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| Research Article |

War in Islamic Law and International Humanitarian Law: The Gaza Case 2023–2026

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Abstract: Scholarship on the interaction between Islamic law and international humanitarian law (IHL) has grown considerably, yet much of it remains confined to abstract doctrinal comparison and has yet to engage seriously with how these frameworks operate in real armed conflicts shaped by religious identity. This study addresses that lacuna through a focused examination of the 2023–2026 Gaza conflict, in which legal norms, religious identity, and military practice intersect. The analysis asks how the principles of distinction and proportionality are understood within *fiqh al-jihād* and IHL with respect to civilian protection, and how those interpretations shape application in asymmetric conflicts involving both state and non-state actors. Employing a qualitative, comparative, and socio-legal methodology, the study advances three principal findings. First, both legal traditions affirm an obligation to protect civilians through the principles of distinction, proportionality, and humanity, although they rest on distinct normative foundations. Second, divergences in practice arise less from doctrinal conflict than from political interest and the strategic deployment of legal narrative by the parties. Third, these dynamics sustain persistent gaps in civilian protection that are often entrenched by selective legal framing and weak accountability. Based on these findings, the study proposes a "Gaza Convergence Model" as a framework for more operational engagement between the two traditions. By aligning shared principles while acknowledging irreducible differences, the model seeks to strengthen both the legitimacy and the effectiveness of civilian protection in armed conflict. More broadly, the study argues for culturally grounded legal approaches and for sustained dialogue between religious and international legal orders.

Keywords: Islamic Law, International Humanitarian Law, Gaza War, Palestine, Gaza Convergence Model.

Introduction

The Gaza conflict of 2023–2026 presents profound challenges to the law of armed conflict, particularly where religious identity mediates the conduct of hostilities. Hostilities escalated with the Hamas attacks of October 7, 2023, which were followed by sustained Israeli retaliatory operations. Treating October 7 as the point of origin, however, risks oversimplifying a far longer history of tension between the parties. As of early April 2026, the Gaza Ministry of Health reports more than 73,000 Palestinian deaths and over 170,000 injuries since October 7, 2023; independent studies, including a 2026 Gaza Mortality Survey published in The Lancet Global Health, place the figure considerably higher, while more than 2,000 Israelis have been killed over the same period. The United Nations Population Fund has reported that 92% of residential housing was destroyed, alongside damage to 88% of schools, 50% of hospitals, and 60% of other buildings. Within this theatre of operations, Hamas asserts the legitimacy of its campaign under the principles of *jihād*, while Israel justifies its operations as self-defense consistent with international humanitarian law (Zreik, 2024, p. 199; Van Steenberghe, 2024, p. 985). Whether the attacks and counterattacks on either side satisfy the principle of proportionality remains open and warrants sustained doctrinal inquiry. Terminological choice likewise demands care. A number of international institutions, including United Nations bodies, have characterized the situation as genocide, a finding that makes the term "conflict" more defensible than "war," and the authors adopt that framing throughout. Against this backdrop, the study examines the intersection of Islamic law and international humanitarian law (IHL), with a specific focus on civilian protection under conditions of ongoing violence.

Focusing on the Gaza theatre, this study evaluates how international humanitarian law and *fiqh al-jihād* within Islamic jurisprudence apply the twin principles of distinction and proportionality. The comparison pays particular attention to contexts involving non-state actors whose identity and legitimacy are grounded in religious categories. The study further examines the role of religious identity in shaping the interpretation and application of the rules of war, thereby drawing together doctrinal analysis and socio-legal inquiry. On that foundation, the paper advances a convergence framework, designated the "Gaza Convergence Model," which integrates the two traditions to enhance civilian protection and to facilitate cross-traditional legal dialogue. This integrative approach foregrounds the practical value of cooperation between Islamic law and IHL and their shared commitment to safeguarding civilians during armed conflict.

Earlier scholarship on the intersection of Islamic law and IHL in armed conflict exhibits significant conceptual gaps. Although Cockayne (2022, p. 601) and al-Dāwūdī (2018, p. 1000) have examined the normative alignment between Islamic law and the Geneva Conventions, neither has engaged the application of those principles in contemporary conflicts involving religiously motivated non-state actors. Bassiouni (2014, p. 153), by contrast, canvasses civilian protection in classical *fiqh* but does not connect that analysis to the subsequent development of IHL, particularly after the

1977 Additional Protocols. Modirzadeh (2014, p. 228) identifies the phenomenon of "folk international law," in which non-state actors selectively adopt elements of IHL and combine them with religious norms in a manner that lacks systematic coherence. These gaps signal the absence of sustained empirical engagement with religiously inflected warfare, an absence this study seeks to remedy through the Gaza case. Where al-Dāwūdī emphasizes normative alignment, Modirzadeh exposes the pragmatic deviations that arise when those principles are put into operation. Moreover, the distinctive configuration of the Gaza conflict, which features a quasi-state actor in Hamas, a sovereign state in Israel, and a dense civilian population confined within a narrow territory, calls for an analytical framework that moves beyond the conventional dichotomy of Islamic law and IHL (Kihara-Hunt, 2025, p. 170).

Contemporary scholarship on the intersection of Islamic law and humanitarian law, including the work of al-Dāwūdī (2018), Cockayne (2022), and Bassiouni (2014), offers a thorough normative and comparative analysis. It does not, however, investigate how those principles are implemented in asymmetric conflicts marked by intense religious identity, such as Gaza. As Modirzadeh (2014) and Kihara-Hunt (2025) have observed, a substantial gap persists in understanding the practices of religiously motivated non-state actors such as Hamas. Closing that gap requires close attention to how such actors adopt, interpret, and apply the norms of the law of armed conflict, and to the consequences of those interpretations for civilian protection in complex conflicts.

This study contends that Islamic law and international humanitarian law share a common conceptual foundation that can be harnessed to strengthen civilian protection in Gaza (al-Dāwūdī, 2018, p. 1010). Core principles, among them the distinction between combatants and non-combatants, proportionality, and humanity, appear in both traditions; although they are formulated differently, they serve convergent ends (Bassiouni, 2014, p. 167). Contemporary interpretations of *fiqh al-jihād* (Islamic jurisprudence on struggle or warfare), emphasizing *maṣlaḥah* (public interest) and *ḍarūrah* (necessity), track the trajectory of international humanitarian law in responding to the complexities of contemporary warfare (Cockayne, 2022, p. 610). The gaps that persist in implementation do not flow from irreconcilable doctrinal conflict between the two systems but from the politicization of religious identity and the instrumentalization of legal narrative for strategic ends (Hāshimī, 2021, p. 95). Developing mechanisms for dialogue and consensus between these traditions offers a credible path toward more effective and broadly accepted protection frameworks in Gaza (Dannenbaum & Dill, 2024, p. 675). An integrative approach that recognizes the legitimacy of both traditions may also help to bridge the ideological polarization that has, to date, undercut civilian protection efforts (Modirzadeh, 2014, p. 236).

Method

This study adopts a qualitative-comparative design that combines doctrinal and socio-legal methods. The combination enables the analysis to read normative doctrine against the empirical realities of armed conflict. Primary materials, comprising classical and contemporary Islamic legal texts and international humanitarian law instruments, were examined comparatively to identify points of convergence and divergence in their normative principles. The case study focuses on the Gaza conflict of 2023–2026 to assess the operation of the principles of distinction, proportionality, and humanity. Gaza serves as the primary empirical site because it is where the bulk of documented violations during this period have occurred; the authors nevertheless acknowledge that the wider Palestinian territories, including the West Bank and East Jerusalem, remain under prolonged siege and occupation. The normative framework developed here is therefore intended to apply to civilian protection across the Occupied Palestinian Territory as a whole rather than to Gaza in isolation. Units of analysis include official statements issued by the parties, decisions and actions of international institutions, and documented patterns of attack. The authors function as analytical interpreters of both legal corpora, offering a critical assessment of their application in the field. The case boundaries are both temporal, running from 2023 to 2026, and substantive, centered on civilian protection.

Data collection proceeded through a systematic literature review and analysis of policy documents, UN and ICRC reports, and credible human rights databases. The *fiqh* corpus includes classical *siyar* (Islamic legal rulings on warfare) and *jihād* (struggle or effort) works, along with contemporary elaborations on *maqāṣid* (objectives of Sharia), *maṣlaḥah* (public interest), and *ḍarūrah* (necessity). The IHL corpus comprises the Geneva Conventions, the Additional Protocols, the commentaries of the ICRC, and current academic literature. Secondary quantitative data, including casualty figures and infrastructure damage assessments, serve as indicators of humanitarian consequences. All sources were selected on the basis of relevance, currency, and verifiability.

The analysis proceeded through conceptual mapping, thematic coding, and cross-tradition comparative matrices. In a first step, indicators of the principles of distinction, proportionality, and humanity were operationalized together with their counterparts in *fiqh al-jihād*. In a second step, the alignment between norms and field practice was assessed through triangulation of legal sources, independent reports, and empirical data. Validity was supported by analytic audit trails, conceptual peer debriefing, and negative case analysis to surface anomalies. The authors acknowledge and seek to mitigate particular limitations, including reporting biases, unequal access to data, and the interpretive character of normative analysis, by a commitment to methodological transparency.

War in Islamic Law and International Humanitarian Law

This section offers a comparative analysis of the principles of warfare under Islamic law and international humanitarian law. Although the two bodies of law draw on distinct traditions, a number of significant points of convergence emerge on closer reading.

1. Islamic Law

The concept of *jihād* in classical *fiqh* was systematically discussed by jurists such as al-Shaybānī (748–805 CE) and al-Awzāʿī (707–774 CE), who distinguished between defensive *jihād*, undertaken to protect Muslim lands from aggression, and offensive *jihād*, undertaken for expansion (al-Dāwūdī, 2018, p. 1000). Legal authorities such as Ibn Qudāmah (1147–1223 CE) held that defensive *jihād* is warranted only in response to actual aggression against Muslim territory, must be declared by a legitimate authority, and should be preceded by efforts to secure peace (Abū Zahrah, 1995, p. 67). Ibn Rushd (1126–1198 CE), in *Bidāyat al-Mujtahid*, explained that defensive *jihād* constitutes an individual obligation (*farḍ ʿayn*) upon every able Muslim when Muslim lands are attacked, whereas offensive *jihād* is a collective obligation (*farḍ kifāyah*) (Bassiouni, 2014, p. 160). Imām al-Ghazālī (1058–1111 CE) insisted that armed resistance must be governed by the principle of *ḍarūrah* (necessity): force must be calibrated to remove the threat and withdrawn once the danger has passed (al-Dāwūdī, 2018, p. 1004). Classical *fiqh* required that the intention behind defensive *jihād* be directed to the protection of the Muslim community, not to territorial conquest or material gain (Bassiouni, 2014, p. 153). Over time, the classical understanding of defensive *jihād* in classical *fiqh* calls for reinterpretation if it is to retain its purchase on modern conflicts and the contemporary state system (al-Dāwūdī, 2018, p. 1003).

Islamic law draws the line between combatants and non-combatants more finely than IHL (al-Zuḥaylī, 1998, p. 237). In *Kitāb al-Siyar*, Muḥammad al-Shaybānī classified persons present in *dār al-ḥarb* (the territory of war) into distinct categories, including *muqātilūn* (combatants), *muʿāhadūn* (treaty partners), *mustaʾminūn* (those granted temporary safe conduct), and *dhimmiyyūn* (protected minorities) (Bassiouni, 2014, p. 159). Ibn Qayyim al-Jawziyyah (1292–1350 CE) set out explicit protections for women, children, the elderly, clerics, and persons with disability or illnesses who take no part in hostilities (Ibn Qayyim al-Jawziyyah, 1997, p. 173). Within Sunni jurisprudence, four principal legal schools, or madhāhib, developed distinct interpretive methodologies, each recognized as legitimate within the tradition: the Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī schools; Shīʿī traditions developed their own schools (notably the Jaʿfarī), although this study draws principally on the Sunni corpus. The Ḥanafī and Mālikī schools further held that combatant status attaches not merely by association with a belligerent party but by reference to intent and the capacity to fight (al-Zuḥaylī, 1998, p. 245). The principle of *ʿiṣmah* (sanctity of life) in Islamic law holds that every person is entitled to protection unless he or she actively participates in hostilities, a position that parallels the presumption of civilian status in IHL (Abū Zahrah, 1995, p. 78). This protection rests on the Qur'anic injunction that "whoever kills a soul unless

for a soul or for corruption [done] in the land, it is as if he had slain mankind entirely; and whoever saves one, it is as if he had saved mankind entirely" (QS. Al-Mā'idah, 5:32), a verse that affirms the inviolability of human life and supplies the scriptural foundation for the doctrine of *ʿiṣmah* in later *fiqh*. In contemporary conflicts involving non-state actors and fighters operating without uniforms, scholars continue to debate how these classical categories should be adapted to asymmetric warfare (al-Dāwūdī, 2018, p. 1008; Muhammadin & Wahab, 2018, p. 255).

Beyond the principles of *jihād* and combatant classification, Islamic *fiqh* regulates the outer limits of armed conflict through the doctrines of *maṣlaḥah* (public interest) and *ḍarūrah* (necessity) (Al-Dāwūdī, 2018, p. 1005). Imām al-Shāṭibī (1320–1388 CE) in *al-Muwāfaqāt* established that the five essential values (*ḍarūriyyāt al-khams*), namely religion, life, intellect, lineage, and property, must be safeguarded even in time of conflict (al-Zuḥaylī, 1998, p. 259). Imām al-Juwaynī (1028–1085 CE) insisted that military action must be confined strictly to what is necessary and must not exceed the limits set by the *Sharīʿah* (Bassiouni, 2014, p. 167). In the *Shāfiʿī* and *Ḥanbalī* schools, the rule *al-ḍarūrah tuqaddar bi-qadrihā* provides that necessity must be met proportionately, without excess (Abū Zahrah, 1995, p. 82). Ibn Taymiyyah (1263–1328 CE) tied the principle of *maṣlaḥah* to *siyāsah sharʿiyyah* (*Shariah*-oriented governance), holding that wartime decisions must privilege public welfare and avoid harm (al-Dāwūdī, 2018, p. 1006). Wahbah al-Zuḥaylī (1932–2015 CE) extended these concepts to modern armed conflict, urging that the prevention of harm should take precedence over the pursuit of benefit, particularly in the protection of civilians (al-Zuḥaylī, 1998, p. 268). Contemporary scholars, invoking methodological tools such as tarjīḥ to bring classical doctrine to bear on present realities (Makhlouf, 2023, p. 58), accordingly affirm that *maṣlaḥah* and *ḍarūrah* must not be invoked as pretexts for violating ethical norms but should function as governing principles in balancing security and humanitarian concerns in complex armed conflict (al-Dāwūdī, 2018, p. 1012).

2. International Humanitarian Law

IHL requires belligerents to distinguish combatants from civilians in every armed conflict (Sassòli, 2019, p. 37). The Fourth Geneva Convention of 1949 codifies that rule by affording protection to civilians and prohibiting direct attacks on them during hostilities (Haydar, 2013, p. 89). Additional Protocol I (1977) extends the rule by prohibiting indiscriminate attacks that fail to distinguish between military and civilian objectives (Sassòli, 2019, p. 308). Before any attack, accordingly, parties to a conflict must verify that the target is a military objective and must take all feasible precautions to spare civilians (Schmitt, 2010, p. 803). The ICRC has long maintained that these rules form part of customary international law and bind all states, whether or not they have ratified the relevant treaties (Sassòli, 2019, p. 42). Contemporary weapon technology, in particular autonomous and high-yield systems, has made the distinction progressively harder to maintain in practice (Sassòli, 2019, p. 312), and the rapid development of autonomous weapons raises unsettled questions of civilian protection that the law has yet to address.

The principle of proportionality in IHL constrains attacks on military objectives when the anticipated civilian harm would be excessive in relation to the concrete and direct military advantage expected (Schmitt, 2010, p. 805). Article 51(5)(b) of Additional Protocol I codifies the rule by prohibiting attacks in which incidental civilian damage would be disproportionate to the concrete and direct military advantage anticipated (Haydar, 2013, p. 112). Commanders must therefore weigh population density, surrounding infrastructure, and foreseeable indirect consequences before ordering any strike (Sassòli, 2019, p. 48). In the *Galić* case, the International Criminal Tribunal for the former Yugoslavia held that military judgments must be assessed with due caution, and against the information reasonably available at the time (Sassòli, 2019, p. 310). Subsequent case law has built on that standard by treating military necessity, anticipated civilian casualties, and the choice of weapons as the principal factors in any proportionality assessment (Schmitt, 2010, p. 809). In practice, strategic and political pressures often make the rule difficult to apply with consistency (Sassòli, 2019, p. 52).

Alongside distinction and proportionality, IHL rests on a third pillar, the principle of humanity, whose function is to prevent unnecessary suffering in war (Schmitt, 2010, p. 795). The Martens Clause of the Hague Conventions of 1899 and 1907 gave the principle its classic form, requiring that parties to a conflict remain bound by the dictates of humanity and the demands of the public conscience even where no treaty rule applies (Haydar, 2013, p. 75). The 1980 Convention on Certain Conventional Weapons and its protocols codify a specific corollary of the rule by prohibiting weapons that cause superfluous injury or unnecessary suffering (Sassòli, 2019, p. 58). Additional Protocols I and II (1977) extend civilian protection further by outlawing starvation as a method of warfare (Sassòli, 2019, p. 315), and the 1998 Rome Statute criminalizes torture, inhumane treatment, and enforced disappearance as war crimes (Haydar, 2013, p. 128). Customary international law now binds non-state armed groups to the principle of humanity as well, not only states (Sassòli, 2019, p. 62). On this view, humanity anchors the law of armed conflict: even where war proves unavoidable, its human cost must be kept within humanitarian limits.

Comparison of Core Principles

Although Islamic law and IHL rest on distinct theological and philosophical premises, their treatment of civilian protection displays important points of common ground. In Islamic law, the classical *fuqahāʾ* set out in detail the categories of non-combatants, including women, children, the elderly, clerics, and the sick, whose protection rests on Prophetic *ḥadīth* and the practice of the Companions (Ibn Qayyim al-Jawziyyah, 1997, p. 173). The Fourth Geneva Convention of 1949, in contrast, defines the civilian population negatively by reference to "non-combatants," producing a comparable protective effect through a different doctrinal route (Hayashi, 2016, p. 92). Both systems confine military operations to objectives that offer a definite military advantage, and together they converge on a shared set of protective principles (see

Table 1). Within Islamic law, the prohibition on destroying trees, farmland, and places of worship, reflected in the injunctions of Caliph Abū Bakr, makes that protective orientation explicit (al-Zuḥaylī, 2011, p. 237).

Both traditions employ proportionality to balance military necessity against humanitarian considerations, although they do so through distinct formulations (Bassiouni, 2014, p. 167; Ahmad, Lilienthal, & Ahmad, 2023, p. 112). In Islamic law, the treatment of collateral harm is governed by *qawāʿid fiqhiyyah* such as *al-ḍarar yuzāl* ("harm must be removed") and *lā ḍarar wa-lā ḍirār* ("neither inflict harm nor reciprocate harm"), rules that confine the impact of hostilities on those not taking part in the fighting (Abū Zahrah, 1995, p. 82). IHL, in turn, applies a proportionality test that requires commanders to determine whether the anticipated civilian harm would be excessive in relation to the concrete and direct military advantage expected (Schmitt, 2022, p. 145). The doctrine of *ḍarūrah* (necessity) in Islamic law and the principle of military necessity in IHL each acknowledge that military exigency may justify certain measures, but only within strict limits designed to prevent violations of the overarching principle of humanity (al-Qaraḍāwī, 2009, p. 178).

Religious identity performs a significant role in the application of the law of war, nowhere more visibly than in the Gaza conflict, which is saturated with religious and historical meaning (Hashmi, 2012, p. 95). The interpretation of legal norms during hostilities is often colored by the religious commitments of the parties. Hamas, for instance, tends to frame its armed campaign as defensive *jihād*, while Israel anchors its conduct in a historical narrative of Jewish self-defense (Bennoune, 1994, p. 612). Through the phenomenon of "folk international law," non-state actors selectively combine IHL principles with religious interpretation, producing hybrid frameworks that justify their conduct (Modirzadeh, 2014, p. 228). The central challenge in harmonizing Islamic law and IHL lies in devising an approach that respects the distinctiveness of each system without losing sight of the overarching objective of humanitarian protection (al-Dāwūdī, 2018, p. 1010). Contemporary scholars such as al-Zuḥaylī and Kamali have developed methodologies that connect *maqāṣid al-sharīʿah* (the higher objectives of the *Sharīʿah*) to the humanitarian ethos of IHL, particularly in the protection of civilians (Ḥaydar, 2013, p. 184). At the same time, leading IHL scholars such as Sassòli and Bouvier have come to recognize the value of engaging religious and cultural perspectives in building compliance with humanitarian norms (Powell, 2020, p. 148). An integrative approach that couples the Islamic principle of *maṣlaḥah* (public welfare) with the principle of humanity in IHL offers common ground for protecting Palestinian and Israeli civilians alike without compromising the integrity of either legal tradition. This balanced protection is not incidental. Islamic law, no less than IHL, imposes an unconditional duty to protect non-combatants on every side of a conflict, including the Israeli civilians killed, injured, or taken hostage on and after October 7, 2023, whose protection falls squarely within both the doctrine of *ʿiṣmah* and the customary rules of distinction under IHL.

Table 1. Comparison of core principles of civilian protection: Islamic law and IHL

Principle	Islamic Law	IHL	Convergence
Distinction	Classical jurists (al-Shaybānī, Ibn Qayyim) forbid killing non-combatants: women, children, elderly, clerics, disabled.	GC IV (1949) and AP I (1977) prohibit direct or indiscriminate attacks on civilians.	Both systems treat civilians as protected persons by default.
Proportionality	*ḍarūrah* (necessity): force only removes the threat and ceases when the danger passes (al-Ghazālī, Ibn Rushd).	AP I Art. 51(5)(b): attacks disproportionate to the concrete military advantage anticipated are prohibited.	Force must be limited to what is strictly required by military necessity.
Humanity	*ʿiṣmah* (sanctity of life); Qur'an 5:32; Caliph Abū Bakr's injunctions bar torture and destruction of essential resources.	Martens Clause; 1980 CCW; prohibition of torture, starvation, superfluous injury (Rome Statute).	Unnecessary suffering is forbidden even where no specific rule exists.
Protection of property	Prohibition on destroying trees, farmland, wells, houses of worship (Abū Bakr's ten rules).	GC IV Art. 53; AP I Art. 54 protect objects indispensable to civilian survival.	Objects essential to civilian life are non-targetable.
Non-state actors	*siyāsah sharʿiyyah* binds rulers and fighters alike; ethical obligations apply personally to combatants.	Common Art. 3 and customary IHL bind organized armed groups in non-international conflicts.	Both systems hold non-state armed actors to core humanitarian duties.
Source of norms	Qur'an, Sunna, classical *fiqh* (four Sunni schools), *maqāṣid al-sharīʿah*.	Geneva Conventions, Additional Protocols, customary IHL, ICRC commentaries, case law.	Both combine written text with interpretive tradition.

Source: authors' analysis based on classical *fiqh* sources (Ibn Qayyim, al-Shaybānī, al-Ghazālī), Geneva Conventions and Additional Protocols, and contemporary scholarship (al-Dāwūdī, 2018; Hayashi, 2016; Bassiouni, 2014; Cockayne, 2002; Schmitt, 2022).

The Gaza Conflict 2023–2026

Hamas anchors its armed resistance in Gaza on a claim of legitimacy under defensive *jihād*, construed as a *sharʿī* obligation to defend Muslim territory against Israeli occupation (Roy, 2016, p. 78). The revised Hamas Charter of 2017 states that its campaign is directed not against Jews as a religious community, but against the Israeli occupation (Norman, 2010, p. 142). In practice, the movement has drawn sustained criticism for aspects of its military conduct, and in particular for the siting of armed infrastructure within densely populated areas. That practice raises a pressing question as to whether Hamas's invocation of defensive *jihād* satisfies the classical conditions of legitimate authority (*imām al-jihād*) and of proportional response under Islamic jurisprudence. The principle of distinction, which prohibits acts that endanger those not participating in hostilities, becomes exceedingly difficult to uphold in such circumstances. Rocket launches from populated areas, for example, raise serious concerns about compliance with both Islamic law and IHL. Although Hamas formally professes adherence to civilian protection under Islamic law, the gap between stated commitment and conduct on the ground is consistently documented by international monitoring bodies. Classical scholars such as al-Shaybānī and Ibn Qudāmah insisted on due care in the protection of non-combatants, providing the theological foundation for those obligations. The tension between the claim of defensive *jihād* and the resort to indiscriminate methods of warfare illustrates the difficulty of applying classical *fiqh al-jihād* to the realities of modern asymmetric warfare, and is a vivid reminder of the difficulty of reconciling religious duty with humanitarian obligation.

Israel defends its military operations in Gaza by invoking the doctrine of self-defense recognized in Article 51 of the UN Charter (Kreß, 2025, p. 140). The scale and duration of those operations have nonetheless generated sustained debate about the reasonable limits of such action (Bisharat, 2013, p. 72). Whereas Hamas appeals to religious legitimacy, Israel's reliance on Article 51 does not typically invoke an equivalent ethical restraint comparable to the Islamic doctrine of *maṣlaḥah* (public interest), and this asymmetry has frequently translated into broader civilian harm. Israel's approach to proportionality in this conflict is governed principally by its perception of security threats, a framing that marginalizes the extensive civilian harm sustained by the Palestinian population and accounts for tens of thousands of casualties (Weizman, 2017, p. 183). Israel has also applied the so-called "Dahiya Doctrine," which contemplates the use of overwhelming force against civilian infrastructure alleged to serve military functions, a strategy widely criticized by IHL scholars as incompatible with the principles of distinction and proportionality (Dannenbaum & Dill, 2024, p. 665). Several UN commissions of inquiry have accordingly concluded that Israeli military operations in Gaza fall short of IHL standards, particularly in target selection and proportionality. Israel's invocation of self-defense against a non-state actor further raises complex questions about the reach of Article 51 in asymmetric settings (Nessa & Kleczkowska, 2024, p. 28). Israel's self-identification as a "Jewish state" also shapes its military policies, including the

recurrent deployment by political and military leaders of biblical references and historical narratives of deliverance to legitimize operations in Gaza (Pappé, 2017, p. 212). The tension between Israel's security imperatives and its obligations under international law illustrates the difficulty of applying humanitarian law in protracted conflicts inflected by identity, history, and contested territorial claims (Gordon, 2008, p. 156).

The Gaza conflict has had devastating consequences for civilian protection, above all for children (Provost & Wijenayake, 2024, p. 1020). Data from UN agencies and the Gaza Ministry of Health indicate that, since October 2023, more than 70,000 Palestinians have been killed, the majority of them women, children, and elderly civilians, figures consistent with grave violations of the principles of distinction and proportionality. These patterns are summarized in Table 2 together with the corresponding IHL and Islamic law norms at stake. The destruction of vital infrastructure, including hospitals, schools, and water supply systems, has reached 70 to 80%, producing a protracted humanitarian crisis that may amount to violations of the prohibition on destroying objects indispensable to the survival of the civilian population. Evacuation from conflict zones has become nearly impossible given Gaza's limited territory of roughly 365 km², its dense population, and border closures that preclude movement to safer areas. Restrictions on humanitarian access have further deepened the crisis, as Israeli blockades and damaged infrastructure impede the delivery of relief. A number of international legal scholars argue that these conditions constitute collective punishment, prohibited under the Fourth Geneva Convention (Chomsky & Pappé, 2010, p. 93). Accountability mechanisms for war crimes in Gaza remain weak. UN investigations are routinely disregarded, and the International Criminal Court confronts jurisdictional and political obstacles. The resulting pattern of impunity, in which violations of the laws of war recur without meaningful consequence, further erodes civilian protection and the authority of IHL.

The humanitarian crisis in Gaza throws into relief the serious limits of the existing framework of the law of armed conflict and the pressing need for practical dialogue between legal traditions. The civilian population remains trapped in a closed theatre ringed by sealed borders, shattered infrastructure, and severely constrained humanitarian access. The failure to operationalize distinction and proportionality is due less to doctrinal disagreement than to competing security narratives and conflicting identities, with each party asserting ultimate legal and moral legitimacy and leaving little space for compromise. The absence of robust accountability within both Islamic law and IHL compounds the problem, as armed actors on both sides, and on the Israeli side most consistently, continue to violate civilian protection norms without meaningful consequence. Institutionalizing dialogue through joint Islamic–IHL training and local fatwa councils could translate this moral convergence into operational guidance for the protection of civilians. At the same time, the tragedy of Gaza opens an opportunity to develop new approaches that join universal humanitarian values to a sensitivity for local cultural and religious context. A fuller

account of the relationship between the Islamic principle of *maṣlaḥah* (public welfare) and the principle of humanity in IHL can supply the ground for constructive dialogue. On that footing, an integrative approach converts abstract ethics into practical legal cooperation, reinforcing civilian protection in the short term while building a more robust normative framework for comparable conflicts in the future. Gaza thus illustrates not only the limits of the existing legal regimes but also the promise of a normative synthesis rooted in both *Sharīʿah* and humanitarian law.

Table 2. Documented patterns in the Gaza conflict (2023–2026) mapped to IHL and Islamic law norms

Pattern	**Scale/evidence**	**IHL norm**	**Islamic law norm**
Civilian casualties (both sides)	> 73,000 Palestinians + > 2,000 Israelis killed; ~1,200 Israelis on October 7, 2023; hostages taken (Gaza MoH, 2026).	Distinction (GC IV, AP I); hostage-taking prohibited (GC IV Art. 34).	*ʿiṣmah* protects women, children, elderly, clerics; defensive *jihād* cannot target non-combatants.
Destruction of civilian infrastructure	70–80% of hospitals, schools, water systems damaged; 92% of housing damaged (UNFPA).	Protection of objects indispensable to civilian survival (AP I Art. 54).	Abū Bakr's ten rules: no destruction of houses, crops, wells, or places of worship.
Siege, starvation & aid restriction	Blockade; famine conditions; medical supplies short (Hassoun et al., 2024; Hussein et al., 2024).	Starvation as a method of warfare is prohibited (AP I Art. 54); duty to allow relief (GC IV Art. 23; AP I Art. 70).	*maṣlaḥah*: preservation of life and means of subsistence is a primary objective.
Disproportionate force ("Dahiya Doctrine")	Overwhelming strikes on infrastructure claimed as military (Dannenbaum & Dill, 2024).	Proportionality (AP I Art. 51(5)(b)); distinction.	*ḍarūrah* (necessity): force must not exceed the threat.
Weak accountability	UN investigations ignored; ICC faces jurisdictional and political hurdles (Krever et al., 2024).	Grave breaches regime (GC IV Art. 146–147); universal jurisdiction.	*siyāsah sharʿiyyah*: Islamic governance requires enforcement against violations.

Source: compiled from UN OCHA (2026), Gaza Ministry of Health figures (2026), and scholarship cited in references.

Towards an Integrative Approach: The Gaza Convergence

Islamic law and IHL share a foundational commitment to the protection of human dignity (al-Dāwūdī, 2018, p. 1010). One of the most prominent points of convergence lies in the distinction between those engaged in combat and those who are not. In *fiqh al-siyar*, this distinction is expressed as *muqātilūn* (combatants) and *ghayr muqātilūn* (non-combatants), while IHL expresses the same categorical distinction through the principle of distinction (Ibn Qayyim al-Jawziyyah, 1997, p. 173). Both systems insist on the protection of vulnerable groups, including women, children, and the elderly, who take no part in hostilities, although the underlying rationale differs. Islamic law also contains the concept of *maṣlaḥah*, a principle directed to the common good and the preservation of the five essential values of human life (*al-ḍarūriyyāt al-khams*). This principle resonates with the concept of humanity in IHL, which safeguards fundamental human rights in all circumstances (al-Zuḥaylī, 2011, p. 259). These shared values open the door to a more integrated approach to Gaza, one drawing on norms from both systems (Cockayne, 2022, p. 610). By recognizing the particularity of each tradition while reaching for its universal values, a dialogical approach to civilian protection becomes possible.

A more integrative approach to armed conflict must take account of the distinctive contribution of each legal system (Bassiouni, 2014, p. 167). Islamic law carries strong ethical and spiritual dimensions that exert significant influence within Muslim societies, while IHL offers a more technical framework with global purchase. A holistic legal approach becomes possible only when the insights of each tradition are read together. Islam recognizes *ʿirfānī* (spiritual knowledge), which can be paired with the rational-empirical methods of modern humanitarian law. Likewise, the concept of *maqāṣid al-sharīʿah* (objectives of the *Sharīʿah*) supplies the interpretive resources needed to adapt Islamic law to the realities of contemporary armed conflict (al-Qaraḍāwī, 2009, p. 143). Scholars such as al-Qaraḍāwī, through *fiqh al-wāqiʿ*, which connects religious principles to prevailing social and political conditions (al-Qaraḍāwī, 2009, p. 178). Deploying such methods narrows the conceptual gap between Islamic law and humanitarian law and produces more context-sensitive solutions for civilian protection in Gaza (Tshuma, 2024, p. 645).

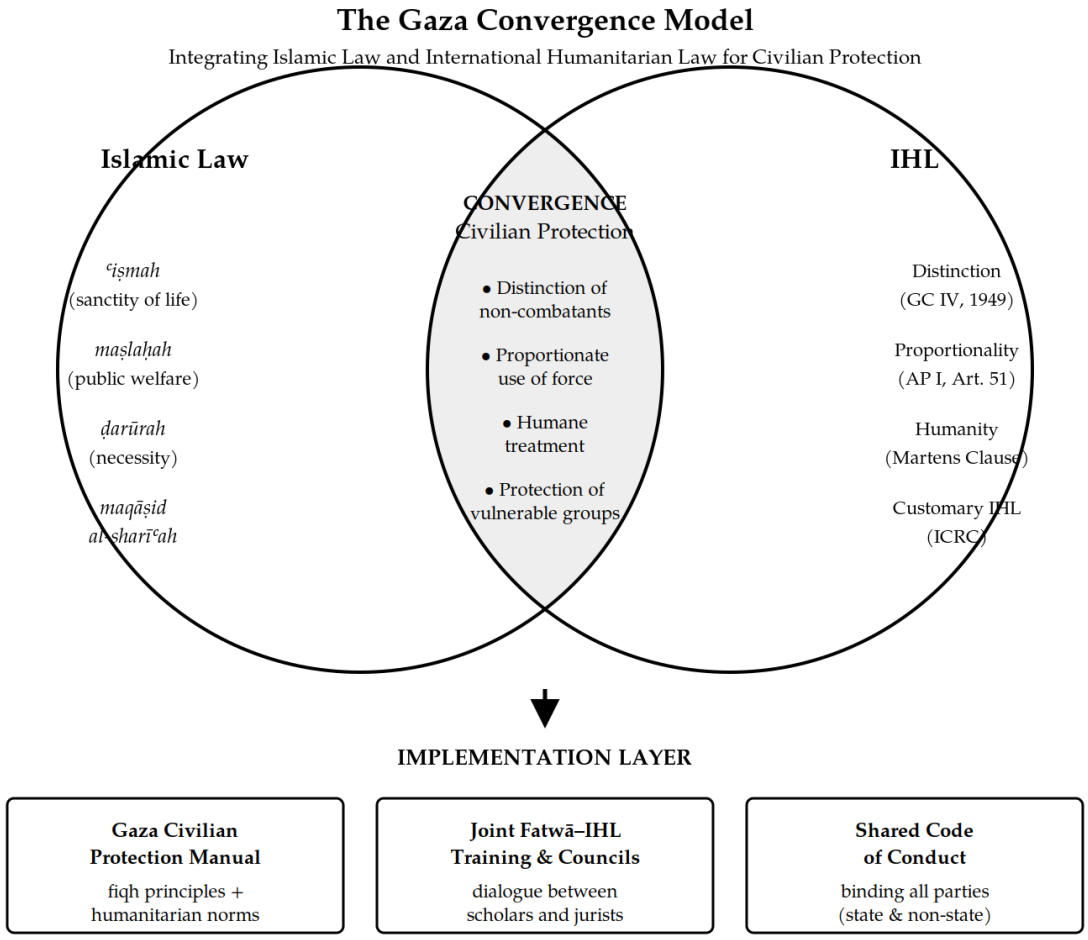
The most striking point of common ground between the two systems lies in the principles of justice and compassion (Abū Zahrah, 2008, p. 82). In Islam, *ʿadl* (justice) is a cardinal value that must be upheld even toward an enemy. The same commitment appears in IHL, which, though cast in different terminology, insists on the fair and humane treatment of all parties to a conflict (Hayashi, 2016, p. 92). Islamic law likewise advances *raḥmah* (mercy), which parallels the principle of humanity in IHL and its requirement of humane treatment for all persons without discrimination (Bennoune, 1994, p. 612). Bringing these values into a common framework offers a firm foundation for civilian protection in Gaza. The Islamic concepts of *maṣlaḥah*, *ʿadl*, and *raḥmah* with the IHL principles of humanity, distinction, and proportionality can be brought together in a more comprehensive protective framework. The proposed model,

designated the "Gaza Convergence" (Figure 1), is well-positioned to attract support from the parties to the conflict and from the wider international community (Powell, 2020, p. 148).

Effective implementation of this integrative approach will require structured dialogue among a range of stakeholders, including Islamic jurists, humanitarian law specialists, and representatives of the affected communities (Arifin et al., 2025). A Gaza Dialogue Forum could serve as a platform for deliberation on civilian protection standards acceptable to all parties. Institutions such as the International Committee of the Red Cross, the Organization of Islamic Cooperation, and the United Nations are positioned to act as mediators in that forum. One promising strategy is the religious framing of humanitarian law, with religious leaders taking part in disseminating and teaching the rules of war in terms that align with Islamic principles and international norms alike (Hāshimī, 2021, p. 95). Joint training programs between *ʿulamāʾ* and humanitarian law experts would further strengthen mutual understanding and build durable networks of cooperation (Ḥaydar, 2013, p. 184). Enlisting religious authority in the promotion of civilian protection increases the likelihood that societies will accept and comply with the agreed rules. The approach pairs religious legitimacy with international legal authority and yields a stronger, more locally grounded protection system.

To translate this integrative approach into concrete form, a "Gaza Civilian Protection Manual" could be developed, combining *fiqh* principles and humanitarian norms in language accessible to all parties (Dannenbaum & Dill, 2024, p. 675). Such a manual would provide guidance for armed groups, humanitarian organizations, and civilians in situations of conflict. A complementary code of conduct reflecting shared values from both traditions could be developed to promote compliance among armed actors such as Hamas and the Israeli military, drawing on the moral and legal sanctions recognized in each framework (Modirzadeh, 2014, p. 236). Drafting such a code would need to take account of Gaza's specific conditions, including its limited territory, high population density, and damaged infrastructure, to ensure that the rules remain practical and enforceable (Weizman, 2017, p. 183). Monitoring mechanisms that involve religious authorities together with humanitarian organizations should be established in parallel to ensure effective enforcement. In the long term, education in Islamic law and IHL should be introduced to younger generations in Gaza, across the wider Palestinian territories, including the West Bank, in Israel, and internationally, to build an early understanding of the importance of civilian protection and to contribute to breaking cycles of violence (Chomsky & Pappé, 2010, p. 93). Although such efforts demand time and sustained commitment, they represent a necessary step toward more effective and durable civilian protection in Gaza.

Figure 1. The Gaza Convergence Model: overlap of Islamic law and IHL on civilian protection, with an implementation layer.



Conclusion

This study has examined the relationship between Islamic law and IHL in the context of civilian protection during the Gaza conflict. The two systems share common ground on the distinction between combatants and civilians, notwithstanding their different foundations, Islamic law rooted in divine revelation and IHL in inter-state agreement. The doctrine of *ʿiṣmah* in Islamic law, with its emphasis on the sanctity of human life, maps onto the humanitarian principle of IHL; both traditions privilege the protection of life and human dignity in all circumstances. Differences in implementation nonetheless arise less from fundamental legal contradiction than from the politicization and instrumentalization of law for strategic purposes by the warring parties. The Gaza case shows that both Hamas and Israel, with Israel the more consistent user of selective legal interpretation to justify military conduct, have often done so at the expense of civilian protection. The absence of robust accountability mechanisms in either system has produced a recurring cycle of violations without consequence that steadily undermines the effectiveness of civilian protection.

The integrative approach proposed here makes both academic and practical contributions. It crosses the conventional boundary between Islamic law and IHL and works toward a protective framework capable of accommodating both. The shared principles of *ʿadl* (justice), *maṣlaḥah*, and *raḥmah* in Islamic law, together with the principles of distinction, proportionality, and humanity in IHL, offer fertile ground for constructing a more cohesive and effective regime. In practical terms, that regime has the potential to generate operational guidance and accountability mechanisms whose legitimacy is drawn from both systems, rendering them more acceptable and applicable to the parties to a conflict. The emphasis that Islamic law places on justice and humanitarian values adds a distinctive perspective on civilian protection capable of enriching international humanitarian norms. The integrative model developed for Gaza may likewise serve as a reference point in other conflicts, which in turn points to the vital role of religious leaders in advancing and teaching civilian protection within their communities. Engagement of this kind has the potential to reshape how justice and humanitarian responsibility are understood across diverse contexts. Further research remains necessary to examine mechanisms of dispute resolution that bring the doctrine of *taḥkīm* (arbitration) in Islamic law into dialogue with international legal procedure. Smaller-scale pilot projects of cross-traditional legal dialogue would provide a credible first step toward broader and more comprehensive implementation.

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