportionality, as the scale of civilian harm reported in Gaza suggests persistent tension between military objectives and humanitarian constraints.

2.3. Prohibition of Collective Punishment, Human Shields, and Civilian Coercion (The Fourth Geneva Convention, 1949)

Geneva Convention IV prohibits collective penalties and measures of intimidation against protected persons (Article 33). It also prohibits using protected persons to render areas immune from military operations (Article 28). In the conflict's legal framing, restrictions or practices that effectively punish

civilian populations as a whole, or that instrumentalize civilians, directly contravene these protections.

2.4. Humanitarian Access and Protection of Aid Workers

The protection of humanitarian relief personnel and the facilitation of humanitarian access are central to modern IHL compliance. Reported deaths of UN staff and repeated warnings that aid missions remain under threat indicate a deterioration of humanitarian operating space and pose legal questions about the protection of relief operations. Specific incidents including attacks resulting in foreign aid worker deaths and lethal events during aid collection reinforce concerns about compliance with precautionary obligations and civilian protection rules (Punia, 2024).

The loss of humanitarian access in Gaza shows that IHL violations harm civilians and undermine their long-term survival and relief by prolonging hardship and impeding recovery.

2.5. War Crimes Qualification and Accountability Pathways

Where serious violations occur, international criminal law becomes relevant. The Rome Statute recognizes war crimes including intentionally directing attacks against civilian objects, including buildings dedicated to religion, education, art, science, or charitable purposes, as well as hospitals (under specified conditions) (ICC, 2021). Customary IHL analysis further supports the classification of grave breaches and the attribution of individual responsibility (Henckaerts, 2005).

Institutionally, the ICJ functions as the principal judicial organ of the UN, and its jurisprudence (including on self-defense and armed activities) informs how international law evaluates state conduct, necessity claims, and legal consequences of force. Still, the study finds that the international enforcement environment remains structurally constrained by Security Council politics and veto dynamics, limiting effective accountability.

Finding 2 (IHL dimension): The application of IHL principles to the Gaza hostilities reveals persistent legal tensions in proportionality, distinction, protected objects (especially medical units), and humanitarian access, suggesting a compliance and accountability gap even where the normative framework is clear.

3. Fiqh Siyar Framework and Its Normative Relevance to Civilian Protection

Fiqh Siyar is the Islamic legal discipline governing relations with non-Muslim polities and the ethics of war and peace. Its conceptual foundations derive from the Qur'an, Sunnah, juristic elaboration, and state practice in early Islamic governance (A. Al-Dawoody, 2019). In doctrinal framing, the Qur'an emphasizes fighting only those who fight you and prohibits transgression (Q.S. 2:190), making restraint a

foundational rule rather than a policy preference. When formal IHL enforcement faces political constraints, Fiqh Siyar offers another means to encourage compliance. It relies on moral and religious accountability, influencing behavior by appealing to internal ethical duties instead of just legal sanctions.

Scholars of Islamic law of war argue that armed force is legitimized principally under defensive necessity and bounded by objectives aligned with maqasid al-shariah, especially the protection of life (hifz al-nafs) (Khadduri, 2002). Classical jurists differentiate combatants (ahl al-qital) from non-combatants and maintain broad civilian immunity, with limited exceptions for direct participation in hostilities (Shaybani, 1996).

A significant normative contribution of Fiqh Siyar is its categorical prohibition of mutilation and its strong insistence on dignity even in death supported by juristic sources and ethical constraints that mirror (and sometimes exceed) the humanitarian logic in IHL (A. M. Al-Dawoody, 2009). Reports and allegations concerning mutilation or abuse of bodies, if verified, would therefore represent not only IHL violations but also profound breaches of Islamic humanitarian ethics (Punia, 2024). Finding 3 (Fiqh Siyar dimension): Fiqh Siyar provides a parallel normative structure reinforcing civilian immunity, restraint, and dignity, and it supplies ethical vocabulary (transgression, dignity, maqasid) that can strengthen humanitarian compliance narratives where treaty enforcement is weak. These principles set ethical standards that guide humanitarian discussions, military rules, and local views on legal behavior in war.

4. Comparative Synthesis: Convergences, Differences, and Peace-Oriented Mechanisms

Normatively, IHL and Fiqh Siyar converge on key humanitarian restraints: protection of civilians, limitation on methods of warfare, and proportionality-like reasoning where necessity cannot override humanity (Melzer, 2019). Yet they differ in authority structures: IHL is grounded in treaty consent and customary practice, while Fiqh Siyar is rooted in revelation and moral legal obligation, which can shape compliance motivations differently (A. M. Al-Dawoody, 2009).

CONCLUSION

This study demonstrates that the humanitarian crisis in the Gaza conflict cannot be adequately understood or addressed through a purely positivist international legal framework. The application of International Humanitarian Law to the hostilities reveals persistent challenges in upholding the principles of distinction, proportionality, protection of civilian objects, and humanitarian access, despite the clarity of the normative rules governing armed conflict. Structural limitations in enforcement

mechanisms, particularly those arising from geopolitical dynamics within international institutions, have contributed to a recurring accountability gap and weakened civilian protection.

Through a comparative normative analysis, this research finds that Fiqh Siyar offers a parallel and complementary legal tradition that reinforces core humanitarian restraints. Islamic international law consistently emphasizes civilian immunity, restraint in the use of force, and the primacy of humanity over military necessity, grounded in both legal doctrine and moral obligation. Its categorical prohibition of transgression, collective harm, and mutilation, together with its strong insistence on dignity even in death, demonstrates a level of ethical clarity that in some respects exceeds the minimum standards articulated in modern IHL.

While International Humanitarian Law derives its authority from treaty consent and customary practice, Fiqh Siyar is rooted in revelation and ethical accountability, shaping compliance motivations beyond institutional enforcement alone. This study concludes that the normative convergence between IHL and Fiqh Siyar provides an opportunity to strengthen civilian protection narratives and compliance frameworks in contemporary armed conflicts. Integrating ethical and religious legal perspectives into humanitarian discourse may enhance the effectiveness, legitimacy, and internalization of civilian protection norms, particularly in conflicts where legal enforcement remains politically constrained.

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