FAILURE TO ‘DISTINGUISH’: DISCOURSE OF JUSTIFICATIONS FOR IHL NON-COMPLIANCE IN THE GAZA AND UKRAINE WARS

By

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Abstract

This thesis represents a new addition to the list of scholarly pieces exploring compliance with International Law. While this realm has been extensively theorised, adherence to International Humanitarian Law (IHL) has received less spotlight, despite its importance. Taking non-compliance with the principle of distinction as the main variable, a specific focus is applied on instances where state actors have failed to 'distinguish' between civilian and military objectives in armed conflict. As this principle is one amongst the core humanitarian obligations, its breach prompts a response from non-compliant state actors, in the form of justification statements. This research applies a qualitative comparative framework on the wars in Gaza and Ukraine and identifies main patterns of justifications through discourse analysis. It finds two distinct state strategies that are triggered by non-compliance with the principle of distinction: one of absolute denial, and the other of legitimising the action through IHL. Further, it concludes that compliance is essentially a speech act, its audience being the international community who decides of the viability of that justification. Lastly, the author argues that the system of IHL needs to be reformed to offer a stricter protection to civilians during war.

Keywords: *international humanitarian law, compliance, principle of distinction, Gaza, Ukraine, discourse*

AUTHOR'S DECLARATION

I, the undersigned, **Zsófia Berta**, candidate for the MA degree in International Relations declare herewith that the present thesis titled "Failure to 'Distinguish': Discourse of Justifications for IHL Non-Compliance in the Gaza and Ukraine Wars" is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright.

I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 22 May 2025

Zsófia Berta

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Introduction

War has been a significant recurring element in history that continues to shape our realities today. Perhaps it was the gradual realisation of the ever-presence of armed conflicts that incentivised states to formulate a set of behavioural norms to abide by during war. This evolved into the body of law we refer to as 'International Humanitarian Law' today. But can it be considered truly 'humanitarian' – or, in other words, does it protect human beings who are innocent and uninvolved in the hostilities? These questions have legitimately arisen again as a response to the immense rate of civilian deaths in two current conflicts that continue to unfold before our eyes: Gaza and Ukraine. To understand why civilians continue to be targeted and killed, one has to turn to the problematics of non-compliance with the principle of distinction – a norm in IHL that requires states to distinguish between civilian and military targets, and imposes an absolute prohibition on targeting the former group. Thus, a failure to 'distinguish' will likely result in civilian casualties and constitute a violation of IHL, thereby prompting a response from a state, attempting to justify or neutralise its actions. These justifications are highly important to focus on because they provide key insights into the narratives of states about a given conflict, and might indicate the underlying intentions behind the actions. Further, analysing how states justify violating the principle of distinction reveals 'blind spots' of IHL that need to be eliminated to achieve more comprehensive protection of civilians.

My research is centred around the following research question: *What patterns of justifications emerge upon a state-committed violation of the principle of distinction in Gaza and Ukraine, and how does the resulting public discourse affect the current body of International Humanitarian Law?* In terms of contribution to previous literature, this represents a careful balance between positivist and interpretivist stances, to be able to engage with IHL's principles and with its criticism simultaneously. A synthetic approach will further allow for

establishing a connection between a legally embedded term, compliance, and public discourse, thus jointly forming an interdisciplinary form of enquiry.

Here I wish to briefly outline the structure of my thesis. First, I will review previous literature that has addressed the topic of this research and highlight the contribution of this work, and second, I will present the methodology. Chapter 3, titled 'International Humanitarian Law', will provide an overview of how this body of law developed into the current system in force, then will proceed by discussing the principle of distinction, and lastly will apply a critical lens to examine IHL. Following this, Chapter 4 will dive deep into the problematics of compliance, commencing with a subsection about predominant theories seeking to explain why states comply with International Law. Moving on, the next subsection will highlight the necessity of making an analytical distinction between compliance and non-compliance. Then, the compliance chapter is concluded by discussing the overall patterns in statements of justification that states make upon violating a rule. Chapter 5 is the dedicated case study section that presents contextual background information on both wars in Gaza and Ukraine and then discusses the results of the discourse analysis, drawing generalised comparisons between the two. Finally, some concluding remarks will be shared about compliance with International Humanitarian Law in the 21st century.

Chapter 1 – Literature Review

In this part, the selected literature is reviewed systematically in a chronological order to present how scholars have engaged with the topic of International Humanitarian Law compliance. The last few pieces directly address the case studies of this research, Gaza and Ukraine. Besides the currency and significance of these conflicts, their novelty as topics in the public discourse is also striking – therefore, the amount of literature engaging with the subject remains limited. My research aims to fill in some of these gaps by scrutinising these two cases through the lens of International Humanitarian Law and international public discourse.

But why is it significant to bring discourse to the picture when analysing compliance? The causal connection between a state violating an international norm and the following response or justification was initially established by Chayes and Chayes (1995b). Along these lines, Guzman (2002) argued for the importance of assessing the reputational loss that would potentially occur and set up a comprehensive model to assess that. Factors determining the degree of reputational loss included the severity of the violation, the reasons for the violation, the extent of awareness of other states and finally, the clarity of the legal rule itself. While this model applied to International Law in general terms, substantial conclusions are drawn regarding compliance with International Humanitarian Law as well. As an 'upper limit' to the potential reputational loss is assumed, reputation will not result in sufficient compliance pull for issues of 'large stakes'. Following, the theory anticipated lower compliance rates in areas of law that are held to be of the highest importance, such as the laws governing armed conflicts (1885). Guzman thus provided a powerful explanation for the lack of compliance with International Humanitarian Law and represents a well-suited starting point for further discussion of the literature. Nevertheless, his article left the question of justifications unaddressed – in other words, the strategies applied by states to avoid or mitigate the assumed

reputational loss. Indeed, justifications for a violation constitute a key variable that needs to be inserted between the act of violation and the resulting reputational loss.

While Guzman already incorporated the role of the international community in his reputational model, a theory that would deeply engage with non-compliance and the role of third parties was advanced by Prorok and Appel (2014). Their article examined adherence to the principle of distinction as a factor dependent on the composition of states' alliance networks. In terms of composition, the main determinant is the allies' domestic political system: because democracies are more likely to value the importance of International Humanitarian Law highly, thus, their willingness to punish non-compliant behaviour is also higher (720). Following, the model predicted a higher compliance with the principle of distinction if a state is surrounded by democratic allies, mainly because the likelihood of enforcing the law through coercion increases with democracies. These findings contradict Guzman's predictions regarding compliance with different areas of International Law, however, to the extent they hold up to current realities is contestable – especially in the case of Israel which is embedded in an alliance network of predominantly democratic countries.

The issue of states' responses after an instance of violation of International Law was examined by Morse and Pratt (2022). Such reactions are seen as efforts to manage the multilayered state image that is composed of moral authority, performance, lawfulness and allegiance to citizens (3). According to the authors, an event of breach consequentially triggers the process of image management, whereby states apply one of the following strategies: 'atonement' as in accepting the current International Law regime as legitimate, 'disassociation', referring to shifting a blame and finally, 'attack' which constitutes the exact opposite of the first strategy by challenging International Law with some sort of delegitimising discourse (3-4). While their findings mostly concern domestic political support of a government, the identified

patterns of response strategies represent a valuable contribution to compliance literature and apply to IHL compliance as well.

However, state responses and justifications, as part of a behavioural effect of violating an international norm, might not suffice as a ground for determining non-compliance, as Traven and Holmes (2021) suggested. Analysing the case of US bombings in the Vietnam War, they argued that previous International Relations scholarship has not properly addressed the issue of norm type when examining compliance. Thus, they adopted a clear differentiation by establishing two categories of 'proscriptive' and 'calculative' norms (2). The former category of norms aims to shape behaviour by imposing a ban on certain actions, and attaches the dimension of morality to an action by labelling the violation as illegitimate or immoral (5). In contrast, the other category is composed of more permissive, calculative norms that emphasise the need to minimise the harm to the value in question – thus allowing states to make their own calculations and act accordingly (6). This categorisation enabled the authors to capture one of the most substantial tensions within IHL, which is the dichotomy of the principle of distinction and the principle of proportionality. Distinction, on the one hand, is seen as proscriptive as it imposes a complete ban on targeting civilians, and proportionality, on the other, as predominantly a calculative norm (5-6). The authors suggested that a failure to distinguish these two norm categories leads to incorrect research findings. Further, they claimed that focusing on behavioural patterns is insufficient when analysing compliance, and that querying intentions should constitute part of the research too. Despite the importance of intentions, Traven and Holmes' views are contestable on grounds they even themselves acknowledge: the difficulties of obtaining information on true intentions. Indeed, states violating IHL would likely not disclose such internal and sensitive data. Therefore, focusing on a publicly accessible aspect of state communication that follows the act of non-compliance (that is, public responses and justifications) is a more viable research plan.

The former literature pieces, simply because of their time of making, could not have addressed the wars in Gaza and Ukraine. But, since the start of the 2023 military offensive in Gaza, comparative analyses of the two countries have become more and more widespread in journalism. A crucial part of these articles focused specifically on 'double standards' that the Global North has been repeatedly claimed to exhibit (Aswadi 2023; Goldston 2024; Kucici and Boye 2024). However, the subject has been addressed within academia as well, for example in the literature piece by Maulana (2024). He recorded and analysed differences in Western nations' responses towards Gaza and Ukraine, with a specific focus on general attitudes, policies and the underlying motivations behind those stances. Because the research was situated in the discipline of International Relations, it did not make far-reaching observations about IHL. Rather, it examined variables that concern the foreign policy realm, such as diplomatic statements, policy actions, humanitarian action and civilian casualties (36). Commonalities were noted in the first and third factors, namely Western states diplomatically condemning the actions of both Russia and Hamas, and providing humanitarian aid to the states under attack (39-40). Furthermore, the importance of geopolitics and political-cultural differences was highlighted as shaping states' responses, both of them serving as possible explanations for the double standards. Indeed, the article concluded evidence of Western countries' selective application of International Law to fit their strategic objectives (46).

Overall, compliance literature has reached significant observations regarding IHL. Nevertheless, the number of comparative analyses on Gaza and Ukraine has been limited, and my research aims to fill in this gap by comparing justificatory discourse to observe patterns of non-compliance with the principle of distinction. This literature review analysed the key literature pieces that stand the closest to my research project, and thus, it does not claim to be perfectly encompassing. However, relevant chapter-specific literature is further reviewed throughout the text to establish a more nuanced position of the author. This thesis aims to

contribute to the former literature by adopting an interdisciplinary focus on non-compliance with the principle of distinction, connecting discourse and the legal question of compliance. My work further aims to populate the list of literature that applies a comparative analysis on Gaza and Ukraine.

Chapter 2 – Methodology

This part aims to outline the methodology applied throughout this thesis. Due to the nature of the subject under examination – which is international humanitarian law – the project slightly deviates from traditional International Relations (IR) literature in the sense that the two disciplines of International Law and IR are necessary to be applied jointly. Focusing on discourse allows for a departure from strict legal inquiry and establishes a connection between those two disciplines. My research follows both an inductive and deductive approach, as it is both building on previous theoretical frameworks on IHL compliance and aims to actualise these approaches based on the findings derived by the end. The first part applies critical analysis on the former scholarship and identifies key strands within. The second part of this thesis uses a comparative case study method of Ukraine and Gaza to examine the patterns of state justifications regarding violations of the principle of distinction. The two cases were selected due to their high relevance in the international public discourse as well as the immense number of civilian casualties these territories have witnessed, as described below in the dedicated section.

Data about the patterns of state justifications in both cases is gathered from various sources that constitute communication channels for official state authorities, including X which remains an important source of less formal, albeit more up-to-date statements. In some instances, where original full-text statements could not be found, it was necessary to rely on newspaper articles and access these statements in a rather secondary source format. This undeniably limits the discourse analysis and thus represents a shortcoming of my study. Nevertheless, this partial data also represents meaningful elements of the case study. The qualitative statements were analysed through the method of discourse analysis and coded with the data analysis programme NVivo. The sample of my analysis is limited to specific time

periods, between 24 February 2022 – 13 April 2025 in the case of Ukraine, and between 7 October 2023 – 13 April 2025 in the case of Gaza.

Case selection of the specific violations of the principle of distinction was conducted through scanning several news media channels and choosing those of the widest coverage: increased awareness of the attack is more likely to provoke a response from international actors. In total, eight violations of the principle of distinction were considered, so four cases from both Gaza and Ukraine. Since the principle of distinction specifically prohibits the targeting of civilians and civilian infrastructure, strikes that have not resulted in any civilian deaths might constitute a breach as well. For the grounds of diversity, the final choice of the attacks was also impacted by the targeted objects: thus, strikes on hospitals, religious centres (churches) and other civilian infrastructure were singled out.

Lastly, I wish to discuss the possible shortcomings of my study. First of all, my research and findings cannot and do not aim to provide a profound legal criticism of the current body of International Humanitarian Law, due to the lack of academic background in the field of law. Thus, my conclusions are drawn from an IR perspective. The second clear limitation of my research is the sample size: including more attacks and thus collecting more justificatory statements would have given a more nuanced picture about state discourse and trends of non-compliance. However, the four events in both countries turned out to be sufficient to draw general patterns of response. Third, language undeniably constituted an obstacle throughout the data collection process, as some of the public statements are made in the official language of the state. Nonetheless, this barrier is not very significant as the focus lies on those statements that speak to an international ‘audience’ – so, providing justifications not to own constituents but to the international community. With that said, this research thereby aims to further underline the importance of researching non-compliance with the principle of distinction by monitoring state discourse.

Chapter 3 – International Humanitarian Law

3.1. Historical Development

A chapter on International Humanitarian Law (IHL) should commence with a discussion concerning its creation, and reflecting on the different historiographies that aim to give an account of its inception. This part presents traditional and critical approaches to form an all-embracing picture of the historical context.

The traditional historiography (Mamedov 2017; Sassòli 2019) set the figure of Henry Dunant and the battle of Solferino in the centre. According to this account, the origins of IHL materialised at a 'revolutionary' moment when Dunant, incentivised by the brutalities of the 1859 battle, created a relief agency that turned into the International Committee of the Red Cross in 1876. The 1863 Lieber Code, applied during the American Civil War, is also highlighted as a significant milestone, however, the first multilateral legal instrument addressing state conduct during hostilities was the 1864 Geneva Convention. It was the end product of the diplomatic conference convened by the Swiss government, and seen as 'the birth of modern IHL' by the orthodox approach. This was followed up by the Hague Conventions adopted in 1899 and 1907, but the main foundations of the IHL regime in force today were laid down by the 1949 Geneva Conventions and their two Additional Protocols of 1977. Since then, however, the IHL regime has not been meaningfully updated, and thus it fails to respond to the current realities of modern armed conflicts – an issue that cannot be overlooked even from a more traditional approach. But possibly due to the constraints of a traditional historiographic approach, such criticism rather stays on the surface level and is quickly balanced by underlining that IHL is still in motion, as more specific instruments regulating warfare have been created recently (ibid., 13).

In contrast to the orthodox approach, which either left out or dismissed colonialism and the Eurocentrism of IHL, critical accounts placed these variables in the centre and thus told an

alternative story of the development of this legal regime. A significantly shorter timeline was presented by Alexander (2015), justified with the claim that the term 'International Humanitarian Law' only came into being in the 1970s, due to concerted efforts of the ICRC and other advocates. Taking this into account leads to observations that otherwise might have been overlooked, such as the fact that IHL has not always been 'humanitarian'. Indeed, the difference between the traditional and critical accounts is captured sharply by the argument that there are two ways of analysing IHL – one tells 'the story of the humanisation of war and law' and the other presents 'a story of imperialism and oppression' (111). Not only was a major terminological change required to move away from the militaristic logic captured within the 'laws of war', but the colonial repression and violence against the civilian population in Algeria and Vietnam had to be witnessed to provide an incentive for further regulations (Alexander 2016). Thereby, Eurocentrism and postcolonial inequalities are indeed emphasised as key factors, especially throughout the negotiations of Additional Protocols I and II where they became the most detectable. Clear divisions were formed in debating the principle of proportionality, with mostly Western/European states arguing for retaining it and on the other side, some postcolonial states and Eastern bloc members expressing concern over the possibility of the principle overriding the humanitarian protection granted to civilians (31-33).

Similarly, a postcolonial lens emphasises elements in the development of IHL that are left out of traditional accounts. Mégret (2005) held that it is impossible to detach International Law from the colonial context it was born within. As a result, it is argued to have developed a concept of an 'Other', a so-called 'savage' – a figure of uncivilisation and barbarism who is incapable of respecting the laws of war. This logic, predominantly based on the standard of civilisation, justified a comparatively worse treatment of these populations during war as well as their exclusion from international treaties, including those laying the ground for the current IHL regime. Despite decolonisation and the involvement of the Global South in the negotiations

of the Additional Protocols, it is specifically the degree of involvement Mégret leads us to call into question, in light of continuing structural inequalities in power. Furthermore, patterns he identified are not simply characteristics of the past: applying derogatory rhetoric and dehumanising the enemy by labelling them 'uncivilised' still forms a part of current conflicts.

Sassòli took note of one notable criticism against International Humanitarian Law – that it is 'always one war behind reality' (ibid., 9). An overview of history seems to confirm this statement, as do the current realities of today, with both the Gaza and the Ukraine war ongoing. These are cases that demonstrate the weakness of the compliance pull, as well as the enforcement mechanism of the currently applicable IHL regime. While it would be mistaken to claim that there has been no additions to IHL since the Additional Protocols, the more recent conventions adopted rather concern a specific aspect of armed conflicts, and thus, do not have fundamental effects on the whole body of humanitarian law[1]. While the need to bring about changes has been recognised by a group of (predominantly Global South) states[2], significant adjustments will likely not be made in the foreseeable future.

3.2. Status of Civilians and the Principle of Distinction

The status of civilians in armed conflict is determined by the so-called principle of distinction, which originally did not form part of the 1949 Geneva Conventions and was established later with the Additional Protocol I of 1977 (API). Despite the long and difficult negotiation process that preceded its creation and its contested nature, Alexander argued that

[1] More recently adopted IHL conventions to be found here: International Committee of the Red Cross, 'International Humanitarian Law Treaties: Essential Documents', Cross-Files | ICRC Archives, audiovisual and library, 3 March 2022, https://blogs.icrc.org/cross-files/international-humanitarian-law-treaties-essential-documents/.

[2] Brazil, China, France, Jordan, Kazahstan and South Africa recently launched an initiative that aims to promote adherence to IHL. International Committee of the Red Cross, 'Brazil, China, France, Jordan, Kazakhstan, South Africa Launch a Global Initiative to Galvanise Political Commitment to International Humanitarian Law and Call for a High-Level Meeting to Uphold Humanity in War in 2026', ICRC, 27 September 2024, https://www.icrc.org/en/news-release/global-initiative-galvanise-political-commitment-ihl-uphold-humanity-war.

both of the Additional Protocols constitute customary International Law – and thus, they apply to all states internationally. Indeed, the International Committee of the Red Cross customary IHL manual highlights the principle's customary law nature, providing evidence of several national military manuals including the same provision (Henckaerts and Doswald-Beck 2005). In the following, I will discuss the relevant legal framework of the principle of distinction.

In Part IV titled 'Civilian Population' in API, Article 48 establishes the principle of distinction as follows: '…the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives'. The ICRC manual further confirmed the customary International Law status of the principle by stating it had not found any contrary state practice and referenced the charter of the International Criminal Court, which establishes the violation of the principle of distinction as a war crime (ibid., Rule 7).

The definition of the category 'civilian' is set out by Art. 50. Civilians are defined negatively and thus, the label is applicable to anyone who is a non-combatant. Due to the broadness and the prevalent ambiguities of the definition, the article states that in case of doubt, an individual's civilian status should be presumed. The following provisions develop a more detailed and comprehensive protection around civilians: Art. 51(4) prohibits indiscriminate attacks and Art. 51(7) prohibits the usage of civilians as human shields. States under API not only have obligations to protect the civilian population but also the civilian areas and buildings, defined as 'civilian objects' in Art. 52, against which attacks are prohibited. In case of the contested status of the object itself, described in Art. 52(3), the same logic applies – those 'normally dedicated to civilian purposes', the presumption should be that the object is not used for military purposes. The former obligation will be especially relevant to the specific cases of attack considered, as both in the case of Gaza and Ukraine, such buildings of civilian purpose were frequently targeted.

Finally, Art. 57(2) sets out the obligation of warring states to do 'everything feasible' to ensure that neither the targeted personnel nor the objects are of a civilian nature. In this case, the linguistic and legal ambiguity strikes the observer quite easily, as no other legal instrument provides a detailed explanation of what the expression 'everything feasible' refers to – as similarly, there is no way of assessing if this criterion was indeed fulfilled. As a result, there is no standard for states to adhere to, and this creates a situation where even an action that constitutes the bare minimum can amount to 'feasible' precautions.

3.3. Does IHL Allow for Violations? – A Critical Outlook

A critical outlook on International Humanitarian Law and the principle of distinction leads to key observations about an imperfect system. In the previous section, the legal and linguistic ambiguities of the provisions of Additional Protocol I were prevalent – and this invites the researcher to assess the law through a critical lens. The main question to be tackled here is if Humanitarian Law was designed in such a way as to, in a sense, 'allow' for violations committed against it.

Whether the current legal rules constituting the regime can be seen in a positive light can indeed be questioned. The first critique that points at the imperfections of IHL is an in-built 'balancing' opportunity between one's military goals and humanitarian obligations. Providing a detailed account of the negotiations of Additional Protocol I and its application later in the Gulf War, Alexander (2015) showed how the logic of military necessity prevailed over humanitarian protection. The underlying reason for this is the permissive character of the principle of proportionality that can legitimise civilian casualties, if the military advantage resulting from the operation outweighs it. Although a considerable shift in lawyers' approach is noted in the case of Kosovo, with the humanitarian aspect prevailing, it hardly changes the fact that the presence of proportionality still leaves room for balancing and exempting harmful

actions under the criteria of military necessity. The cases of Gaza and Ukraine stand as proof of these shortcomings, where International Humanitarian Law has evidently failed (Hathaway 2024). This current 'breakdown' of the law is considered a consequence of a steady moving away from the Geneva regime, led by the United States. Specifically, the actions of Washington in the case of the War on Terror and Syria resulted in the tipping of the balance towards military necessity and the prevalence of the logic of 'dual use' – referring to objects that are utilised both for civilian and military purposes. Following, it is argued that Israel continues to instrumentalise the principle of proportionality to justify violent actions against the civilian population of Gaza.

Another criticism stems from the long-standing legal debate on the applicability of international human rights law (IHRL) during armed conflict. These debates are centred around the legal nature of both regimes as *lex generalis* and *lex specialis*. The legal principle concerning this dichotomy establishes that the more specific rule prevails over the general one (International Committee of the Red Cross, n.d.-c). Extrapolated to the relationship between IHL and IHRL, the more specific rules governing armed conflict prevail in case of conflict, but besides these exceptions, co-applicability of the two legal regimes is emphasised (International Committee of the Red Cross, n.d.-b). However, the difficulties of applying IHRL are still prevalent in multiple aspects. Lubell illustrated this with a metaphor of the difficulty of translation that occurs between two languages: humanitarian law and human rights law, despite considerable overlaps in their provisions, apply different language that needs to be reconciled (2005, 745). Indeed, intersections between the two regimes were prevalent already at the time of negotiating the 1949 Geneva Conventions, which is not surprising as they were created by the same historical impetus in the aftermath of the Second World War (Campanelli 2008). Using the practice of the United Nations as evidence, IHRL is argued to be compatible with IHL and deciding questions about applicability should be conducted on a case-by-case basis

(657). Notwithstanding, it stems from the comparison that the two legal systems assign a different value to human life, and taking it remains justifiable under IHL by an appeal to the principle of military necessity.

A few concluding remarks have to be made regarding the discussions about International Humanitarian Law 'failing' or being inadequate in the light of current hostilities and civilian casualties in 21st-century armed conflicts. However, International Law cannot be considered inadequate on its own: if it fails, that failure has to be attributed to the states that did not manage to uphold it. Despite the establishment of international courts and enforcement mechanisms, the problem of the missing higher authority in International Law has not been solved. Indeed, as the International Committee of the Red Cross has noted, 'ultimately, respect for IHL is a question of political will' (International Committee of the Red Cross 2024). Whether political will is present to amend the non-functioning parts of the Geneva system, needs to be assessed further on. However, Sassòli's observation about the often belated nature of humanitarian law-making can give room for a less pessimistic outlook on the future of IHL, as the wars in Gaza and Ukraine might trigger an overall revision process and changes soon. For now, the observation stands correct that IHL allows for violations of basic human rights and, in some cases, for a transgression of its own humanitarian principles.

Chapter 4 – Mapping out Non-Compliance

4.1. Theories of Compliance with International Law

The following chapter will introduce the theoretical landscape of compliance research in International Law and reflect upon the key arguments proposed. This field has been extensively theorised, with the possibility to trace back the main strands of thinking to prominent European scholars of the 18th century, such as Hobbes and Kant. However, what makes compliance studies truly interdisciplinary is the need to depart from strict legal theorising and address state behaviour as an important factor, thus opening it up to International Relations scholarship. This underscores the importance of bridging the gap between the two disciplines when analysing compliance with International Law.

Before diving deeper into specific theories, it is essential to tackle core conceptual issues and analyse what different definitions of compliance have emerged from previous literature. One possible way is to think about compliance as a technical and legally loaded term, defined simply as adherence to the rules or 'the degree to which state behaviour conforms to what an agreement prescribes or proscribes' (Young in Stein 2012, 478). Besides this narrower understanding, there have been attempts to describe the term as something broader and less circumscribed, in response to nuances in states' behaviour towards international legal rules. According to the so-called functional definition of International Law, compliance ought not to be understood as a simple dummy variable but rather as a spectrum, recognising the fact that different international treaty regimes will witness different degrees of state commitment (Guzman 2002), thus, the 'acceptable level of compliance' changes in different contexts (Chayes and Chayes 1995a, 17). Subscribing to a broader view of compliance entails a departure from an orthodox understanding of International Law - thus, the theorisation of both concepts in academia goes hand in hand. Rooted in this is the claim that the definition of

compliance is inseparable from theories of International Law, so the term's meaning is highly dependent on the specific theoretical framework applied (Kingsbury 1998, 346). For this reason, I will proceed further by presenting the main theories that give different meanings to the term compliance.

The majority of compliance research exhibits some connection to theories of the International Relations discipline or its specific concepts. The realist strand is primarily preoccupied with concepts of self-interest of the state and the impossibility of cooperation, emphasising the inconceivability/ineffectiveness of International Law. Therefore, compliance is reduced to simply meaning that states act in accordance with their national interests. However, realism has been critiqued on the basis that it fails to explain the reason behind treaty accession and hence, can be dismissed without having explanatory force of compliance. The liberal approach, while recognising the role of state interest, contends with realism in its view about the impossibility of cooperation and the unenforceability of International Law. Institutionalism can be placed under the umbrella term of liberalism due to its belief in the legitimacy and power of institutions that are built on certain shared objectives. Following these lines, Franck's legitimacy theory emphasises the importance of institutional contexts as aiding legitimacy to the international rules adopted under their aegis (Koh 1997). Thus, compliance is recognised by the liberal strand as an existing issue, but mainly on the international dimension, disregarding endogenous factors within the domestic mechanisms of the state. Another prominent lens in the field of IR scholarship, constructivism, emphasises the role of norms and identities (and their socially constructed nature) in shaping states' relations to International Law. Following, the main contribution that this theoretical framework has made is to uncover the inner dynamics of norm-internalisation, thus seeing International Law as repeated, dynamic interactions not necessarily constrained to state actors (ibid.). A broad understanding of what counts as the 'interpretative regime' of a norm (ibid., 2640) resultingly confers a new,

perceptual layer to compliance - in other words, the determination of a possible breach of International Law is dependent on how a wide range of actors interpret the specific rule in question. The fourth strand that exhibits clear connections to IR theories - specifically to the rational actor model - is the rationalist approach. While there is a limitation to the extent states can be perceived as rational actors, the consequences of non-compliance are seen as damaging, thus forcing states to engage in cost-benefit calculations (Guzman 2002). Built on rationalist assumptions, for instance, is the managerial model: it identifies compliance as an issue of management of domestic state resources as well as the clarity of obligations outlined and the possibility of future change (Chayes and Chayes 1995a).

What clearly emerges after discussing the most prominent theories of compliance is the fact that international humanitarian law as a subject of enquiry has not been thoroughly addressed in the literature - the focus was rather on, for instance, international trade law or human rights. Humanitarian obligations possess unique characteristics in the sense that the whole body of law governing them is presumed to have much stronger normative underpinnings. Therefore, it is essential to highlight some factors that appear in a new light in the context of analysing international humanitarian law.

Firstly, the role of reciprocity is elevated to a new level of importance in the case of international humanitarian law, as Morrow observes (2007). Reciprocal enforcement as an inducement to comply arises as a result of joint ratification of a treaty or legal instrument - and, conversely, non-compliant behaviour of the warring sides produces non-compliance on the other side as well. This hypothesis is especially interesting to test in the context of 21st-century conflicts and allows for thoughtful reflections on the case studies presented in this thesis. The current body of IHL, composed of the Geneva Convention of 1949 and its Additional Protocols, can be regarded as an almost universally accepted treaty body, with only 20 non-party or non-signatory states (International Committee of the Red Cross, n.d.-a). While Russia and Ukraine

are both parties, in contrast to Palestine's accession, Israel remains a non-party. The former case of the Russian invasion demonstrates that joint ratification might not have such a determining effect on compliance as Morrow argued.

The second key factor that can be identified is the regime type of the country in question and the international system of alliances it is embedded in (Prorok and Appel 2014). Following the lines of the democratic peace theory, there is wide support for the claim that democracies are more likely to abide by IHL or hold its violators accountable (719-20). Therefore, an alliance network composed overwhelmingly of democratic members incentivises states to comply with IHL and the principle of distinction, due to either economic, military or political power leveraged over the warring party through third-party coercion (730). Opening up the focus to take account of the international society as a whole constitutes a novel approach that sheds light on the importance of broadening the focus when researching compliance. However, echoing previous criticism, Prorok and Appel might have overestimated the impact of democratic alliances, especially if looking at how their model plays out in the case of Israel currently.

Third, the impact of news and social media coverage remains to be contestable, but significant enough not to be dismissed in the first place. Violations committed towards a treaty regime are usually pointed out by either states as primary subjects of International Law or international organisations/judicial bodies. However, the role of global news reportage and dissemination has been rapidly increasing since the beginning of the 21st century, coupled with the emergence of multiple channels for communication. These channels have the capability to provide visual material and evidence for international humanitarian law violations (Khamis and Dogbatse 2024; Sjölund 2023). Thereby media contributes to a heightened level of awareness of non-compliance, and thus, a higher proximity of reputational loss and punishment from other international actors.

As shown above, paying special attention to the role of reciprocity, regime type and alliance system patterns, as well as media coverage, brings the research project closer to understanding compliance with international humanitarian law. However, as this research is centred around non-compliance, it is necessary to dedicate a separate section to its conceptual analysis and reflect on the relevant differences in the literature.

4.2. A Conceptual Discussion of Non-Compliance

While the overwhelming majority of compliance scholarship has been preoccupied with the question of why and under what circumstances states comply with International Law, non-compliance as a phenomenon remained in the background, underemphasised. In the methodological sense, the latter concept was deemed to be simply a negative derivative of compliance. However, it is important to centre non-compliance in the academic query to develop a theoretical framework of why actors engage in non-compliant behaviour. This does not mean denying any connection or reference to compliance, of course - rather, such a project would acknowledge that while compliance is a standardised act of conforming to the normative structure of International Law, non-compliance is 'deviant' behaviour and thus, cannot be examined as an isolated action by itself. Indeed, violation of international rules has to be always followed up by some sort of justification (Chayes and Chayes 1995b; Morse and Pratt 2022), and such a justification constitutes a significant part of a theory of non-compliance.

Non-compliance, just like its positive conceptual pair, carries a wide range of interpretational layers, but most of the reviewed literature converges in understanding compliance and non-compliance as constituting a spectrum rather than a dichotomy (Guzman 2002; Stein 2012). It follows that one single act of breach cannot necessarily be labelled as non-compliance - but then, this makes further questions arise regarding the specific threshold that separates one from the other. A possible way to tackle this issue is to introduce different levels

of compliance, as seen in Morrow (2007). He defines non-compliance as a situation 'where frequent major violations rise to the level that the standard is ignored' (563). Albeit such a quantification of the instances of violations to determine whether compliance has been 'full', 'low' or even non-existent, requires a refined methodology and thorough justification of the categorisation applied. Furthermore, reducing non-compliance to numbers might result in ignoring the damage that even single acts of violation might cause, especially of International Humanitarian Law. Nevertheless, quantitative analysis is an important part of compliance research, as coding the number of violations can tell a lot about the legitimacy and effectiveness of a specific body of rules. Chayes and Chayes address this question of how non-compliance can affect international rules by arguing that when the number of non-compliant parties reaches a certain extent or a violence of unique severity happens, it can result in a treaty regime collapsing (ibid., 21).

Derived from the managerial model of Chayes and Chayes, non-compliant behaviour reflects a failure in the domestic management of state resources. So, in this sense, non-compliance is an unintentional form of deviation, produced by a missing, endogenous element of governance. However, this understanding remains limited as it seems to ignore those cases when violations are intentional and calculated acts. A constructivist understanding allows to stretch the concept a bit and interpret non-compliance as a 'stigma' that is socially constructed by the international society (Morse and Pratt 2022). This approach is especially fruitful as it brings the aspects of reputation, image and interaction to the picture - and thus, lays the ground for discussing justificatory state responses.

At this point, it is important to address an aspect of this issue that is highly relevant to non-compliance with International Humanitarian Law – the complicity of third states. The specific provision under examination here is Common Article 1 of the Geneva Convention (CA1) that sets out the obligation of all parties to ensure respect for IHL 'in all circumstances'.

Although the ICRC published a 2016 Commentary regarding the provision, its character as an obligation has been debated in the legal scholarship, but the provision certainly entails a high level of complexity that justifies the importance of such debates.

The Expert Opinion by Boutruche and Sassòli (2016) followed the lines of the ICRC Commentary and adopted a clear stance towards the dilemma whether the 'obligation to ensure respect' is of a negative or rather positive nature. According to them, it is possible to distinguish an 'internal' as well as an 'external' dimension, with the former pertaining to states' obligation towards their population and the latter to the responsibility of third states to a conflict. Recognising the external dimension implies a shift from previous interpretations – at the time of the adoption of the 1949 Geneva Conventions, Common Article 1 was not intended to recognise such an aspect of the obligation (9). Indeed, simply obliging states 'to respect' versus 'to ensure respect' fundamentally differs, with the latter interpreted as a positive obligation to take appropriate measures. Consequently, remaining passive as a third state constitutes a breach of this principle (14). Another feature that the Expert Opinion identified is to fulfil the obligation with 'due diligence'. In other words, the state has to be duly informed of the circumstances and take appropriate and proportionate measures accordingly. However, due to the relativity of acting with due diligence, assessing whether a state has complied with the obligation to ensure respect for IHL acquires a case-by-case character. Without generally applicable standards, the authors claimed that the political weight and the proximity to the IHL violator should be taken into account when determining the threshold of required action of states (17).

Recently, a new impetus has been given to the dispute regarding CA1: Nicaragua's institution of proceedings on 1 March 2024, accusing Germany of breaching its obligations under IHL by supporting Israel with arms that could be later used for attacks against the civilian population in Gaza. The contesting views clashed on the grounds of whether CA1 indeed bears

an external dimension. The first account rejects the external obligation aspect, thus, it is in disagreement with the ICRC's 2016 Commentary, which is claimed to misinterpret the article by departing from the original meaning intended in 1949 (Schmitt and Watts 2024). In contrast, the other view asserts the European recognition of the external dimension of CA1, thus, its applicability to Germany as well (Milanovic 2024). Furthermore, it provides important clarifications regarding the article that might contribute to a better understanding. Firstly, it is argued that the seriousness of the breach should be taken into account by making a differentiation between passive inaction or active complicity – such as arms transfers to Israel in the case of Germany. Secondly, CA1 does not require a wrongful intention from the third state that violates it, but the requirement of 'subjective risk-taking' is enough. Thus, this latter view reaffirms the importance of focusing on both the negative obligation to ensure respect as well as its external dimension.

In sum, based on the literature on non-compliance, it is possible to make a few key observations. Non-compliance constitutes not only repeated actions of breach but also the public responses and discourse surrounding it. In essence, non-compliance manifests in a speech act that is delivered by an actor of authority – for this reason, it is necessary to monitor discourse to fully understand the act itself. The following section will engage with these response strategies. Finally, whether non-compliance can indeed become a 'stigma' is dependent on the international community and their attitude towards Common Article 1. Its external dimension cannot be dismissed as non-existent based on the grounds that International Humanitarian Law is a living instrument and the necessity of the Geneva system to be constantly revisited to fit current realities.

4.3. Patterns of Justification for Violations

This section maps out the justificatory responses and behavioural patterns that are likely to follow violations of International Law. Compliance literature, as briefly discussed above, has already identified the existing causal link between a breach of a legal rule and the necessity to justify the non-compliant action. Therefore, it is of particular importance to identify the most common justifications that state actors resort to. The frameworks discussed in this subchapter will constitute the theoretical base for my deductive approach that I apply subsequently in the discourse analysis.

Neutralisation theory contributes meaningfully to this discussion because it is centred around neutralisation techniques used to justify wrongful behaviour that results in norm violation. A comprehensive model of neutralisation techniques is created by Kaptein and Helvoort (2019), who analysed previous literature in the field to map out possible strategies actors can resort to in case of a violation of a norm. Two main techniques are identified that are further separated into subcategories: 1. denying the violation (either possible by fact distortion or norm negation), or 2. denying the responsibility in the deviant act (either possible by blaming the circumstances or hiding behind oneself). In total, twelve different techniques are identified, each of which has a specific place in the order of sequence, as the actor tries to neutralise their wrongful act (1264). While the extent to which the specifics of this model are applicable for non-compliance with the principle of distinction is to be determined in the case study section, it is worth examining the principle through this framework as it exhibits not only a legal, but a strong normative character as well.

Acts of justifying violations of International Law can be interpreted as governments' strategy of image management (Morse and Pratt 2022). Converging with the views of Chayes and Chayes (ibid.), they see the accusation of non-compliance as a catalyst for justifications. State response to allegations represents a technique to nurture their international as well as their

domestic image to gain political support. The three main strategies identified in the article are: atonement, which entails accepting the legitimacy of the International Law regime and voice state commitment to it; disassociation, as in distancing the government from the non-compliant action, essentially shifting the blame; and finally, attack, which refers to challenging the legitimacy of the regime that is perceived to be contrary to national interests (3-4). Each of these strategies leads to different effects in the four listed aspects of public image, that is, performance, morality, lawfulness and allegiance to citizens (15). While these in the article pertain to the domestic arena, the first three aspects have a significant international dimension. Thus, the framework of Morse and Pratt is relevant for the issue of Humanitarian Law compliance.

These two theoretical approaches provide us with conflicting statements regarding the patterns of justifications for the non-conforming behaviour. While the neutralisation model set up by Kaptein and Helvoort establishes an anticipated order of action that non-compliant actors follow - moving on from one type of justification to another - Morse and Pratt rather portray it as an array of mutually exclusive techniques governments can choose from. Specifically in the case of the principle of distinction, general expectations would predict a low frequency of positions that would view the principle as illegitimate or even attack it, since that would mean taking up an attitude that is outright contrary to one's humanitarian obligations. This demonstrates the importance of assessing the actor's relationship with International Law prior to searching for patterns in justificatory behaviour. Similarly, it is likely that strategies of atonement and hiding behind the imperfect knowledge, intentions or personality will be less frequent, as they essentially mean admitting to the violation committed, risking not only public image but also being tried for war crimes before an international court.

Weighing the contributions from this literature, I now intend to establish expected patterns of justifications for non-compliance with the principle of distinction in the cases of

Ukraine and Gaza. A factor of high importance to consider, as I highlighted above, is whether a state has a positive or negative standing towards international humanitarian law in general – or even exhibits an attitude of ignorance. Besides attack and delegitimising strategies, less extreme techniques that belong to the negative side are norm negation and 'negative reciprocity' arguments justifying one's non-compliance with the enemy's deviant actions. The positive side is composed of more subtle techniques that likely involve affirmation of the adherence to humanitarian obligations, that all 'feasible' precautions were taken: distortion of facts, appealing to a higher goal or the argument of necessity (such as the human shields argument) and blaming the circumstances.

Chapter 5 – Gaza and Ukraine: Case Studies

This chapter will apply a comparative case study analysis of Gaza and Ukraine to examine specific violations of the principle of distinction and to map out the patterns of justifications that go hand-in-hand with the attacks. The reasons for choosing these two cases are multiple: first, both wars have so far resulted in enormous levels of casualties in the civilian population (OCHA 2025; United Nations 2025) and thus, can provide valuable information on non-compliance with International Humanitarian Law. The second reason partly stems from the first, which is the extensive media coverage and wide public awareness of the two cases. Previously, the chapter on compliance has shown how violation of a norm requires the non-compliant actor to respond. Furthermore, I have argued that compliance increasingly shifted towards constituting a speech act, made by an individual of authority on behalf of the state. Putting these elements together highlights the importance of monitoring wars that continue to unfold before the eyes of the whole international community. Third, public claims regarding the Global North applying double standards (Cook 2023; Middle East Monitor 2024; AP 2024) have already established a solid connection between them and invite further research to be conducted. Lastly, it is necessary to clarify that in both Gaza and Ukraine, the law of international armed conflict applies – indeed, the ICC recently confirmed this with regard to the former (International Criminal Court 2024).

Both in the case of Gaza and Ukraine, four distinct attacks against civilians or civilian infrastructure were chosen, which were carried out by Israel and Russia. Sampling was carefully executed to retain a degree of diversity even with a limited number of cases – thus, the end sample is composed of the totality of eight strikes, representing examples of hospital attacks, attacks against other civilian areas or shelters, as well as attacks on religious centres. These categories are considerably flexible and of a guiding nature, thus, overlaps do not constitute an obstacle in the analysis. Following, publicly accessible statements on the attacks were collected

from Israeli and Russian authorities as well as several relevant international actors, then analysed through discourse analysis. Statements of justification were coded separately from the general responses of the international community, with the main codes ascribed to morality, IHL terminology, language used to describe the enemy and the attack, as well as references made to third parties/the international community. For the full transcript of statements, refer to Appendix 1 and Appendix 2 in Gaza and Ukraine, respectively.

The following sections will engage with the history and contextualise the present of the cases of Gaza and Ukraine, respectively, then both country-specific sections will outline the patterns of non-compliance and justifications concerning the selected attacks. Finally, a comparison will be drawn and more general conclusions will be reached about non-compliance with the principle of distinction in the 21st century.

5.1. Gaza

5.1.1. Brief Historical Context and Pivotal Events

The Israel-Palestine conflict dates back a long way in history, and this section does not aim to give a full account of historical events, but rather to highlight a few pivotal moments. After World War I, the so-called Balfour Declaration, made after the United Kingdom's foreign secretary at the time, endorsed the establishment of a Jewish state in Palestine (Winder, n.d.). The territory remained under British mandate until 1947, when the state left, and shortly after, a partition plan was produced by the United Nations. The plan envisaged establishing a Jewish and an Arab state (United Nations, n.d.-a). After Israel's declaration of independence in 1948, the Arab-Israeli war started and, eventually, ended with Israeli victory. The war triggered the flight of an immense number of Palestinian refugees – thus the label 'Nakba' that means catastrophe in Arabic (ibid.). The rest of the territories assigned to the Arab state by the UN

plan became controlled by Egypt and Jordan (United Nations n.d.-b). In the Arab-Israeli war of June 1967, Israel occupied these territories, the Gaza Strip and the West Bank (Charif, n.d.).

Multiple attempts have been made at resolving the conflict; one of the most significant efforts is the Oslo Accords of 1993, which resulted in partial withdrawal of Israeli forces and the established a self-governance in territories under Palestinian control, the West Bank and Gaza (United Nations n.d.-b). After the Palestinian upheaval labelled the 'Second Intifada', several proposals were made on resolving the conflict, such as the 2002 Arab Peace Initiative and the two-state solution plan by the UN Security Council. After Israel's withdrawal from Gaza in 2005, Hamas won legislative elections of 2006 and took over the territory in 2007. Israel launched and operation in the Strip in 2008 – which was later examined for international law violations by the UN – and subsequently in 2014 (ibid.).

On October 7, 2023, Hamas attacked Israel, resulting in a huge number of civilian casualties (Mounier 2024). In response, Israel launched its offensive on Gaza. In January 2025, the peace talks resulted in a ceasefire – however, after the first phase, the process stalled and finally ended by Israel in March, stating that it returned to fighting, resuming attacks on the Gaza civilian population (Regan et al. 2025). As of 30 April 2025, 52,400 Palestinians have been killed in the Gaza Strip, as reported by the OCHA (2025).

On 26 January 2024, the International Court of Justice ordered Israel to uphold provisional measures, as an interim ruling of the proceedings instituted by South Africa against Israel under allegations of violation of the Genocide Convention in the Gaza Strip. However, as Human Rights Watch found a month later, Israel did not comply with the decision (2024).

Another aspect necessary to reflect on is Palestine's rough road to fully recognised statehood, which has been ongoing from the UN partition plan onwards. The state was declared formally in 1988, however, it was only granted permanent observer status in 2012 (United Nations, n.d.-b). On 10 May 2024, a UN General Assembly resolution awarded Palestine a

number of special rights, including the right to be seated among member states, but it still remains an observer state (United Nations General Assembly 2024). As of now, 146 member states recognise its statehood – with the US and several key European countries, such as France and Germany, missing from the list (AJLabs 2024).

5.1.2. General Patterns of Non-Compliance and Justifications

Before turning to examine the patterns of justifications of Israel, it is essential to discuss one variable not explicitly visible in these public statements – that is, the attitude towards International Law. Such a contextual background is necessary to understand the nuances within the public justifications. Israel, as the statements will later underline, is an actor that values the legitimising aspect of International Law compliance highly and thus wants to be seen as compliant with it. However, what nuances this picture is that the state is not party to Additional Protocol I, which contains the provisions on the principle of distinction and civilian protection (International Committee of the Red Cross 2025). Nevertheless, significant parts of AP I – among others, the principle of distinction – are considered customary International Law by an ICRC-study (Henckaerts and Doswald-Beck 2005) which means that non-signatories also have to abide by it.

Two contesting aspects should be addressed regarding Israel's relationship with IHL. On the one hand, on the website of the foreign ministry, there is a separate section dedicated to the Hamas-Israel conflict, which reaffirms the applicability of IHL to the conflict but also Israel's commitment to humanitarian obligations, making explicit mentions to the principles of distinction, proportionality, feasible precautions and humanitarian assistance as guiding military actions (Ministry of Foreign Affairs 2023). The document further emphasises Israel's right to defend itself in light of the October 7 attacks and elaborates on the military advantage it wants to achieve, namely the elimination of Hamas' capabilities to attack Israel and the

‘neutralisation’ (or, in other words, demilitarisation) of infrastructure in Gaza. The ongoing ground operations are justified on the basis that aerial attacks are insufficient for the destruction of Hamas (ibid.).

On the other hand, it is important to make a mention of the so-called Dahiya doctrine, established in the 2006 war with Lebanon, and, in essence, legitimises the use of disproportionate force (Rogers 2023). It is argued that the doctrine likely constitutes one of the factors behind the prolonged ground operations in Gaza and the high civilian death toll it took (ibid.).

The following specific Israeli attacks on Gaza were selected to conduct discourse analysis on, presented in chronological order: the strike on the Church of Saint Porphyrius on 20 October, 2023; the first attack on Jabalia refugee camp on 31 October, 2023; the military raid on Al-Shifa hospital commencing around the middle of March and ending on 1 April, 2024 with the withdrawal of Israeli forces; and finally, the recent bombing of Al-Ahli Arab hospital on 13 April, 2025. All of these attacks constitute targeting of civilians or civilian objects, and thus, it is necessary to proceed by looking at the public discourse of the Israeli authorities.

Official statements provided as justification for these attacks were gathered predominantly from the Israeli Defense Forces (IDF), which continues to post updates after their military actions on both their website and X page. There was no governmental statement found regarding the specific attacks in the case study. Examining these public reactions, the main underlying narrative that can be observed is the human shields argument: in all four cases, the main justification for the attack was that it was carried out against allegedly terrorist infrastructure embedded in these civilian areas, thus civilians are being used as human shields (Demas 2023; Sullivan 2023). IHL-specific terminology is further utilised, claiming that all feasible precautions were taken to mitigate civilian harm (Farrell et al. 2023; Israel Defense Forces 2025) – however, no technical details are shared concerning these precautionary

measures. Running a general word query throughout all Israeli statements reveals a high frequency in the usage of the word 'terrorist'. Further, the logic of military necessity seems to gain higher importance in these statements, highlighting that the object of target was infrastructure related to terrorism, Referring to the Jabalia refugee camp attack in 2023, Jonathan Conricus, the IDF spokesperson at the time, stated: 'What a misnomer to call it a "refugee camp". These are the permanent dwellings of Palestinians under Palestinian rule. We struck a high value target there…' (Conricus 2023). This statement suggests a significantly diverging interpretation of IHL obligations, namely an erosion of civilian protection because a 'high-value target' could be struck.

5.2. Ukraine

5.2.1. Brief Historical Context and Pivotal Events

The tensions that culminated in Russia's invasion of Ukraine on 24 February 2022 must be traced back to the question of Crimea, at best. In February 2014, Russia decided to annex the peninsula that was originally transferred to Ukraine by a Soviet decision in 1954 (Crimea Platform, n.d.), and held a referendum in March about the territory's accession which was later regarded to be invalid by the UN General Assembly (Walker 2023).

The shared Ukrainian-Russian border witnessed a constant increase in the number of Russian troops one year before the war started, and in February of 2022, Moscow conducted joint military exercises with Belarus (ibid.). On the 24th, when Russian forces attacked Ukraine, Putin held a long speech that served to be a justification for starting the war. Several discursive elements were noticed that confirm to the recurring narratives about the 'West' violating International Law, the threat for Russia posed by Ukraine and NATO's expansion, and the goal of 'denazifying' and 'demilitarising' Ukraine – however, the legal justifications embedded in the speech were of rather dubious and unfounded (Milanovic 2022). Since 2022, the Russian

invasion has claimed an estimated number of 12,910 Ukrainian civilian lives as of March 2025 (Human Rights Monitoring Mission in Ukraine 2025).

On 26 February 2022, Ukraine instituted what might be labelled as 'reverse compliance' proceedings (Raju 2022) against Russia before the International Court of Justice, as a response to the latter's allegations of genocide being committed in Ukrainian territory. In the Application, Ukraine claims that there is no legal basis for Russia's claims, furthermore, it accused Russia of 'acts of genocide' committed against the Ukrainian population (International Court of Justice 2022). The case is still pending at the ICJ.

Since the beginning of 2025, the newly elected Trump has pledged to put an end to the war on Ukraine and has held multiple calls with both warring parties (Radford 2025). In March this year, the US proposed a 30-day ceasefire plan that Ukraine agreed to (Hodunova 2025), but it has not been implemented due to reluctance of Russia over some specific conditions (Sauer, Walker, and Roth 2025). Since then, offers have been made by multiple sides, including the US, EU-Ukraine and Russia, but no agreement has been reached until the time of writing of this thesis (Psaropoulos 2025).

5.2.2. General Patterns of Non-Compliance and Justifications

Similarly to the case of Gaza, this part of the analysis will commence with examining Russia's relationship towards International Law. With the ongoing war and aggression against Ukraine, the position of Moscow is clearly that of a delegitimising force, but it has not been this explicit before. First of all, unlike Israel, Russia has ratified Additional Protocol I (International Committee of the Red Cross 2025). Therefore, it is obliged by the law to uphold the principle of distinction and other protection standards for the civilian population. Indeed, a direct denunciation of IHL would be inconceivable, as the 2002 'Manual on International Humanitarian Law for the Armed Forces of the Russian Federation' recognises these specific

obligations, making direct reference to the principles of distinction, proportionality and humanity (Manual on International Humanitarian Law 2002, Art. 17). Based on these observations, it seems that Russia is aiming for at least a minimal extent of conformity with International Law.

However, the annexation of Crimea in 2014 was a decisive turning point. While it was condemned as illegal (European Council 2014, 1), the 'illegality' has not been formally established judicially: the UN General Assembly resolution addressing the question simply reaffirmed Ukraine's territorial integrity but did not label the annexation illegal (United Nations General Assembly 2014). Two years later, in 2016, a joint declaration on International Law was issued by Russia and China, which gave a glimpse into how these two countries would reformulate the international order (Anderson 2023). The declaration, while not having any specific reference to IHL, is still highly relevant as it shows the inclination of Russia to 'cherry-pick' International Law obligations that support their military-geopolitical interests – such as the principle of non-intervention.

Regarding IHL, Russia can be seen as posing a 'denialist challenge' to the system (Clark et al. 2018, 335). According to this view, Moscow presents itself as a 'guardian' of IHL and responds with denial to every accusation of non-compliance. Thereby, it transforms an individual deviant behaviour into an issue of deficit that concerns the whole body of International Law. This cautious balancing can be observed in the terminological framing of the war on Ukraine – for the first two years, it was labelled as 'special military operation' as an attempt to neutralise the attack, and was only changed to 'war' recently because of the involvement of the 'West', according to the Kremlin (Osborn 2024).

The specific Russian attacks on Ukraine that the discourse analysis is conducted on are the following, presented in chronological order: the strike on Mariupol maternity hospital on 9 March, 2022; the Bucha massacre, taking place between March-April of 2022; the attack on

Odessa's orthodox cathedral on 23 July, 2023; and finally, the most recent strike on Sumy at the date of 13 April, 2025.

The official justification statements were gathered from various authorities, such as the Ministry of Foreign Affairs and the Ministry of Defense, as well as from the official Kremlin spokesperson. However, throughout the data collection process, it was noticeable how the latter was less involved in reacting to the specific attacks, and similarly, there could not be any statements found that were made by Putin as the leader of Russia. The main justification narrative in all of the chosen statements is an absolute denial of responsibility and the shifting of it to Ukraine and the 'West'. This latter rhetoric involves portraying the attacks as 'staged' and 'provocation' against Russia (The Russian Ministry of Defense 2022; The Ministry of Foreign Affairs 2022a). Another recurring element that supports this denialist narrative is similar to Israel's strategy, that is, applying the human shields justification for attacks, in the form of denying that civilians were targeted. In connection to this, the labels 'radical' and 'terrorist' also surface to portray Ukrainians (TASS 2022; 2023), in line with the 'denazification' argument made by Putin, which aims to justify the war – and which can essentially be seen as a form of dehumanising the enemy. All in all, the above-described denialist logic of Russia is likely the reason for the seldom mention of IHL or humanitarian obligations.

5.3. Comparison

Having made some case-specific observations, this part will continue by taking common patterns of both and conducting a comparative analysis. The patterns will not only confirm or refute previous theories on compliance but also provide an opportunity to reflect on the shortcomings of the current International Humanitarian Law regime.

First of all, it is essential to determine whether the conduct of Israel and Russia in the case of these attacks amounted to non-compliance with IHL and if yes, which principles were violated. The hardships of establishing non-compliance have been previously highlighted by Traven and Holmes (2021), as one of the most telling components of a violation of the law is the intentions of the state committing the violation. But while intentions are nearly impossible to fully map out, previous reports on the 'deliberate', 'indiscriminate' or even 'systemic' character of the attacks conducted by Israel and Russia reveal a certain degree of underlying intentionality (Polishchuk and Gurcov 2025; Office of the High Commissioner for Human Rights 2024). Arguably, where systemic targeting of civilians has been previously recorded, those patterns are likely to shape conduct of warfare throughout the whole conflict, unless that behaviour faces some sort of legal punishment.

As outlined in Additional Protocol I, non-adherence to the principle of distinction can be justified only if the resulting military gain outweighs the harm caused to civilians. This refers to the principle of military necessity, which requires the desired military objective to be clearly spelt out. Despite some scattered claims about necessity throughout the statements, not enough evidence was provided that would legitimise the attack. Determining whether the Article 57(2) obligation to take feasible precautions is upheld is beyond the scope of this study, due to the lack of precise military data. Nevertheless, in all of these eight cases, the principle of distinction has been clearly transgressed as civilian objects – hospitals, residential areas and churches – were targeted.

The establishment of the existence of non-compliance has to be followed by the aggregation of patterns within justificatory discourse and an analysis of the degree of their conformity to the previously explored models. Section 5.3. has already touched upon the importance of the state's attitude towards International Law as a key variable examining compliance. Accordingly, previous sections on Gaza and Ukraine have provided such

contextual information and have found a stark contrast in the positions of Israel and Russia towards IHL. While Israel positions itself as a law-abiding actor, Russia rather approaches its legal obligations with dismissal and represents a legitimacy challenge to the system. The discourse analysis reveals that justificatory state responses mirror these general attitudes towards International Law: the frequency of applying specific IHL terminology is higher in the case of Israel, while Russia rarely resorts to legal language in its justificatory statements.

As a result, two different strategies of justification can be identified. Two previous models are invoked to check their validity towards these findings: the one developed by Kaptein and Van Helvoort (2019) on neutralisation techniques and the other by Morse and Pratt (2022) concerning governmental image management. Israeli statements concerning the Gaza attacks signal a mixed strategy of neutralisation techniques, norm negation and blaming the circumstances (ibid., 1265). It is important to highlight that none of the four attacks were denied, moreover, the Israeli military even took responsibility for carrying them out. Instead, it is rather the legality of the attack that is claimed with the above-mentioned neutralisation techniques. Direct examples to this include the argument of military necessity (thereby negating the principle of distinction into a transgressable norm), and the narrative of human shields (which represents a combination of blaming the circumstances and partly shifting the responsibility, as human shielding by Hamas is seen beyond Israeli control). Conversely, Russia applies the strategy of disassociation by distancing itself from the violation and responding to claims of responsibility with absolute denial. Alternatively, this can also be interpreted as engaging in a subtle way of attack against the IHL system. Russia's justificatory discourse can be translated into the neutralisation technique of fact distortion – labelling the attacks as 'staged', 'propaganda' or 'provocation from the 'West' represents an example of that. The vast differences between these strategies call for a new classification: the first one as 'immunity

through instrumentalisation of IHL' by Israel, and the second as 'denial and distancing' by Russia.

Based on these findings, it can be argued that the question of compliance/non-compliance with IHL moved increasingly to the realm of discourse[3]. Along these lines, compliance can be essentially conceptualised as a speech act which is largely distanced from the actual actions on the ground. The circumstances of the breach are challenging to determine not only because of the presence of hostilities, but also due to the proliferation of sources that can possibly provide evidence, or, on the contrary, misleading information. As a result, the thin line that separates the perception of compliance from non-compliance in these two prominent 21st-century conflicts is a speech act produced by an actor of authority within the state that committed the violation. The strength of this act – in other words, the cogency of the justification – determines how the international community assesses the event. Third states have to navigate within an overload of different narratives, and deem one credible. The assessment of credibility then dictates whether the reputational loss outlined by Guzman (2002) will occur or not, and if yes, to what extent. The speech act will be recreated continuously for the reason that non-compliance, in opposition to simple adherence to the rules, is understood as deviation from the 'standard' (Morrow 2007) – and such deviation requires a justification.

The role of the international community is crucial in evaluating the justification narratives of warring states and thereby positioning them within the public discourse. Therefore, without a broadening of focus to include the international community, this analysis would remain incomplete. In the following, overall trends in international responses are recorded while paying particular attention to geopolitics, the application of IHL terminology (as already

[3] It has to be acknowledged that this is not a fully novel observation, Chayes and Chayes already noted that 'international law is a discursive practice' (1995b, 126).

observed in the case of the warring parties) and the frequency of overall reference to International Law. Furthermore, the issue of third-state complicity is briefly reflected on.

In terms of geopolitics and positioning in the international community, vast differences can be observed between the two countries. While Russia often refers to the 'West' to blame for its military support of Ukraine and spreading 'disinformation' about Russian 'operations'(The Ministry of Foreign Affairs 2022b), Israel does not make any such references – which should not come as a surprise as the state has been embedded within a mainly 'Western' alliance network. Indeed, it has been noted how cultural and political reasons likely determined Western countries' supportive stance towards Israel (Maulana 2024). Regarding the question of third state complicity, difficulties clearly lie in determining the failure to fulfil state responsibility under Common Article 1 to the Geneva Conventions – namely, to ensure respect for IHL. This debate is still in its infancy: the only proceedings that addressed this issue was the case against Germany by Nicaragua (International Court of Justice 2024), discussed previously in section 4.2. However, establishing complicity is challenging mainly due to the legal phrasing of CA1 and the multiple levels lawyers have to consider determining the breach (Milanovic 2024). Thus, it is difficult to imagine such a scenario in which complicit third states are held accountable prior to those to whom the attacks are attributable. Further, due to the lack of extensive legal adjudication, researching third-state complicity deeper would form a whole new research project.

International responses to the chosen attacks confirm what previous literature has argued, especially the accusations regarding double standards. Both the attacks directed against Gaza and Ukraine were described (and in most cases, condemned) by value- and morality-laden terms. There is a frequent reference to the civilian harm and suffering, but in case of Ukraine, the layer of IHL terminology is added – for example, denouncing Russia's actions as a 'war crime' (Borrell Fontelles 2023; Von der Leyen 2022; The White House 2022). Similar

accusations against Israel by Western actors could not be recorded, although calls for international (humanitarian) law to apply were repeatedly made in these statements (UNICEF 2023; OHCHR 2025; Office of the President of Ireland 2023). It is difficult to assess whether the utilisation of IHL terminology is something to advocate for: certainly, in the case of the principle of distinction, making a mention of the law provides an opportunity to condemn an attack not only in moral but also in legal terms. International actors' statements calling out attacks against civilians on a rather moral basis might be attributable to the difficulties of determining whether a given action constitutes a breach of IHL or not. As follows, it can be claimed that the IHL system still falls short of being a moral compass with a strong enforcement mechanism. This is not to say that these laws would be 'immoral', but rather putting emphasis on the fact that some parts of IHL remain permissive to allowing military logic and necessity to prevail over humanity.

Over the examined period, no significant changes could be recorded in the narratives applied as justifications, neither in the case of Gaza nor Ukraine. This signals that both strategies were successful in providing a statement to 'hide behind' in the face of accusations of non-compliance. Of course, the credibility of Israel and Russia is yet a different question, but these strategies clearly highlight the prevalent shortcomings in the IHL regime that allow states to brush off claims of non-compliance.

Conclusion

In this thesis, I addressed the subject of compliance with the principle of distinction, which constitutes one of the core norms of the current International Humanitarian Law regime, set out in 1977 Additional Protocol I to the Geneva Conventions. Violations of this principle continue to occur frequently, and thus, the circumstances of the breach and the justification responses provided by states might evolve. Therefore, my study only captures a limited timeframe and invites further research that broadens the focus either in terms of IHL principles or the number of case studies to be examined. The historical overview of the development of IHL showed a gradual shift in the 1970s towards a system that incorporates humanitarian obligations as its core. However, querying the principle of distinction specifically, it is prevalent that shortcomings prevail due to the ambiguous legal terminology. Critiques against IHL in general are voiced on these grounds, as discussed above in Chapter 4: namely, the trade-off it creates between civilian protection and military necessity and the partly unresolved dilemma of the application of International Human Rights Law in armed conflict.

The extensive literature on compliance with International Law provided a sound theoretical basis for this research. The concept has been approached from multiple different angles, with the International Relations theories contributing significantly to understanding adherence to the law. Specifically regarding IHL compliance, three factors were identified as playing a key role: reciprocity, the regime type of a given country and media coverage (which ties closely into awareness of a violation). Indeed, the importance of social media as an increasingly dominant factor has been highlighted by both cases of Gaza and Ukraine, providing a source for justification statements of state authorities in multiple instances.

Furthermore, the conceptual dichotomy of compliance and non-compliance has been elaborated upon, discussing why it is important to focus on the latter. Non-compliance counts as a ‘deviation’ from the standard behaviour of abiding by the laws and thus needs to be

justified. This justification represents an important part of the research, as it can potentially alleviate the reputational loss that would be caused by an IHL violation. This research added a new, interpretative layer to compliance with the principle of distinction, conceptualising it as a speech act by a state authority. Following these lines, a comparative case study of Gaza and Ukraine – both representing situations of high relevance in international politics – is ideal to examine discourse concerning states' military actions that fail to 'distinguish'. Based on the general patterns found through the discourse analysis of four Russian and four Israeli attacks, two types of justifications for violating the principle of distinction were identified: one of absolute denial of responsibility (Russia), and the other taking responsibility and attempting to legalise the violation itself (Israel; usually involving some reference to military necessity).

In conclusion, the developments noted above signal a change in compliance with and enforcement of IHL, but also the inner structure of its body as well. Even with the absolute prohibiting character of the principle of distinction, military necessity allows states to circumvent their humanitarian obligations and thus, target civilians or civilian objects legitimately. What follows from the high civilian casualty numbers witnessed in Gaza and Ukraine is that, in their current form, IHL obligations are seldom upheld by warring states. This invites a rethinking of the system along humanitarian lines, namely minimising the justifications that states can potentially make to legitimise their attacks on civilians – moving towards a stricter ban on violating the principle of distinction.

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Appendices

These two appendices contain the textual data that was analysed through discourse analysis. Appendix 1 presents all the material related to the Gaza attacks, similarly does Appendix 2 in the case of Ukraine. All of the justifications and relevant third-party statements are grouped accordingly based on the specific attack they refer to. Although not all of them are referenced in the 5.3. Comparison section, they formed part of the discourse analysis and are reflected in the general patterns that were identified. Thus, they are provided here for reasons of transparency.

Appendix 1 – Gaza Attacks: Justifications and Third-Party Statements

Church of Saint Porphyrius (20 October 2023)

The Dispatch, 2023
"Earlier tonight (October 20th), IDF fighter jets targeted the command and control center belonging to a Hamas terrorist, involved in the launching of rockets and mortars toward Israel. The command and control center was used to carry out attacks against Israel, and contained infrastructure belonging to the Hamas terrorist organization"
"As a result of the IDF strike, a wall of a Church in the area of the center was damaged. We are aware of reports on casualties. The incident is under review."
"Hamas intentionally embeds its assets in civilian areas and uses the residents of the Gaza Strip as human shields."

Jerusalem Patriarchate, 2023
THE PATRIARCHATE OF JERUSALEM CONDEMNS ISRAELI AIRSTRIKES TARGETING HUMANITARIAN INSTITUTIONS IN GAZA
The Orthodox Patriarchate of Jerusalem expresses its strongest condemnation of the Israeli airstrike that have struck its church compound in the city of Gaza.
The Patriarchate emphasizes that targeting churches and their institutions, along with the shelters they provide to protect innocent citizens, especially children and women who have lost their homes due to Israeli airstrikes on residential areas over the past thirteen days, constitutes a war crime that cannot be ignored.
Despite the evident targeting of the facilities and shelters of the Orthodox Patriarchate of Jerusalem and other churches – including the Episcopal Church of Jerusalem Hospital, other schools, and social institutions – the Patriarchate, along with the other churches, remain committed to fulfilling its religious and moral duty in providing assistance, support, and refuge to those in need, amidst continuous Israeli demands to evacuate these institutions of civilians and the pressures exerted on the churches in this regard.
The Patriarchate stresses that it will not abandon its religious and humanitarian duty, rooted in its Christian values, to provide all that is necessary in times of war and peace alike.

Jabalia refugee camp attack (31 October 2023)

Reuters, 2023
An Israel Defense Forces (IDF) spokesperson, asked about the images showing damage in several refugee camps, said: “In stark contrast to Hamas’ intentional attacks on Israeli men, women and children, the IDF follows international law and takes feasible precautions to mitigate civilian harm.”

Israeli Defense Forces Media Center, 2023
IDF & ISA Eliminate Commander of Hamas' Central Jabaliya Battalion
A short while ago, IDF fighter jets, acting on ISA intelligence, killed Ibrahim Biari, the Commander of Hamas' Central Jabaliya Battalion. Biari was one of the leaders responsible for sending “Nukbha” terrorist operatives to Israel to carry out the murderous terror attack on October 7th. Numerous Hamas terrorists were hit in the strike.
Biari oversaw all military operations in the northern Gaza Strip since the IDF entered. He was also responsible for sending the terrorists who carried out the 2004 terrorist attack in the Ashdod Port in which 13 Israelis were murdered, and was responsible for directing rocket fire at Israel, and advancing numerous attacks against the IDF, over the last two decades.
His elimination was carried out as part of a wide-scale strike on terrorists and terror infrastructure belonging to the Central Jabaliya Battalion, which had taken control over civilian buildings in Gaza City. The strike damaged Hamas’ command and control in the area, as well as its ability to direct military activity against IDF soldiers operating throughout the Gaza Strip. As a result of the strike, a large number of terrorists who were with Biari were killed. Underground terror infrastructure embedded beneath the buildings, used by the terrorists, also collapsed after the strike. The IDF reiterates its call to the residents of the area to move south for their safety.

Sky News, 2023
Israeli Defense Forces spokesperson (Lt. Colonel Jonathan Conricus)
“There was no strike on a refugee camp – we targeted a Hamas battalion commander, a very important combatant who was leading operations against us. He was hiding together with many of his combatants in a tunnel complex underneath civilian houses - that was what we struck.”
It’s called a refugee camp, but these are not refugees in the sense that these are people who were just evacuated from their homes,” he said.
“This is third, fourth and fifth generation refugees (and) we have been asking them to evacuate for more than two weeks.
“We have established a humanitarian zone in the south and people who were probably forced to stay by Hamas terrorists to be used exactly as has happened now as human shields that is very sad and unfortunate. That is the reason for any civilian casualties here.”

Conricus, 2023
Jonathan Conricus, X
What a misnomer to call it a "refugee camp". These are the permanent dwellings of Palestinians under Palestinian rule. We struck a high value target there, after calling on civilians to evacuate northern Gaza two weeks ago.

UNICEF, 2023
Refugee camps, settlements for the internally displaced, and the civilians inhabiting them are all protected under international humanitarian law (IHL). Parties to conflict have an obligation to respect and protect them from attack.

"Attacks of this scale on densely populated residential neighborhoods can have indiscriminate effects and are completely unacceptable. Refugees and internally displaced people are protected under international humanitarian law. Parties to conflict have an obligation to protect them from attack."

Office of the President of Ireland, 2023

Statement by President Higgins (Ireland) on ongoing violence in the Middle East

"The ongoing horrific loss of civilian life in Gaza and Israel has to be addressed. It should concern us all. Violence by non-State as well as State actors must be described for what it is – breaches of international law. If international law is to respected, it is important that hostages be released and an immediate humanitarian ceasefire be put in place.

In this terrible ongoing loss of civilian life, that is having such a devastating impact on families on all sides, with the large proportion of those killed being women and children, it is important that there be a verification of figures, that the lives lost are not reduced to competing press releases.

The enlistment of civilians for military purposes on any side has to be recognised and addressed; collective punishment is not something we can accept and claim to be advocates of international law. It is simply unacceptable that hospitals and those being cared for within them are threatened by the basic lack of resources, damaged or indeed threatened with destruction, or those within them forced to be evacuated.

Those in the international community who are anxious to support international law, see it vindicated in its fullest sense, including the Geneva Convention, must press for an independent verification of the facts.

International bodies, including the European Union and members of the broader international community, who remain silent or allow their messages to have ambiguous construction have a responsibility to commit to vindicating international law. This is needed to give credibility to what is a much-invoked multilateralism. Not to do so is to accede to little less than the granting of impunity to those involved in a conflict.

When it comes to the protection of children, no other issues should stand in the way for even a minute. Friendships, alliances and partnerships are tested by what cannot be avoided if diplomacy is to return and replace war.

I am proud of the Irish NGOs who are responding to the present horror that is unfolding in Gaza, great acts of courage and humanity are taking place in the worst of circumstances. One can only admire the extraordinary courage and commitment of the medical personnel who, while enduring unimaginable difficulties, are staying with those for whom they care, putting their own lives at risk. That so many members of the United Nations Relief and Works Agency (UNRWA), including teachers, have already lost their lives in that task illustrates the terrible price that threatening civilians with terror, war and its response delivers. What they are facing are the experiences of this suffering.

If we are to move past the present events, we need the capacity to verify what are the facts on the ground and to respond to them, removing all blocks to humanitarian relief, indicating how a space for diplomacy can be found, and out of all of this how a consistent diverse body of proposals might come forward. Ones that can deliver a reasonable security to citizens of Israel, and at the same time achieve the delivery of the long-neglected rights of the Palestinian people; offering the prospect of peace to future generations who must share space and life together as neighbours."

The White House, 2023
John Kirby, White House spokesperson
We see in the scope of their operations that — that they are making efforts to try to minimize civilian casualties. That does not mean — and I did not say — that they aren't still causing some — that their operations aren't still causing some. They are, and each one is tragic. Each one shouldn't happen. And we have been crystal clear about that.

Al-Shifa hospital attacks (March-April, 2024)

Ministry of Foreign Affairs Israel, 2024
Joint IDF and ISA announcement
IDF and ISA forces completed operations against terrorist operatives and infrastructure at the Shifa Hospital: approximately 500 suspects affiliated with terrorist organizations were apprehended and 200 terrorists were eliminated
Over the last two weeks, the IDF and the ISA conducted precise operational activity against terrorist operatives and infrastructure at Shifa Hospital in the Gaza Strip. The forces apprehended approximately 500 terrorists identified as affiliated with terrorist organizations, and eliminated hundreds of terrorists in the Strip. The apprehended suspects were transferred for further interrogation to the ISA and Unit 504 in the Intelligence Directorate.
The operation was carried out following precise intelligence from the ISA and the Intelligence Directorate regarding terrorist organizations' activities in the area, including using Shifa as a command and control center and military headquarters.
The forces found large quantities of weapons, intelligence documents throughout the hospital, encountered terrorists in close-quarters battles and engaged in combat while avoiding harm to the medical staff and patients.
This morning (Monday), the mission was completed, and the forces withdrew from the area of the hospital.
The IDF and ISA will continue to operate against terrorist operatives and infrastructure across the Gaza Strip.

Middle East Monitor, 2024
UN Envoy
The UN Special Rapporteur on Counter-Terrorism and Human Rights said that "Israel is clearly refusing to implement its obligations under the international humanitarian law", Anadolu Agency reports.
"Violence continues unabated. Israel, most recently, has launched a very large attack on a major hospital in Gaza, causing many hundreds of deaths there," Ben Saul told Anadolu, noting that over 30,000 people have been killed, and over 70,000 wounded since 7 October.

The White House, 2024
John Kirby
Now, as I'm sure you're all aware, the President had a chance to speak with Prime Minister Netanyahu earlier today. On that phone call, the President emphasized that the strikes on humanitarian workers and the overall humanitarian situation in Gaza are unacceptable.
He made clear the need for Israel to announce and to implement a series of specific, concrete, and measurable steps to address civilian harm, humanitarian suffering, and the safety of aid workers.
He made clear that U.S. policy with respect to Gaza will be determined by our assessment of Israel's immediate action on these steps.

He underscored that an immediate ceasefire is essential to stabilize and improve the humanitarian situation and to protect innocent civilians. And he urged the Prime Minister to empower his negotiators to conclude a deal without delay to bring the hostages home.
The two leaders also discussed public Iranian threats against Israel and the Israeli people. President Biden made clear that the United States strongly supports Israel in the face of those threats.

Al Ahli Arab Hospital bombing (13 April 2025)

Israel Defense Forces, 2025
IDF, X
DISMANTLED: Hamas Command and Control Center Inside Al Ahli Hospital
The compound was used by Hamas terrorists to plan and execute terror attacks against Israeli civilians and IDF troops.
Despite the IDF repeatedly stating that military activity within medical facilities in Gaza must stop, Hamas continues to blatantly violate international law and abuse the civilian population.
Prior to the strike, steps were taken to mitigate harm to civilians or to the hospital compound, including issuing advanced warnings in the area of the terror infrastructure, the use of precise munitions, and aerial surveillance.

OHCHR, 2025
The UN Special Rapporteur on the right to health, Tlaleng Mofokeng, today condemned the Israeli attack on Al-Ahli hospital, the last functioning hospital in the northern part of the Gaza Strip, saying the many months of coruscant violence continues to make the provision of health care services even more impossible in a system that was already brought to its knees.
“I am horrified to learn that the war on hospitals, health care providers and civilians continues, making the provision of health services even more impossible in a system that has already been brought to its knees,” Mofokeng said.
Al-Ahli Hospital was hit by an airstrike on 13 April 2025, destroying the emergency department and causing the death of a child due to lack of access to appropriate care.
“With this latest attack on the health system, the options for health care – especially emergency care – for the people of Gaza are reduced to zero, and Israel continues to operate with impunity,” the expert said. “The health care system has been decimated.”
The Special Rapporteur recalled that health workers, as primary responders in the provision of health services, are exposed to harassment, intimidation and death on a daily basis as they attempt to save the lives of the Palestinian people.
“Health care facilities and health workers must be protected under international law,” she said.

Appendix 2 – Ukraine Attacks: Justifications and Third-Party Statements

Mariupol hospital attack (9 March 2022)

TASS, 2022
Sergei Lavrov, 2022
"We have heard pathetic rhetoric about some atrocities allegedly committed by the Russian army many times. On March 7, three days ago, our delegation presented evidence at a session of the UN Security Council that the maternity hospital in question had long been seized by the Azov battalion and other radicals. All expectant mothers, all nurses and other personnel had been driven out. It was a base of the ultra-radical battalion Azov. These facts were disclosed three days ago. It is up to you to make conclusions as to how the world public is being brainwashed."

The Russian Ministry of Defense, 2022
Department of Information and Mass Communications of the Ministry of Defense of the Russian Federation
Absolutely no tasks were carried out by Russian aviation in the Mariupol area to destroy targets on the ground. The analysis of the statements of representatives of the Kiev nationalist regime, photographic materials from the hospital, leaves no doubt.
The alleged "airstrike" is a completely staged provocation to maintain anti-Russian excitement among Western audiences.
We have repeatedly stated that medical institutions in Mariupol, including Hospital No 3, stopped their regular work at the end of February. All staff and patients were dispersed by nationalists. The hospital building, due to its advantageous tactical location close to the city center, was converted into a stronghold of the Azov national battalion.
This is massively reported by residents of the city, who have moved both to Kiev-controlled and areas controlled by the Donetsk People's Republic. Photographs of the hospital grounds contain evidence of two separate staged explosions near the hospital. Buried underground and another small power directed to the hospital building.
The nature of the external and internal damage to the building can mislead the mass non-professional audience in Europe and the United States. For which this production was made. But not experts. A high-explosive aviation munition, even of lower power, would simply leave nothing of the outer walls of the building.
I emphasize that all these and other war crimes in Mariupol are committed by the punitive forces locked in the city. We have repeatedly warned that as the ring tightens, the number of Nazi provocations will increase. They have nowhere to run from there.
It was these Nazis of the Azov battalion who deliberately and with particular cruelty destroyed the civilian population in the Donetsk and Lugansk republics for eight years. In recent days, attacks by Ukrainian nationalists and mercenaries who arrived in Ukraine from the United States, Great Britain and Europe on Russian doctors and special medical vehicles have become more frequent.
The Nazis deliberately ambush medical vehicles with symbols - a red cross.
Sniper fire is fired from long distances at doctors evacuating wounded Russian servicemen in combat areas. Even for doctors who provide assistance to local residents in settlements. All this once again confirms the Nazi essence of the Kiev regime, which publicly calls for the murder of any Russians without exception in violation of international humanitarian law.

Von der Leyen, 2022
Ursula von der Leyen, X
The bombing of the Mariupol maternity hospital is inhumane, cruel and tragic.
I am convinced that this can be a war crime. We need a full investigation.

Guterres, 2022
António Guterres, X
Today's attack on a hospital in Mariupol, Ukraine, where maternity & children's wards are located, is horrific. Civilians are paying the highest price for a war that has nothing to do with them. This senseless violence must stop. End the bloodshed now.

Borrell Fontelles, 2022
Josep Borrell Fontelles, X
#Mariupol is under siege.
Russia's shelling of maternity hospital is a heinous war crime.
Strikes of residential areas from the air and blocks of access of aid convoys by the Russian forces must immediately stop.
Safe passage is needed, now.
#PutinsWar #Accountability

Bucha massacre, 2022

The Ministry of Foreign Affairs, 2022
Foreign Minister Sergey Lavrov's opening remarks at a meeting with Martin Griffiths, UN Under-Secretary-General for Humanitarian Affairs, Moscow
We cooperate with international partners, including the UN and the International Committee of the Red Cross, in order to organise humanitarian convoys to Ukrainian cities such as Sumy, Kharkov and Mariupol. Unfortunately, attempts continue to politicise humanitarian issues and even to speculate on them. Two weeks ago, attempts were made to present the situation in a Mariupol maternity ward as a crime by the Russian military. It later turned out that the purpose of these efforts was openly provocative, and that fake materials had been submitted. They were later debunked.
Another information attack took place the other day in the town of Bucha in the Kiev Region soon after Russian service personnel left the vicinity under specific plans and agreements. A "show" was staged there several days later, and Ukrainian representatives and their Western patrons are broadcasting it on all channels and social media networks. All Russian service personnel left the town on March 30, 2022. On March 31, 2022, the mayor of Bucha made an official statement that everything was all right there. Two days later, we saw the "show," organised on the town's streets, and they are now trying to use it for anti-Russia purposes.
We have requested an urgent UN Security Council meeting on this issue. We believe that such provocations directly threaten international peace and security.

The Ministry of Foreign Affairs, 2022
Foreign Minister Sergey Lavrov's comment on Ukraine, Moscow
In the past few days, the propaganda machine of the West and Ukraine has focused exclusively on fueling hysteria over video taken, as we understand, by the military and security service of Ukraine in the city of Bucha, Kiev Region.
Assertions of "war crimes" committed by the Russian Armed Forces in the course of the special military operation have repeatedly been proved false at the detailed briefings by the Russian Defence Ministry, our Ministry and the Permanent Mission to the UN where we held a special news conference yesterday. Today our Ambassador to the UN Vasily Nebenzya set forth our

position in great detail, cited facts and read out the testimonies of witnesses at a meeting of the UN Security Council.
The question, then, is what purpose does this blatantly false provocation serve? We are inclined to view it as a pretext to torpedo the ongoing negotiations at a time when some light, however dim, has appeared at the end of the tunnel. At the talks in Istanbul on March 29, 2022, Ukrainian representatives set forth in writing their vision for a treaty on Ukraine's status and security guarantees for the first time during contacts between our delegations.
For the first time ever, the Ukrainian side has put on paper that it is prepared to declare Ukraine a neutral, non-aligned and non-nuclear state, and to refuse to deploy weapons from foreign states on its territory or to conduct exercises on its territory with the participation of foreign military personnel, unless they are approved by all guarantors of the future treaty, including the Russian Federation. The security guarantees envisaged by the treaty are a step toward everyone realising that the negotiations need to completely rule out NATO's eastward expansion, primarily to Ukraine, and to ensure indivisible security in Europe.
The Ukrainian side itself included in this draft of the main clauses of the treaty a provision saying that the security guarantees that will be provided to Ukraine in the event of an agreement will not apply to Crimea and Donbass. This is also a sign of significant progress in terms of Kiev making a realistic assessment of the status of these territories.
In accordance with the Istanbul agreements and as a gesture of goodwill, the Russian side decided to de-escalate the situation on the ground, primarily, in the Kiev and Chernigov regions. At precisely this moment, three days after our military left the town of Bucha, the provocation we are talking about was staged in that town. We have every reason to believe this was done to divert attention from the negotiation process and from the fact that, after Istanbul, the Ukrainian side began to backpedal and tried to attach new conditions. As soon as the Western media whipped up hysteria over the fake about Bucha, the Ukrainian negotiators attempted to interrupt the negotiating process.

Council of the EU, 2022
Ukraine: Declaration by the High Representative on behalf of the EU on Russian atrocities committed in Bucha and other Ukrainian towns
The European Union condemns in the strongest possible terms the reported atrocities committed by the Russian armed forces in a number of occupied Ukrainian towns, that have now been liberated. Haunting images of large numbers of civilian deaths and casualties, as well as destruction of civilian infrastructures show the true face of the brutal war of aggression Russia is waging against Ukraine and its people. The massacres in the town of Bucha and other Ukrainian towns will be inscribed in the list of atrocities committed on European soil.
The Russian authorities are responsible for these atrocities, committed while they had effective control of the area. They are subject to the international law of occupation.
The perpetrators of war crimes and other serious violations as well as the responsible government officials and military leaders will be held accountable. The European Union supports all measures to ensure accountability for human rights violations and violations of international humanitarian law in Ukraine by Russian Armed forces.
In particular, we fully support the investigation launched by the ICC Prosecutor into war crimes and crimes against humanity as well as the work of the OHCHR Commission of Inquiry. The EU is assisting the Ukrainian Prosecutor General and Civil Society focused on collection and preservation of the evidences of the war crimes.
We stand in full solidarity with Ukraine and the Ukrainian people in these sombre hours for the whole world. The EU will continue to firmly support Ukraine and will advance, as a matter of urgency, work on further sanctions against Russia.
President Putin must stop this war immediately and unconditionally.

Ministry of Foreign Affairs Turkey, 2022
Images of massacre in the press from various districts around Kyiv, including Bucha and Irpin, are appalling and worrisome in the name of humanity. We share the pain of the people of Ukraine.
Targeting innocent civilians can never be accepted. Identifying those who are responsible and bringing them to account by holding an independent investigation into the issue is our main expectation.
Türkiye will continue to work towards ending such shameful scenes for humanity and achieving peace immediately.

Reuters, 2022
Mateusz Morawiecki
"The crimes Russia has committed on close to 300 inhabitants of Bucha and other towns outside Kyiv must be called acts of genocide and be dealt with as such," Mateusz Morawiecki wrote on Facebook.
"Everyone responsible - directly or indirectly- must be severely punished by an international tribunal."

The White House, 2022
Statement of President Joe Biden on the UN Vote Suspending Russia from the Human Rights Council
I applaud the overwhelming vote today in the General Assembly of the United Nations to kick Russia off the UN Human Rights Council. This is a meaningful step by the international community further demonstrating how Putin's war has made Russia an international pariah.
The United States worked closely with our Allies and partners around the world to drive this vote because Russia is committing gross and systemic violations of human rights. Russian forces are committing war crimes. Russia has no place on the Human Rights Council. After today's historic vote, Russia will not be able to participate in the Council's work or spread its disinformation there as the Council's Commission of Inquiry investigates Russia's violations and abuses of human rights in Ukraine.
The images we are seeing out of Bucha and other areas of Ukraine as Russian troops withdraw are horrifying. The signs of people being raped, tortured, executed—in some cases having their bodies desecrated—are an outrage to our common humanity. Russia's lies are no match for the undeniable evidence of what is happening in Ukraine. That's why nations in every region condemn Russia's unprovoked and brutal aggression against Ukraine and support the brave people of Ukraine in their fight for freedom. And we will continue to work with responsible nations around the world to gather evidence to hold Russia accountable for the atrocities being committed, increase the pressure on Russia's economy, and isolate Russia on the international stage.

Odessa Orthodox cathedral 2023

Guardian, 2023
Russia's defence ministry denied that its missile had hit the cathedral, claiming the damage was the result of a Ukrainian air defence missile. Moscow instead claimed it had hit targets in the area where "terrorist attacks" were being prepared. However, Russia has launched a range of hypersonic missiles against Odesa on several nights over the past week, and missiles have hit several residential areas.

TASS, 2023-a

Dmitry Peskov

"Our armed forces never strike social infrastructure facilities, let alone temples, churches and other such structures, so we do not accept such accusations. They are absolute lies."

"What happened was air defense missiles were fired, and they were the ones that destroyed the temple."

TASS, 2023-b

Russian Ministry of Defense

"Judging by the video footage of the Transfiguration Cathedral published by local residents, the most probable cause of its destruction was the fall of a Ukrainian anti-aircraft guided missile as a result of incompetent actions of the operators of air defense systems, which the Ukrainian forces deliberately placed in residential areas, including in the city of Odessa"

"The planning of strikes with high-precision weapons against military and terrorist infrastructure facilities of the Kiev regime is carried out on the basis of thoroughly checked and confirmed through several information channels, knowingly excluding the destruction of civilian facilities where there are civilians, as well as objects of cultural and historical heritage."

United Nations in Ukraine, 2023

Statement attributable to the Spokesperson for the Secretary-General - on Ukraine
Stéphane Dujarric, Spokesman for the Secretary-General

The Secretary-General strongly condemns the Russian missile attack today on Odesa that resulted in civilian casualties and damaged the UNESCO-protected Transfiguration Cathedral and other historical buildings in the Historic Centre of Odesa, a World Heritage site.

In addition to the appalling toll the war is taking on civilian lives, this is yet another attack in an area protected under the World Heritage Convention, in violation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Secretary-General is concerned about the threat that this war increasingly poses to Ukrainian culture and heritage. Since 24 February 2022, UNESCO has verified damage to 270 cultural sites in Ukraine, including 116 religious sites.

The Secretary-General urges the Russian Federation to immediately cease attacks against cultural property protected by widely ratified international normative instruments. The Secretary-General also continues to urge immediate cessation of all attacks against civilians and civilian infrastructure.

UNESCO, 2023

Odesa: UNESCO strongly condemns repeated attacks against cultural heritage, including World Heritage

UNESCO is deeply dismayed and condemns in the strongest terms the brazen attack carried out by the Russian forces, which hit several cultural sites in the city center of Odesa, home to the World Heritage property ‘The Historic Centre of Odesa’.

Borrell Fontelles, 2023

Josep Borrell Fontelles, X

Continuous Russian missile terror on @UNESCO -protected #Odesa constitutes yet another war crime by the Kremlin, demolishing also the main Orthodox Cathedral -a world heritage site. Russia has already damaged hundreds of cultural sites, trying to destroy Ukraine. #Accountability

Sumy attack (13 April 2025)

TASS, 2025
Dmitry Peskov, Kremlin spokesperson
"I can only repeat and remind you what the president and our military spokespeople have said: our forces carry out strikes solely on military and paramilitary targets"

AP, 2025
Sergei Lavrov
"We have facts about who was at the facility that was hit in Sumy. There was another gathering of Ukrainian military commanders there with their Western colleagues, who are there either in the guise of mercenaries, or I don't know in what guise. Servicemen from NATO countries are there, everybody knows it, and they are directly in charge."

Kellogg, 2025
Keith Kellogg, Trump's special envoy for Ukraine, X
Today's Palm Sunday attack by Russian forces on civilian targets in Sumy crosses any line of decency. There are scores of civilian dead and wounded. As a former military leader, I understand targeting and this is wrong. It is why President Trump is working hard to end this war.

Guterres, 2025
António Guterres, X
Deeply alarmed by Sunday's missile attack by Russia on Sumy, Ukraine, which continues a devastating pattern of similar assaults.
Attacks against civilians are prohibited under international law & must end immediately.
I renew my call for a durable ceasefire & reiterate the @UN's support to meaningful efforts towards a just, lasting & comprehensive peace that fully upholds Ukraine's sovereignty, independence & territorial integrity.

Von der Leyen, 2025
Ursula von der Leyen, X
This morning, Russian cruelty struck again, killing men, women and children in the city of Sumy. A barbaric attack, made even more vile as people gathered peacefully to celebrate Palm Sunday. This latest escalation is a grim reminder: Russia was and remains the aggressor, in blatant violation of international law.
Strong measures are urgently needed to enforce a ceasefire. Europe will continue to reach out to partners and maintain strong pressure on Russia until the bloodshed ends and a just and lasting peace is achieved, on Ukraine's terms and conditions. The victims of today's attack, their families, and all Ukrainians are in our hearts. Today and every day. Europe stands with Ukraine and President @ZelenskyyUa