

Fast Facts: Incorrect prime ministerial comments about international law

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Prime Minister Anthony Albanese on Insiders, July 28

Key points

- The Prime Minister misrepresented the principles of proportionality and obligations regarding the delivery of humanitarian aid.
- He implied that Israel is collectively punishing Palestinians.
- This fact sheet explains the relevant laws of armed conflict.

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Summary

This fact sheet will correct misrepresentations of international law made [by Prime Minister Anthony Albanese on ABC-TV “Insiders”](#) on July 27.

The Prime Minister spoke on the situation in Gaza, as well as the likelihood of Australia recognising Palestine. This fact sheet will focus on the former. A second fact sheet will examine the latter.

On the program, the Prime Minister spoke about both the situation in Gaza, and the likelihood of Australia recognising Palestine. This document will focus on the former.

The Prime Minister clearly spoke from a position of genuine anguish about the humanitarian situation in Gaza. AIJAC shares his anguish. However, the Prime Minister appeared to blame just Israel for the situation. However, we believe the blame is shared by Hamas, the UN and Egypt (which, [until the weekend](#), had barred almost all aid from crossing the Egypt–Gaza border for more than a year). Our position on the humanitarian situation, and our frustration with the unwillingness of the UN and affiliated organisations to coordinate with Israel, is a [matter of public record](#).

During the interview, the Prime Minister made four separate statements about international law, which this analysis will address.

The Prime Minister's comments

First, he said, “We have rules of engagement and they’re there for a reason and they’re to stop innocent lives being lost.” (Rules of engagement are separate to international law, but this phrase was used in the context of a comment about international law, so it is likely that is what he meant).

Second, he said, “Quite clearly, it is in breach of international law to stop food being delivered, which was a decision that Israel made in March.”

Third, he said, “International law says that you can’t hold innocent people responsible for what is a conflict.”

Fourth, he said, “Israel as a democratic state has the responsibility to ensure that innocent lives are not lost.” While this last comment, like the first, doesn’t directly mention international law, it was made during a discussion about it, and it is likely what he was referring to.

The principle of proportionality

Rule 14. **Proportionality in Attack**

Rule 14. Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

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The first and fourth comments are effectively the same point. However, the Prime Minister is mistaken. International humanitarian law, also known as the laws of armed conflict, is not about ensuring no innocent lives are lost in conflict. Rather, it is about minimising the effect of war on civilians.

Principally (but not exclusively), this is done by ensuring only military objects are targeted ([the principle of distinction](#)), and that the expected impact on civilians as a consequence of any attack must not be disproportionate to the “concrete and direct military advantage anticipated” from the attack ([the principle of proportionality](#)).

This second principle explicitly allows for military forces to knowingly risk harming civilians while attacking military objectives if the attack is not “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

The principle of proportionality is one of the most fundamental and basic tenets of the laws of armed conflict (and, indeed, the rules of engagement of Western militaries, including Australia). The Australian interpretation of the principle of distinction [explicitly interprets ‘military advantage’ as including the security of the attacking forces](#).

This means the Australian Defence Force and, under Australia's interpretation, the Israel Defence Force, may knowingly risk inflicting civilian casualties or damage civilian infrastructure in order to protect their own soldiers, although only within the limits of proportionality described above.

Mr Albanese appears to have misunderstood or accidentally misrepresented these realities in the interview.

Humanitarian relief

Rule 55.

Access for Humanitarian Relief to Civilians in Need

Rule 55. The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.

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Mr Albanese's second comment was about food delivery. It is true that international humanitarian law [demands](#) that parties to a conflict allow unimpeded passage of humanitarian aid to civilians that require it. However, this obligation in the [Fourth Geneva Convention, Article 23](#)

is subject to the condition... that there are no serious reasons for fearing:

- a) that the consignments may be diverted from their destination,
- b) that the control may not be effective, or
- c) that a definite advantage may accrue to the military efforts or economy of the enemy through the [provision of aid].

Israel has long maintained that aid supplied via UN mechanisms is often diverted, not under effective control and offers a definite advantage to Hamas – which, as a [recent story from the Washington Post](#) highlighted, allegedly depended on diverting aid flows to keep its fighters fed and paid, and to control the Gaza population.

Mr Albanese repeatedly said and implied that Israel is impeding aid from entering Gaza, and explicitly said that Israel stopped aid entering from March.

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The last statement is correct, but the Prime Minister didn't mention:

- Israel's reasons for stopping it (to prevent Hamas from benefiting from it and to devise another way of delivering aid, as well as to pressure Hamas into agreeing to a renewed ceasefire);
- That there was adequate food already in Gaza at that time (no aid went in for two months, and there was no starvation during the aid hiatus); and, more importantly,
- That Israel began allowing aid to go back in from May 13 once it became clear the stockpiles in Gaza were starting to run out.

However, the UN has not effectively distributed aid inside Gaza since then, with over 900 truckloads of aid recently having accumulated inside Gaza waiting to be delivered as of last week.

Read more: [Israel slams UN for ignoring aid already in Gaza while demanding more](#)

Collective punishment

Rule 103. Collective Punishments

Rule 103. Collective punishments are prohibited.

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The Prime Minister's third comment about [collective punishment](#), was technically correct but misleading. It falsely implied that Israel is collectively punishing Gazans, as the term is used under international law.

Civilians suffering is sadly a normal reality during warfare, but such suffering is not in and of itself evidence of collective punishment, or all wars would be examples of illegal collective punishment. Warfare is the most terrible of human activities, and international law recognises this while trying to mitigate the suffering it causes.

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To accuse Israel of collective punishment is to say that Gazan civilians suffer, not as an unfortunate but unavoidable outcome of the war, but as a matter of Israeli policy to punish Gazan civilians, with no military or security justifications for the decisions it takes. That's a very serious allegation. We assume that the Prime Minister did not mean to make that accusation.

The Prime Minister holds a unique position, and his words matter. It's clear he has not been briefed well on this issue. In a situation of unravelling social cohesion in this country, where numerous parties have used incorrect perceptions of Israeli actions and policies to justify attacks on Australian Jews, it is vital that people of influence – especially the Prime Minister – be careful to ensure their language is always accurate.