


The Impact of a Ceasefire on the Applicability of International Humanitarian Law

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On January 19, 2025, a long-awaited ceasefire deal between Hamas and Israel has taken effect. From what is known of the agreement, hostilities in Gaza are to cease for 42 days. During this period, 33 Israeli hostages are scheduled to be released in exchange for hundreds of Palestinian detainees, and Israeli forces will withdraw to the outskirts of Gaza. Following this initial phase, the second stage of the agreement is expected to begin and will involve the complete withdrawal of Israeli troops from the Gaza Strip and the release of the remaining hostages in return for more Palestinian detainees. This stage is projected to last another 42 days, with President Biden declaring that its successful implementation would mean a “permanent end to the war.” The third phase, of indefinite duration, will focus on the reconstruction of Gaza. 

Despite these developments, the ultimate success of the peace process depends on (at least) two main factors. First, it hinges on the outcome of future negotiations, as any failure could reignite the conflict. Second, it relies on Prime Minister Netanyahu’s willingness to proceed beyond the initial phase – as he has described the first phase as “temporary,” and has insisted Israel is “reserving the right” to resume fighting if needed. This post briefly explores how this agreement affects the application of international humanitarian law (IHL) in Gaza.

The Temporal Scope of Application of IHL

IHL is designed to mitigate the suffering caused by war, providing protections to individuals and regulating the means and methods of warfare. Its application begins once an armed conflict arises and persists beyond the cessation of active hostilities. As the International Criminal Tribunal for the Former Yugoslavia (ICTY) clarified in the Tadić case, IHL applies “until a general conclusion of peace is reached” in international conflicts or “a peaceful settlement is achieved” for non-international conflicts (ICTY, *Prosecutor v. Duško Tadić*, 2 October 1995, IT-94-1-AR72, §70).

A key issue flowing from *Tadić* is whether international armed conflicts (IACs) and non-international armed conflicts (NIACs) should be treated differently in regard of the end of application of IHL. This question resonates particularly for the conflict in Gaza, whose qualification has been highly discussed (see here, here or here). For present purposes, this post follows the International Criminal Court’s approach, which considers – grossly summarizing – that there is an IAC between Israel and Palestine alongside a NIAC between Hamas and Israel.

From a *ratione temporis* perspective, the key difference between IACs and NIACs lies at their starting point: to qualify as a NIAC, thresholds of organisation and intensity must be met, while an IAC is triggered by the very first act of force between States. Practically, this means that any inter-State violence is automatically subject to IHL, while outbreaks of violence in a non-international context needs to be assessed as being more than “situations of internal disturbances and tensions” for IHL to apply.

Is this difference reflected in when IHL stops applying ? It has both been argued that it does (p. 180) and that it does not. According to the ICRC 2024 Opinion Paper, what matters for IHL to cease to apply is that the fighting has ended “with a degree of stability and permanence” (for IACs) or that “there is a lasting cessation of armed confrontations without real risk of resumption” (for NIACs). Therefore, while we have no intention of settling this debate, we believe that whether a conflict is classified as internal or international has limited bearing on the question of when it ends ; in both cases, the decisive factor is a factual assessment that the situation has truly and durably stabilized.

This raises the question of whether formal instruments – such as ceasefires, armistices, or truces – affect that factual assessment. One might assume that a seemingly stable arrangement, like the recent Hamas-Israel agreement, could suffice. However, while these terms frequently appear in media reports (sometimes interchangeably, see, for example, in reporting on Gaza, all three terms used here), they are not strictly defined in the main IHL treaties. Moreover, while references to “armistice” or the “flag of truce” occur in certain provisions (e.g., Chapter V of the 1907 Hague Convention IV; article 15 GC I ; article 37 and 38 AP I), these rules are not tied to the *ratione temporis* application of IHL. Indeed, on this matter, the treaties rely on a broader notion : the “general close of military operations” (see here and here). This means that they apply “based on the facts on the ground” rather than simply by virtue of formal or informal agreements. Temporary pauses in hostilities – even those hoped to become permanent – do not alter this framework ; what matters is that “the last shot has been fired” (p. 62). It can thus be said that peace agreements, whatever their type, can serve as an indication but are not sufficient on their own.

Additionally, it is important to distinguish between the “close of hostilities” and the “general close of military operations”. The former serves as the “triggering factor” for rules that specifically arise once hostilities have ceased or have been suspended – such as obligations to clear unexploded ordnance, recover and identify the deceased, and release individuals deprived of liberty. The latter concept relates to the temporal scope of application of IHL. Although the two notions are related, their definitions differ. The “close of hostilities” refers to the point at which parties cease employing means and methods aimed at injuring the enemy – but only if “there is no reasonable expectations of their resumption” – whereas the “general close of military operations” encompasses “not only the end of active hostilities but also the end of military movements of a bellicose nature”. Consequently, the “close of hostilities” does not necessarily imply that other military activities (such as movement of troops) have been discontinued. As a result, the two concepts may, in practice, occur at different points in time.

Finally, in situations where hostilities result in occupation, the ongoing application of IHL assumes particular importance (see, for in-depth discussion, Koutroulis, V., *Le début et la fin de l'application du droit de l'occupation*, Paris, Pedone, 2010). That said, given that the second phase of the announced armistice involves the withdrawal of Israeli forces from Gaza, there should, *prima facie*, be no occupation. However, in its 2024 advisory opinion, the International Court of Justice has made clear that obligations under the law of occupation would remain applicable in Gaza insofar as Israel continues to exercise a degree of control (see §§ 92-93). In other words, the applicability of occupation law will depend on the extent of control exercised by Israel following the implementation of the second phase.

In Practice : Gaza and Lebanon

In the context of Gaza, the current ceasefire does therefore not, by itself, mark the end of the conflict. Nonetheless, examining its provisions can help gauge when thresholds for the “close of hostilities” and the “general close of military operations” might be reached. For now (25/01), the ceasefire appears to be holding, with no major acts of violence reported ; but there is no certainty that the ceasefire will outlast the first phase. We therefore believe that the close of hostilities is not yet met – at the very least until the start of phase two, which is supposed to be a “permanent ceasefire”.

Concerning the “general close of military operations”, significantly, the second phase of the ceasefire arrangement envisions a complete withdrawal of Israeli forces from Gaza. Until that withdrawal is both carried out and shown to be stable, neither the IAC nor the NIAC dimension can be considered definitively over. Moreover, the movement of the armed forces of both Hamas and Israel will need to concretely show no intention of resuming hostilities, including refraining from “redeploying troops along the border to build up military capacity or mobilizing or deploying troops for defensive or offensive purposes”. Achieving such conditions in the near term appears highly uncertain.

A concrete example of how a ceasefire agreement can only be indicative of the situation on the ground is the recent announcement by Netanyahu that the Israeli troops would remain in Lebanon past the sixty-day withdrawal deadline set by the ceasefire agreement of November 27, 2024. Moreover, even since the agreement, multiple violations of the deal have been reported by Lebanon to the Security Council, including “more than 816 attacks by land and air”. This means that nor a “close of the hostilities” nor a “general close of the military operations” have been attained, despite the ceasefire.

Consequently, IHL remains binding both in Gaza and Lebanon. All parties to these conflicts must continue to respect fundamental protections under IHL, including the humane treatment of individuals in their custody and the facilitation of humanitarian assistance.

Why the Continued Applicability of IHL Matters

Maintaining IHL during ceasefires or armistices is essential for humanitarian protection and accountability, as this corpus of law provides safeguards to help protect the rights and dignity of vulnerable populations – particularly civilians and detainees. Arguably, the most significant consequence of the continued applicability of IHL is that, as long as the conflict remains unresolved, any renewed hostilities remain subject to these rules.

Although a ceasefire can significantly reduce violence, it does not necessarily conclude the conflict. IHL remains fundamental, guiding both humanitarian and legal responses until a more permanent and stable peace is established. In Gaza's case, one can only hope that the current agreement is fully implemented and lays the groundwork for a lasting resolution ; yet, until that time, IHL continues to apply.