

## From Symbolism to War Crime: Legal Analysis of the Evin Prison Attack under International Humanitarian Law (Original Research)

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(DOI): 10.22066/cilamag.2026.2071811.2825

Date Received: 29 Sep 2025

Date Accepted: 28 Jan 2026

### Abstract

In June 2025, Israeli airstrikes on Evin Prison in Tehran killed more than 80 civilians, including detainees, staff, and visiting family members. The attack provoked strong international condemnation, notably from France, due to its civilian toll and the absence of a credible military justification. The present article examines the strike's legality under international humanitarian law (IHL), with particular emphasis on the principles of distinction and proportionality as codified in Additional Protocol I to the Geneva Conventions. Using a descriptive-analytical approach, this paper argues that the Evin attack lacked a legitimate military objective and violated the fundamental requirement of Article 48 to distinguish between civilian and military targets. Israel's claim of "symbolic" intent falls short of IHL standards and highlights the absence of lawful military necessity. While detention facilities may, in some contexts, be misused as human shields, no such justification existed in this case. The strike appears politically and psychologically motivated, potentially amounting to acts of terror against civilians. In accordance with Article 8 of the Rome Statute and relevant IHL instruments, the attack constitutes a war crime due to breaching the principles of proportionality and distinction. Rigorous legal analysis and comprehensive documentation are essential to advancing individual criminal responsibility, including through mechanisms such as universal jurisdiction.

### Keywords

Evin Prison; Principle of Distinction; Principle of Proportionality; Symbolic Attacks; Iran–Israel Conflict; War Crime; International Humanitarian Law (IHL).

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## 1. Introduction

On June 23, 2025, during the twelve-day armed conflict between Israel and Iran, Israeli airstrikes hit Evin Prison in northern Tehran, a civilian detention facility holding political and criminal detainees, staff, and visiting family members. The attack, carried out without warning, killed more than 80 civilians and caused extensive destruction, despite the lack of credible evidence of military assets within or near the prison.<sup>1</sup> Its timing during visiting hours further exacerbated civilian casualties and raised grave concerns regarding Israel's compliance with international humanitarian law (IHL).<sup>2</sup> The incident provoked strong international condemnation,<sup>3</sup> with France and several other States denouncing it as a grave violation of IHL.<sup>4</sup> Unlike other strikes during the conflict, which targeted infrastructure such as power grids and water facilities, the Evin attack became uniquely controversial,<sup>5</sup> particularly after Israeli officials<sup>6</sup> characterised it as “symbolic” rather than tactical.<sup>7</sup> This rationale has intensified scrutiny of Israel's compliance with the principles of distinction and proportionality, while also raising concerns regarding potential breaches of the duty of precaution in attack and the prohibition on terrorising civilians under Article 51(2) of Additional Protocol I.

Attacks on detention facilities are not a new phenomenon, as they have been repeatedly targeted during armed conflicts, often claiming military necessity as a justification. For instance, in May 1999, NATO aircraft bombed Dubrava Prison near Istok during the Kosovo conflict. NATO justified the

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1. US News, “Iran Releases Death Toll of Israel’s Evin Prison Attack as Officials Remain Suspicious of Ceasefire” (29 June 2025), available at: <https://www.usnews.com/news/world/articles/2025-06-29/irans-judiciary-says-at-least-71-killed-in-israels-attack-on-tehrans-notorious-evin-prison>, Accessed on 3 September 2025.

2. Amnesty International, *Iran: “Deliberate Israeli attack on Tehran’s Evin prison must be investigated as a war crime – new evidence”* (26 June 2025), available at <https://www.amnesty.org/en/latest/news/2025/07/iran-deliberate-israeli-attack-on-tehrans-evin-prison-must-be-investigated-as-a-war-crime/> Accessed on 8/13/2025.

3. The International Commission of Jurists (ICJ), “Israel/Iran: Israel’s attack on Iran violates international law, threatening peace and security”, <https://www.icj.org/israel-iran-israels-attack-on-iran-violates-international-law-threatening-peace-and-security/> Accessed on 8/16/2025.

4. Jean-Noël Barrot, “Israeli Strike on Tehran’s Evin Prison Unacceptable,” Reuters, 23 June 2025, available at: <https://www.reuters.com/world/europe/israeli-strike-tehrans-evin-prison-unacceptable-france-says-2025-06-23/> Accessed on 8/13/2025

5. Amnesty International, *Iran: Deliberate Israeli attack on Tehran’s Evin prison must be investigated as a war crime – new evidence* (26 June 2025), available at <https://www.amnesty.org/en/latest/news/2025/07/iran-deliberate-israeli-attack-on-tehrans-evin-prison-must-be-investigated-as-a-war-crime/> Accessed on 8/13/2025.

6. Israel Defence Minister “Israel Katz” wrote immediately after the attack that Israel struck Evin prison due to its function as an “agency of government repression.” Foreign Affairs Minister “Gideon Sa’ar”’s post on X (formerly Twitter) indicated that Evin prison had been struck in retaliation for Iran’s attacks on civilians in Israel. However, none of these statements were proven.

7. See: ABC News, *Israeli strike damages Tehran’s Evin Prison, families report chaos*, (June 24, 2025) <https://abcnews.go.com/International/israeli-strike-damages-tehrans-evin-prison-families-report/story?id=123124238> Accessed on September 3, 2025.

strike by alleging that Serbian forces were using the facility to coordinate military operations and store equipment, framing the prison as a “dual-use object.”<sup>8</sup> The attack damaged prison buildings and resulted in the deaths of detainees and staff. More significantly, in the days that followed, Serbian security forces gathered inmates in the yard under the pretext of evacuation and then executed them, leaving more than 90 dead. Human rights investigations later attributed the majority of fatalities to these executions rather than to the airstrike itself.<sup>9</sup>

A decade later, during Operation Cast Lead, Israeli forces targeted Gaza’s central police headquarters, claiming that Hamas used the center to detain political opponents and store weapons. However, no verifiable evidence was introduced. Similarly, on 21 January 2022, the Saudi-led coalition bombed a detention center in Saada, killing at least 91 detainees and injuring more than 200 others. The coalition claimed that the facility was being used for Houthi military purposes. However, international organisations, including the International Committee of the Red Cross (ICRC), confirmed that it was a registered civilian detention site.<sup>10</sup> The absence of credible evidence of military activity led to widespread condemnation of the attack as a potential war crime, especially in light of the heavy civilian toll.<sup>11</sup>

A further relevant precedent concerns the Russian strikes on detention facilities in Ukraine, particularly the Olenivka Prison massacre (2022), which housed Ukrainian prisoners of war (POWs) captured during the siege of Mariupol. More than 50 detainees were killed after the facility was destroyed, allegedly by an internal explosion or artillery strike. Regardless of attribution, the incident was universally condemned as a grave breach of the Third Geneva Convention, which provides special protection for POWs under Articles 12, 13, and 19, prohibiting any form of attack or reprisal against them. The Additional Protocol I, Article 85(3)(a), classifies deliberate attacks on POWs as grave breaches and, consequently, as war crimes. This raises the question that if the Geneva Conventions offers protection to POWs (individuals who had, at some point, engaged in hostilities and became combatants), then shouldn't civilians detained without any connection to the hostilities be considered to have at least the same, if not greater, protections under IHL? This paper

**8.** Human Rights Watch, “Under Orders: War Crimes in Kosovo,” published in 2001 at: <https://www.hrw.org/reports/2001/kosovo> Accessed on 8/10/2025.

**9.** See: Heinrich Böll Stiftung Belgrade, “State Crime in Dubrava Prison,” Published on 6 January 2014 at: <https://rs.boell.org/en/2014/01/07/state-crime-dubrava-prison>, Accessed on September 5, 2025; also see: Amnesty International, “Federal Republic of Yugoslavia (FRY) /NATO: ‘Collateral damage’ or unlawful killings? Violations of the Laws of War by NATO during Operation Allied Force,” Published on 5 JUNE 2000 at: <https://www.amnesty.org/en/documents/eur70/018/2000/en/> Accessed on September 5, 2025.

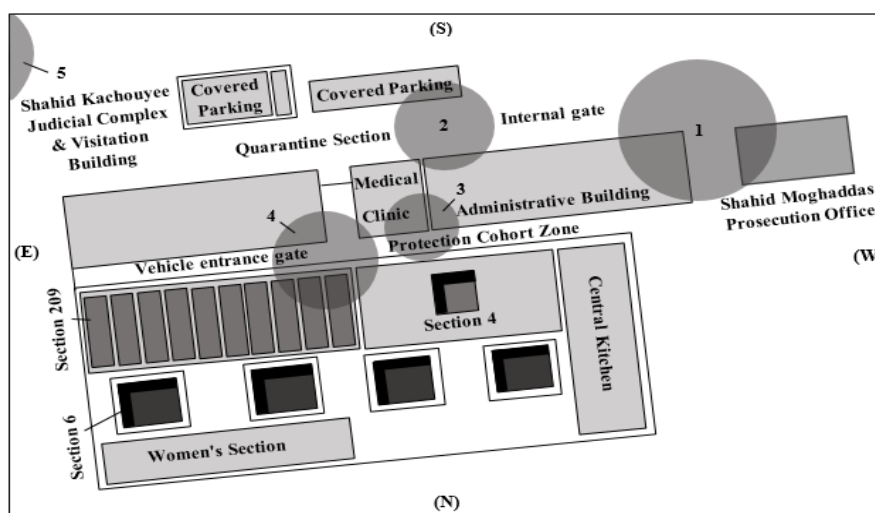
**10.** UN News, “Yemen: Call for Independent Probe into Deadly Prison Airstrikes,” Published on 28 January 2022 at: <https://news.un.org/en/story/2022/01/1110842> Accessed on September 5, 2025.

**11.** France24, “Saudi-led coalition denies targeting prison after Yemen strike kills dozens”, Published on 22 January 2022 at: <https://www.france24.com/en/middle-east/20220122-saudi-led-coalition-denies-targeting-prison-after-yemen-strike-kills-dozens> Accessed on 8/10/2025.

examines whether the Evin strike met these legal thresholds established under IHL. Key questions include: 1) Can the prison be regarded as a military objective under Article 52(2)? 2) Is civilian harm disproportionate to any concrete and direct military advantage? 3) Did the absence of warnings or protective measures breach the principle of precaution?<sup>12</sup> Moreover, the symbolic framing of the attack raises concerns about targeting civilians for psychological intimidation, which may constitute prohibited acts of terror. Using a descriptive-analytical approach, the article evaluates the strike in light of treaty provisions, customary norms, scholarly commentary, and the jurisprudence of international tribunals, before considering its possible qualification as a war crime under Article 8(2)(b) of the Rome Statute.

## 2. Factual Background on the Evin Prison Air Strike Attacks

The schematic plan of Evin Prison shows the main areas affected by the Israeli airstrikes, based on satellite images from April 10, 2025, and June 30, 2025. As depicted in the diagram, five separate locations in the southern and central parts of the prison experienced direct impacts from munitions.<sup>13</sup>



**Figure 2.1.** Schematic plan of Evin Prison indicating impact sites.<sup>14</sup>

In the southern sector of the prison, the vehicle entrance gate, its

<sup>12</sup> Maroonian, Anaïs. “Proportionality in International Humanitarian Law: A Principle and a Rule.” *Lieber Institute, West Point*, 2022. <https://lieber.westpoint.edu/proportionality-international-humanitarian-law-principle-rule/>;

J.-M. Henckaerts, and Doswald-Beck, L., *Customary International Humanitarian Law: Volume I – Rules*. (Cambridge, ICRC & Cambridge University Press, 2009)46.

<sup>13</sup> At the same time, near-infrared imagery reveals extensive burn marks, consistent with vehicles igniting and spreading fire to adjacent structures. For more information, see: <https://www.amnesty.org/en/latest/news/2025/07/iran-deliberate-israeli-attack-on-tehrans-evin-prison-must-be-investigated-as-a-war-crime/>

<sup>14</sup> © This schematic plan is entirely designed by the authors of this article.

adjoining wall, and the visitor information building immediately to the east were destroyed. To the west of the entrance, the administrative building and the *Shahid Moghaddas* prosecution office were extensively damaged. Further inside the southern area, the car park and a structure adjacent to the Quarantine Section (indicated in the Scheme) were struck. Deeper within this section, the administrative building and a smaller adjoining facility, identified by a former detainee as housing the office of the Protection Cohort, i.e., the prison's internal security unit, sustained significant damage. Several nearby structures were also destroyed. Imagery dated 30 June 2025 shows additional destruction to the roof of the Protection Cohort building. It confirms that, to its east, an internal gate, segments of the perimeter wall, and two small structures (likely guard posts) were demolished.<sup>15</sup>

In the central part of the prison, widespread destruction encompassed the medical clinic, the central kitchen, Section 4 (housing male detainees), and Section 209 (the solitary confinement wing run by the Ministry of Intelligence for both male and female prisoners). The women's section also sustained extensive damage. Structural damage around the medical clinic is visible in satellite imagery. At the same time, verified videos confirm that the blast destroyed parts of the clinic itself and ignited vehicles nearby, which then spread fire to adjoining facilities. Taken together, the schematic plan demonstrates that the strikes targeted facilities of a presumptively civilian nature, including visitor reception areas, medical and administrative buildings, kitchens, and detention wings, none of which presented any verifiable military function. The mapping of the impact sites thus reinforces the conclusion that the attack struck civilian objects essential for detainees' welfare, raising serious concerns of indiscriminate or unlawful targeting in violation of IHL.

Beyond these violations, the nature of the strike, conducted without a verifiable military objective, was directed against a civilian detention facility in a densely populated area.<sup>16</sup> This resulted in mass casualties among detainees and their families, raising serious concerns about its underlying intent. The force of the explosion was such that fragments of debris were projected onto the *Yadegar-e-Emam* Expressway, several hundred feet from the former location of the prison's main gate. The northern gate, adjacent to the *Shahid Kachouyi* building and commonly used by families visiting detainees, sustained even more severe damage. Civilian vehicles were destroyed, buildings both within and outside the prison compound collapsed or suffered structural devastation, and windows across the block were shattered.

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**15.** For more information, see: Amnesty International, "Iran: Deliberate Israeli attack on Tehran's Evin prison must be investigated as a war crime", Published on 22 July 2025 at: <https://www.amnesty.org/en/latest/news/2025/07/iran-deliberate-israeli-attack-on-tehrans-evin-prison-must-be-investigated-as-a-war-crime/>, Accessed on September 3, 2025.

**16.** Significantly, Evin Hills constitutes a densely populated urban neighbourhood, characterised by residential complexes and restaurants, meaning that a considerable number of civilians were present at the time of the strike.

Numerous fatalities were reported at the site.<sup>17</sup>

The explicit framing of the attack as symbolic, particularly in light of Evin Prison's association with political dissidents, suggests a motive rooted in psychological intimidation rather than military necessity. In this regard, the operation falls within the prohibition in Article 51(2) of Additional Protocol I, which outlaws "acts or threats of violence the primary purpose of which is to spread terror among the civilian population."

While IHL does not formally codify the notion of "state terrorism," scholarly commentary has increasingly drawn parallels between symbolic or demonstrative attacks on civilians and practices designed to terrorise civilian populations.<sup>18</sup> Accordingly, the Evin Prison strike may be characterised not only as a grave breach of the principles of distinction and proportionality, but also as conduct aligning with the prohibited practice of using violence primarily to instill fear among civilians.

### 3. Legal Assessment under International Humanitarian Law (IHL)

IHL, rooted in the Geneva Conventions, Additional Protocols, and customary norms, governs the conduct of hostilities by balancing military necessity with humanitarian concerns. Its core principles (distinction, proportionality, precaution, and the prohibition of terrorising civilians) serve as the basis for judging the lawfulness of an attack and safeguarding non-combatants.

The principle of distinction, codified in Articles 48 and 52(2) of Additional Protocol I, requires parties in a conflict to always differentiate between civilians and combatants. It also states that attacks should be directed only at combatants and must not target civilians. The principle of proportionality, codified in Article 51(5)(b) of Additional Protocol I and reaffirmed in Article 57, prohibits initiating an attack expected to cause incidental civilian casualties, injuries, or damage that would be disproportionate to the military advantage gained. During military operations, constant care must be taken to safeguard civilians and civilian objects. All reasonable precautions should be taken to prevent, or at least minimise, incidental civilian casualties, injuries, and damage.

The precautionary principle in attack was first outlined in Article 2(3) of the 1907 Hague Convention (IX), which states that if immediate action against naval or military objectives within an undefended town or port is necessary for military reasons, delay is not possible; the commander of the maritime force shall take all necessary measures to minimise harm to the town. It is now more explicitly codified in Article 57(1) of the Additional

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17. Amir Ahmadi Arian, "In Evin Prison," *London Review of Books* 47, 14 (2025). <https://www.lrb.co.uk/the-paper/v47/n14/amir-ahmadi-arian/in-evin-prison> Accessed on 3 September 3 2025.

18. UN General Assembly, Measures to Eliminate International Terrorism, UN Doc. A/RES/49/60, 9 December 1994, para. 3; UN General Assembly, International Convention for the Suppression of the Financing of Terrorism, UN Doc. A/RES/54/109, 9 December 1999, Art. 2(b).

Protocol I, to which no reservations have been made. Reinforcing this duty, Article 58(c) of the Additional Protocol I states that each party must take all feasible precautions to protect civilians and civilian objects under its control from the effects of attacks.

Additionally, IHL prohibits any acts or threats of violence the primary purpose of which is to spread terror among the civilian population, as codified in Article 51(2) of Additional Protocol I. Attacks that are not only unlawful under distinction, proportionality, and precaution principles, but also induce fear or intimidation among civilians, may amount to the prohibited act of terrorising the civilian population. While these principles provide the essential legal framework for assessing the strike on Evin Prison, their application raises two core questions that are central to determining the prison's status under IHL. First, which treaty provisions and customary rules affirm the civilian character and protected status of prisons and detention facilities, and did Evin Prison conform to these criteria at the time of the attack? Second, how do Israel's stated justifications measure against the requirements of IHL, particularly with respect to both the *actus reus* of the strike and the *mens rea* of those responsible for authorising it? The following sections address these questions in turn, examining the civilian status of Evin Prison and evaluating the legal and mental elements relevant to its targeting.

### 3-1. The Principle of Distinction

The principle of distinction constitutes a cornerstone of IHL, obliging parties to differentiate between military objectives and civilian persons or objects.<sup>19</sup> Codified in Article 48 of Additional Protocol I and recognised as a rule of customary international law, it imposes a binding and non-derogable obligation that applies in both international and non-international armed conflicts. Its main aim is to protect civilians and civilian infrastructure from the effects of hostilities and to maintain human dignity even in times of war.<sup>20</sup> Under Article 52(2) of Additional Protocol I, a "military objective" is defined as an object which, by its nature, location, purpose, or use, effectively contributes to military action and whose destruction, capture, or neutralisation offers a definite military advantage. Any object failing to satisfy this standard is presumed to be civilian and therefore immune from attack. This presumption is particularly significant in the case of prisons and detention facilities. Under IHL, such institutions are civilian in nature because they serve to administer justice, hold detainees, and maintain public order rather than to

<sup>19</sup> Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 3rd ed. (Cambridge: Cambridge University Press, 2022), 82–84.

<sup>20</sup> Sophie Farah, "The Principles of Distinction and Proportionality in International Humanitarian Law," *Hull Law Review* 1 (2023–24): 11–14; Gabriel Swiney, "Saving Lives: The Principle of Distinction and the Realities of Modern War," *International Lawyer* 39, 3 (2005): 733–734; Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I – Rules* (Cambridge: Cambridge University Press/ICRC, 2009), 46.

support military operations.<sup>21</sup>

IHL explicitly recognises prisons and detention facilities as civilian objects. Article 52(2) of Additional Protocol I defines civilian objects as all objects that are not military objectives and presumes civilian status unless a facility is used for military purposes. The Fourth Geneva Convention, particularly Articles 4, 27, and 83–88, sets out detailed protections for civilian internees and the infrastructure of places of internment. Article 83 states that the Detaining Power may not place internment camps in areas particularly exposed to the dangers of war, thereby affirming their immunity from military attack. Articles 84–88 further require separation of internees from prisoners of war, adequate housing, health and hygiene safeguards, provision of food and water, and the establishment of shelters against aerial bombardment. Additionally, Customary IHL, Rule 9, affirms that civilian objects are all objects that are not military objectives,<sup>22</sup> underscoring the default civilian character of prisons and detention facilities. Accordingly, under the Geneva Conventions and Additional Protocol I, prisons are legally immune from attack unless credible and verifiable evidence demonstrates their direct military use.

ICTY jurisprudence confirms that detainees, whether civilians or former combatants, are fully protected under IHL once placed *hors de combat*. In *Tadić*, the Chamber held that detention itself removes any lawful target status and stressed that Common Article 3 of the Geneva Conventions requires humane treatment of all persons not actively engaged in hostilities, prohibiting cruel treatment in all circumstances.<sup>23</sup> In its broader analysis of direct participation in hostilities, the ICTY further clarified that only acts directly and immediately affecting military operations can suspend civilian protection, while political or logistical activities do not amount to direct participation.<sup>24</sup>

International standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules), emphasise the civilian character of prisons and prohibit the use of military force in their administration. Rule 82 strictly limits the use of force to exceptional and necessary circumstances, requiring proportionality and restraint.<sup>25</sup> Comparative studies on Latin America further confirm that prisons are civilian institutions

**21.** In support of this statement, Danielle Bell, Head of HRMMU, stated: “Prisoners are civilians, and they must be protected under international humanitarian law.” For further information, see: Office of the United Nations High Commissioner for Human Rights (OHCHR) at: <https://ukraine.ohchr.org/en/Russian-strike-on-Ukrainian-prison-reportedly-kills-at-least-16-and-injures-scores-UN-Human-Rights-Monitors-say>

**22.** ICRC, Customary IHL-Rule 9. Definition of Civilian Objects, Accessed on 19 April 2026 at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule9>.

**23.** ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Trial Chamber Judgement, 7 May 1997, paras. 614–616.

**24.** ICTY, *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Appeals Chamber Judgement, 17 July 2008, para. 172-179.

**25.** United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Resolution 70/175, annex (17 December 2015), Rule 82. Accessed on 19 April 2026 at: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)

and that military involvement undermines human rights protections.<sup>26</sup> These standards reinforce the presumption under IHL that prisons are protected civilian objects. Evin Prison is no exception, as it houses both political and criminal detainees, with an estimated population of between 1,500 to 2,000 prisoners.<sup>27</sup> Therefore, the rationale behind the attack is less convincing, as no legitimate reason was even offered.<sup>28</sup> Although Evin Prison has been the subject of criticism by some international human rights sources,<sup>29</sup> these characterisations relate solely to detention conditions, not any alleged dual-use or military function. Despite these facts, Israel justified the attack by asserting that:

“...We also carried out a targeted strike in Tehran on the notorious Evin Prison. The Evin Prison is a symbol of oppression for the Iranian people. Individuals defined as enemies of the regime were held in prison, many of whom were subjected to severe torture. In this prison complex, intelligence operations against the State of Israel, including counter-espionage, were carried out. The strike was carried out in a precise manner to mitigate harm to civilians imprisoned within the prison to the greatest extent possible...” said the IDF Spokesperson (BG Effie Defrin).<sup>30</sup>

Israeli officials have described Evin Prison as a “symbol of oppression” against the Iranian people. While this characterisation may aim to highlight the detention of political dissidents, it does not provide a legally recognised justification for targeting a detention facility under IHL. Labelling a site as symbol of oppression is a political classification rather than a legal one. Furthermore, one might question how Israel's bombing of the facility contributes to ending oppression? Such reasoning is fundamentally flawed, as it not only lacks any connection to the protective purpose of IHL outlined in Articles 48 and 52(2) of Additional Protocol I, but also raises serious moral concerns.

Second, Israel claimed that intelligence operations, including counter-espionage activities, were being carried out within the prison complex. This

**26.** Godnick, William H. and Iñaki Aguerreche, “Soldiers and Prisons: Reflections on Military Interventions in the Latin American and Caribbean Prison System,” *Perry Center Occasional Paper* (2023).

**27.** Kareem Chehayeb, “Israeli airstrike on Iranian prison was an ‘apparent war crime,’ Human Rights Watch says” *PBS News*, Published on August 14 2025, at: <https://www.pbs.org/newshour/world/israeli-airstrike-on-iranian-prison-was-an-apparent-war-crime-human-rights-watch-says> Accessed on November 13, 2025.

**28.** Mohammad Eslami and Ibrahim Al-Marashi, “*The Day Evin Prison Burned: Why Israel’s Attack Crossed a Moral Line*,” *Informed Comment*, Published on: 28 June 2025 at: <https://www.juancole.com/2025/06/prison-israels-crossed.html> Accessed on 8/15/2025.

**29.** For Instance, see: Matthew Mpoke Bigg, “What to Know About Iran's Notorious Evin Prison”, *The New York Times*, Published on June 23, 2025, Updated June 25, 2025, at: <https://www.nytimes.com/2025/06/23/world/middleeast/evin-prison-iran.html> Accessed on November 13, 2025; Niloofar Gholami, “A look inside Iran's notorious Evin prison” *DW News*, Published on 20 October 2022 at: <https://www.dw.com/en/irans-evin-prison-experience-was-psychological-torture-says-former-prisoner/a-63509722> Accessed on November 13, 2025.

**30.** Israel at war, “Press Briefing by IDF Spokesperson, BG Effie Defrin-June” Published on: 23, 2025 at: [https://www.idf.il/en/mini-sites/israel-at-war/briefings-by-idf-spokesperson-bg-effie-defrin/june-25-press-briefings/press-briefing-by-idf-spokesperson-bg-effie-defrin-june-23-2025-1/?utm\\_source=chatgpt.com](https://www.idf.il/en/mini-sites/israel-at-war/briefings-by-idf-spokesperson-bg-effie-defrin/june-25-press-briefings/press-briefing-by-idf-spokesperson-bg-effie-defrin-june-23-2025-1/?utm_source=chatgpt.com)

assertion has not been substantiated, and no independent or international body has verified the existence of military or intelligence infrastructure at the facility. Under IHL, the burden of proof is entirely on the attacking party to prove that an object meets the definition of a military objective under Article 52(2).<sup>31</sup> Even if some sort of intelligence activity were hypothetically present, the attacking commander would still be bound by Articles 51(5)(b), 57(2)(a)(i–ii), and 57(3) of Additional Protocol I: if there is a reason to believe that an attack would produce incidental civilian casualties, particularly in a facility housing detainees unable to self-evacuate, the commander must refrain from launching the attack. This obligation is not discretionary; it is absolute whenever civilian harm is likely to be excessive or unavoidable. Therefore, launching a strike despite the absence of confirmed military use, and knowing that detainees and visitors could not self-evacuate, aligns with *mens rea*, a conscious acceptance of the likelihood of unlawful civilian harm.

Third, Israeli representatives argued that the strike was carried out precisely and in accordance with the principle of distinction. However, this claim conflicts with the available evidence.<sup>32</sup> Casualty figures, satellite imagery, and the specific structures damaged indicate that the attack primarily targeted civilian areas of the facility, including political-prisoner wards, administrative units, the medical clinic, and visitation halls (see Figure 2.1). Under Article 30 of the Rome Statute, intent is established when an individual either “means to engage in the conduct” (*dolus directus* of the first degree) or is aware that the consequences “will occur in the ordinary course of events” (*dolus directus* of the second degree).<sup>33</sup> Attacking a functioning detention center during visiting hours, when evacuation was impossible, indicates awareness and lethal civilian harm was a natural and foreseeable consequence.<sup>34</sup>

**31.** Nils Melzer, *Targeted Killing in International Law* (Oxford: Oxford University Press, 2008), 81–84; Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 4th ed. (Cambridge: Cambridge University Press, 2022), 87–95; Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Cheltenham, UK: Edward Elgar Publishing, 2019), 346.

**32.** Early reports after the incident stated that civilians killed in the attack included five female social workers, 13 young men in compulsory national military service working as prison staff, and 36 others (30 men and six women), along with a social worker's child. Additionally, on 14 July 2025, authorities released the names of nearby residents and visitors, including Mehrangiz Imanpour, Ali Asghar Pazouki, Leila Jafarzadeh, Hasti Mohammadi, and others. For Further Information, see Reliefweb at: <https://reliefweb.int/report/iran-islamic-republic/iran-deliberate-israeli-attack-tehrans-evin-prison-must-be-investigated-war-crime> Accessed on November 15, 2025.

**33.** ICC, Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, art. 30 at: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> Accessed on November 14, 2025.

**34.** It is important to note that this pattern of attack is not new for Israel; a notable example is the strike on Astaneh-ye Ashrafiyeh, where 16 civilians were killed in an operation allegedly aimed at assassinating a nuclear scientist. For further information, see Asre Iran at: <https://B2n.ir/AstanehAttack>. Israel also attacked over 210 commercial centres, 16 educational centres, 17 energy installations, nearly 10,000 residential units, and 23 medical facilities, including hospitals in Kermanshah and Tehran. See: United Nations General Assembly, *Situation of Human Rights in the Islamic Republic of Iran: Note by the Secretary-General*, A/80/349, para. 10. (26 August 2025) at: <https://docs.un.org/en/A/80/349> Accessed on 14 November 2025.

On the other hand, Israeli representatives have already made clear statements recognising the dual-use justification for targeting Evin Prison, which demonstrates their “knowledge” and “intent” behind the attack. Given the explicit statements by Israeli officials acknowledging the deliberate nature of the attack and framing Evin Prison as a justified military objective, there remains little basis for relying on Article 28 of the Rome Statute to establish command responsibility. A direct order to strike a functioning civilian detention facility satisfies the attribution requirements under Article 25, rendering the establishment of individual criminal responsibility dependent primarily on the mental element set out in Article 30. Accordingly, once intent and knowledge (per Article 30) are established, the conditions for direct perpetration or ordering under Article 25 are fully met, without the need to resort to the “should have known” or “failure to exercise control” standard under Article 28.<sup>35</sup> Under these circumstances, and considering the publicly stated reasons given by Israeli officials, the targeting of Evin Prison seems both intentional and carried out with full awareness of its civilian nature. Given that evacuation of detainees was impossible, and considering the deliberate timing of the strike during visiting hours and the high likelihood of civilian casualties, the mental element described in Article 30 of the Rome Statute is satisfied: the civilian harm caused was not just predictable but unavoidable in normal circumstances. As clarified in the *Lubanga*, the mental element under Article 30 of the Rome Statute includes only *dolus directus* of the first and second degree, and excludes *dolus eventualis*. This is reflected in the Statute’s use of the phrase “will occur in the ordinary course of events,” which signifies near certainty rather than mere possibility, thereby confirming that hypothetical or risk-based intention falls outside the scope of Article 30.<sup>36</sup>

The ICTY’s judgment in *Prosecutor v. Galić* has reaffirmed that deliberate attacks against civilians or civilian objects, absent military necessity, constitute serious violations of IHL and may qualify as war crimes.<sup>37</sup> The jurisprudence of the International Criminal Court (ICC) supports this approach. In *Ntaganda*,<sup>38</sup> the Trial Chamber emphasised that the mere presence of individuals who do not qualify as civilians within a broader civilian population does not deprive that population of its civilian character. The decisive factor is whether the civilian population was the primary object of the attack, rather than an incidental victim. In this regard, the Chamber observed that military operations alleged to constitute part of an attack against civilians must also be scrutinised for compliance with IHL, including adherence to the principle of distinction and the duty to take

35. Ghorbani Darzi Mahaleh et al. “Review of the Nature and Elements of Superior Responsibility in the Statute of the International Criminal Court with Emphasis on the Court’s Jurisprudence in the Cases of Ukraine and Palestine.” *Criminal Law Research* 16, 32 (2025): 141-142.

36. Mohamed Badar, “The Mental Element in the Rome Statute of the International Criminal Court: A Commentary from a Comparative Criminal Law Perspective,” *Criminal Law Forum* 19, 3 (2008): 18-19.

37. ICTY, *Prosecutor v. Galić*, Case No. IT-98-29-T, Judgment, 5 December 2003, para. 36, 45, 51.

38. ICC, *Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06, Judgment, 8 July 2019.

precautionary measures.<sup>39</sup> The complexity of asymmetric warfare does not diminish this obligation. Although non-state actors may at times embed military assets within civilian environments, the deliberate targeting of purely civilian facilities cannot be excused. The use of human shields, as documented in past conflicts, constitutes a violation of IHL but does not displace the protective presumption afforded to civilian objects.<sup>40</sup> Regarding the Israeli attack on Evin Prison, investigations conducted by Amnesty International and Human Rights Watch found no evidence of combatants or military installations within the compound.<sup>41</sup> Under Article 52(1) of Additional Protocol I, the prison must therefore be presumed to be a civilian object. In the absence of verifiable evidence of military use, the attack constitutes a *prima facie* violation of the principle of distinction and, by extension, may amount to a potential war crime under Article 8(2)(b)(ii) of the Rome Statute. This analysis further highlights the interrelationship among the principle of distinction, the duty of precaution in attack, and the prohibition on terrorising civilians which are issues examined in greater detail in the following sections.

### 3-2. Dual-use Facilities

IHL recognises only two categories of property: 1) military objectives, as defined in Article 52(2) of Additional Protocol I, and 2) civilian objects, which include all property that is not a military objective. No intermediate category exists. Therefore, the term “dual-use Facilities” is not an official classification but a descriptive term often used to refer to objects that can serve as military targets while also fulfilling vital civilian functions (e.g., a power station that supplies electricity to both an army installation and a hospital).<sup>42</sup> Some scholars<sup>43</sup> have identified three possible approaches for assessing the legality of attacks against such properties. The first disregards the civilian functions, focusing only on direct incidental harm to civilians and civilian objects. The second expands the assessment to encompass indirect or reverberating effects on the civilian population, and the third treats certain dual-use facilities as falling under the special protection

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39. *Ibid.*, para. 668.

40. For contrasting views on the legality of the strike under *Jus ad Bellum*, see: Per Bauhn, “Just War, Human Shields, and the 2023–24 Gaza War,” *Ethics & Global Politics* (2024); Taher Ghalandari and Mahin Sobhani, “The Concept of Human Shield and Its Challenges by Looking at the Principle of Proportionality in International Humanitarian Law with an Emphasis on Israel’s 2023–2024 Attack on Gaza,” *International Law Review* (2024): 51.

41. Human Rights Watch, Iran: Israeli Attack on Evin Prison an Apparent War Crime, (14 August 2025) <https://www.hrw.org/news/2025/08/14/iran-israeli-attack-on-evin-prison-an-apparent-war-crime> Accessed on September 3, 2025.

42. Maurice Cotter, “Military Necessity, Proportionality and Dual-Use Objects at the ICTY: A Close Reading of the Plić et al. Proceedings on the Destruction of the Old Bridge of Mostar,” *Journal of Conflict & Security Law* 23 (2018): 297.

43. Henry Shue and David Wippman, “Limiting Attacks on Dual-Use Facilities Performing Indispensable Civilian Functions,” *Cornell International Law Journal* 35 (2002): 559.

afforded by Additional Protocol I to “objects indispensable to the survival of the civilian population.” These approaches have been termed “limited proportionality”, “enhanced proportionality”, and “protective proportionality”.<sup>44</sup>

Prisons, by their very nature, are facilities designed for the detention and safeguarding of individuals and are therefore presumed to be civilian objects under IHL. However, this does not necessarily mean these facilities can never lose their civilian character. For example, the Dubrava incident has been controversial on both grounds: distinction and proportionality. If NATO’s claim of “military use” was accurate, the prison could arguably fall within the definition of a military objective under Article 52(2) of Additional Protocol I.<sup>45</sup> Although this assessment had to be qualified by the presence of prisoners who had no choice but to remain there and were, in effect, involuntary human shields.

The prohibition of attacks on detention facilities is deeply rooted in IHL. Under the Third Geneva Convention (Articles 12, 13, 19, and 23) and Article 85(3)(a) of Additional Protocol I, POW camps enjoy absolute protection against any form of attack or reprisal. Article 23 explicitly forbids detaining powers from locating POW camps in or near areas exposed to combat fire. It even requires them to be clearly marked from the air to prevent accidental targeting. The tragic Olenivka Prison massacre (2022), which claimed the lives of dozens of Ukrainian POWs, reaffirmed that such detention sites are inviolable even when situated close to hostilities. By analogy, and with even greater normative force (*a fortiori*), civilian prisons located within a State’s own territory, such as Evin, are entitled to at least the same, if not stronger, protection. Their inmates, personnel, and visitors are civilians entirely detached from the conduct of hostilities. Any intentional or reckless attack against such institutions, therefore, violates the very core of the principle of distinction and the humanitarian object of the Geneva Conventions, whose purpose is to preserve a minimum standard of humanity amid armed conflict.

During Operation Cast Lead (2008-09), Israeli forces targeted Gaza’s central police headquarters, asserting that Hamas used the center to detain political opponents and store weapons. However, no verified evidence was presented. Even if the claims were correct, it is essential to note that the Hamas-led authorities have been responsible for the civilian administration of Gaza (e.g., employing civil workers, running schools, hospitals, traffic police, and the administration of justice). The fact that these institutions and the buildings that house them have been administered by authorities led by Hamas, rather than by a government composed of both Hamas and Fatah

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44. Ibid.

45. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Adopted, 8 June 1977, Art. 48 (Basic Rule), available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48> Accessed on 8/13/2025.

members, does not necessarily mean they are no longer civilian institutions.<sup>46</sup>

### 3-3. The Principle of Proportionality

The principle of proportionality complements the rule of distinction by regulating incidental harm to civilians. It constitutes the most visible articulation of the balance between military necessity and humanitarian considerations in IHL. In essence, the idea of military necessity is embedded within the rules on targeting, insofar as these rules require proportionality assessments whenever civilians or civilian objects may be affected by an attack. If the anticipated collateral damage is excessive when measured against the expected concrete and direct military advantage, the attack cannot qualify as militarily necessity.<sup>47</sup> Codified in Article 51(5)(b) of Additional Protocol I and recognised as a rule of customary international law, it prohibits attacks that are expected to cause civilian losses excessive in relation to the concrete and direct military advantage anticipated.<sup>48</sup> It thereby functions as a balancing mechanism between military necessity and humanitarian protection, requiring an *ex ante* assessment based on information reasonably available to commanders at the time of the attack.<sup>49</sup>

Doctrinally, proportionality is a subordinate norm within the principle of distinction, mainly regulating incidental harm from lawful attacks on military targets. It presupposes the legality of the attack object; if unlawful, proportionality is irrelevant.<sup>50</sup> This aligns with early definitions of military necessity, such as in the *Hostage* case, which held that force is required to secure the enemy's submission at minimal cost, excluding unlawful acts.<sup>51</sup> Similar limitations are found in *Kordić and Čerkez*, which restrict the necessity for lawful measures.<sup>52</sup> Therefore, Proportionality does not authorise targeting civilians but governs incidental harm from lawful attacks. Its main challenge is its subjective nature, especially in judging what constitutes "excessive" harm. Without a clear threshold, there's a risk of justifying

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46. See: United Nations Human Rights Council, Report of the United Nations Fact-Finding Mission on the Gaza Conflict (*A/HRC/12/48*) (25 September 2009), 97, para. 383 at: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> Accessed on 13 November 2025.

47. M. N. Schmitt, "Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance," *Virginia Journal of International Law* 50 (2010): 795, 804–805.

48. Médecins Sans Frontières, "*The Practical Guide to Humanitarian Law – Proportionality*" Accessed July 2025. <https://guide-humanitarian-law.org/content/article/3/proportionality/> Accessed on September 3, 2025; See: Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), Adopted, 8 June 1977.

49. Henckaerts et al., *Customary International Humanitarian Law: Volume I – Rules*, 51.

50. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, 29, 226–227.

51. American Military Tribunal, *Hostage Case (USA v. List et al.)*, Judgment, Nuremberg, 1948, 11 TWC 1230, 1253.

52. ICTY, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Appeals Chamber Judgment, 17 December 2004, para. 686, referring to Lieber Code, Art. 14.

disproportionate force as necessary. The line between “extensive” and “excessive” harm is crucial. Civilian casualties might be lawful if removing a high-value target provides a real military benefit. Ultimately, legality depends on context and good-faith judgment during the attack.<sup>53</sup>

Asymmetric conflicts magnify these challenges. In densely populated contexts such as Gaza, where combatants embed military assets among civilians, proportionality assessments require heightened transparency, restraint, and strict adherence to the “reasonable military commander” standard. This framework excludes political or psychological considerations and mandates the inclusion of foreseeable indirect effects, such as harm to essential civilian infrastructure. Grave breaches of proportionality amount to war crimes. Article 8(2)(b) of the Rome Statute criminalises both intentional attacks against civilians and the launching of attacks undertaken with knowledge that civilian losses would be clearly excessive. Jurisprudence, including the ICTY’s *Galić* judgment on the indiscriminate shelling of Sarajevo<sup>54</sup> and ICC investigations into the use of explosive weapons in urban environments,<sup>55</sup> confirms that violations of proportionality are not merely unlawful but prosecutable. In *Prosecutor v. Germain Katanga*, the ICC reaffirmed that even where a legitimate military objective exists, incidental civilian harm that is manifestly excessive in relation to the anticipated military advantage falls within the prohibition of Article 8(2)(b)(iv) of the Rome Statute.<sup>56</sup>

In assessing the Evin Prison attack, the proportionality analysis centers on whether any conceivable military advantage could justify the scale of civilian harm, and whether the absence of precautionary measures exacerbated the disproportionality. A proper proportionality assessment under Article 8(2)(b)(iv) of the Rome Statute necessarily engages the mental element of the attacker,

**53.** Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 4th ed. (Cambridge: Cambridge University Press, 2022), 121; Michael Gross, *Moral Dilemmas of Modern War* (Cambridge: Cambridge University Press, 2010), 163–164; David Luban, “Military Necessity and the Cultures of Military Law,” *Leiden Journal of International Law* 26, 2 (2012): 326.

**54.** ICTY, *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgment, 3 November 2006, paras. 131–134, 191.

**55.** Rome Statute of the International Criminal Court, Adopted, 17 July 1998, Art. 8(2) (War crimes): “1. The Court shall have jurisdiction in respect of war crimes, in particular when committed as part of a plan or policy, or as part of a large-scale commission of such crimes. ....(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;...” <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel> Accessed on 8/15/2025.

**56.** ICC, *Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, Judgment, 7 March 2014, para. 895.

since the provision criminalises “intentionally launching an attack in the knowledge” that clearly excessive incidental civilian harm will result in relation to the concrete and direct overall military advantage anticipated. ICTY jurisprudence confirms this mental component. In *Galić*, the Trial Chamber held that attacks against civilians are unlawful where they are conducted “willfully”, which means the accused must have acted consciously with intent. This encompasses 'wrongful intent' or 'recklessness', and that such recklessness exists where the attacker knows, or it is “impossible not to know,” that civilians are being targeted.<sup>57</sup>

ICC jurisprudence upholds this approach, albeit through a more restrictive interpretation of the mental element. In *Katanga*, the Trial Chamber clarified that liability for directing an attack against civilians requires proof that the perpetrator intentionally launched the attack, intended the civilian population or individual civilians to be the object of that attack, and was aware both of their civilian character and of the factual circumstances establishing the existence of an armed conflict.<sup>58</sup> Under this framework, liability does not depend on a specific purpose to harm civilians, but on intent and knowledge as defined in Article 30 of the Rome Statute, namely, the decision to launch the attack coupled with awareness that clearly excessive civilian harm will occur “in the ordinary course of events.” In the case of Evin Prison, the foreseeability of severe civilian harm, given the prison’s exclusively civilian character, its dense civilian population, the timing of the strike during visiting hours, and the impossibility of evacuation, indicates that the failure to assess, warn, or mitigate strongly supports the conclusion that the requisite *mens rea* accompanied the *actus reus* of a serious violation of IHL.

The only legal justification advanced by Israel for its attacks on Iran was the doctrine of anticipatory or preemptive self-defense.<sup>59</sup> However, the stated rationale for Israel’s broader military operations (disrupting Iran’s nuclear program and preventing the development of nuclear weapons) was clearly aimed at deflecting a potential future attack that had not yet materialised.<sup>60</sup> The attack on Evin Prison is even more difficult to reconcile with this rationale. The prison was neither part of Iran’s nuclear infrastructure nor

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**57.** ICTY, *Prosecutor v. Galić*, Case No. IT-98-29-T, Trial Chamber Judgment, 5 December 2003, paras. 54–57.

**58.** ICC, *Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, Judgment, 7 March 2014, paras. 804–08.

**59.** Marko Milanovic, “Is Israel’s Use of Force Against Iran Justified by Self-Defence?” *EJIL: Talk!* (2025). Published at: <https://www.ejiltalk.org/is-israels-use-of-force-against-iran-justified-by-self-defence/>, Accessed on September 5, 2025.

**60.** At best, the strike could be subsumed within an expansive preventive paradigm, in which states act against abstract or long-term threats. Yet such a paradigm enjoys little support in contemporary international law and risks collapsing the distinction between lawful self-defence and unlawful aggression. In this sense, the Evin attack illustrates the limits of invoking Article 51 to justify the use of force: none of the three principal approaches (preventive, anticipatory against an imminent attack, or responsive to an actual attack) provides a legally tenable basis for targeting a civilian prison.

linked to any imminent military threat. Instead, it served as a civilian detention center housing political and ordinary prisoners, and provided medical and administrative services. Even when applying the broadest interpretation of anticipatory self-defense and the principle of proportionality, Israel cannot convincingly argue that attacking Evin Prison was a necessary or proportionate response to an imminent armed attack.

Even if one were to assume that Evin Prison had been repurposed for military use (a claim unsupported by available evidence), the proportionality assessment would still condemn the Israeli strike. The deaths of more than 80 civilians, including detainees, medical personnel, and visiting relatives, vastly outweighed any conceivable military gain. This two-tiered analysis demonstrates that the illegality of the strike is not confined to the absence of a lawful military objective; instead, even under the hypothetical assumption of military use, the extent of civilian harm remains clearly excessive under Article 51(5)(b) of Additional Protocol I. Accordingly, the Evin case evidences both a failure of distinction and a grave breach of proportionality, reinforcing the argument that the strike qualifies as a war crime under Article 8(2)(b)(iv) of the Rome Statute.

#### 3-4. The Principle of Precaution in Attack

The duty of precaution in attack is a preventive complement to the principles of distinction and proportionality. Codified in Article 57 of Additional Protocol I and widely recognised as customary international law, it obliges parties to take “all feasible precautions” to avoid, or at least minimise, incidental civilian harm. This encompasses verifying targets, selecting means and methods of attack that pose the least risk to civilians, issuing adequate warnings where circumstances permit, and cancelling or suspending attacks if it becomes apparent that the target is not a military objective or that civilian harm would be disproportionate.<sup>61</sup> Unlike abstract principles, precaution is operational, imposing concrete obligations on commanders. This raises concerns about the Israeli military leadership's conduct. The failure to take precautions, investigate the site's military utility, or use less harmful means, along with a lack of evidence of military use, indicates a serious neglect of duties.

Jurisprudence and state practice confirm that failure to adopt feasible measures, such as adjusting timing, issuing warnings, or employing precision weaponry, may independently constitute a violation of IHL, irrespective of the attack's outcome.<sup>62</sup> In *Prosecutor v. Galić*, the ICTY underscored that indiscriminate or reckless attacks reflect a disregard for precautionary duties and may amount to war crimes.<sup>63</sup> In the Evin prison attack, Israel issued no

61. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, 29, 348.

62. Henckaerts et al., *Customary International Humanitarian Law: Volume I – Rules*, 51-55.

63. ICTY, *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgment, 3 November 2006, para. 58.

warnings and carried out the strike during visiting hours, when civilian presence was at its highest. The absence of precautionary measures, combined with the civilian character of the target, indicates a blatant disregard for Article 57 obligations and reinforces the illegality of the attack under IHL.

### 3-5. The Prohibition of Terrorising Civilians

Article 51(2) of Additional Protocol I prohibits “acts or threats of violence the primary purpose of which is to spread terror among the civilian population.” This provision establishes an autonomous safeguard, distinct from the principles of distinction and proportionality, by expressly outlawing the instrumentalisation of fear as a method of warfare. Its objective is to preserve civilian morale and dignity, ensuring that armed conflict does not devolve into campaigns of intimidation.

Although relatively underdeveloped in jurisprudence, the prohibition has been affirmed in both case law and doctrine.<sup>64</sup> In *Prosecutor v. Galić*, the ICTY held that the deliberate or indiscriminate shelling of Sarajevo with the intent to spread fear among civilians violated IHL and amounted to terrorising the civilian population. Similarly, the ICTY’s Third Amended Indictment in *Prosecutor v. Karadžić and Mladić* explicitly identified spreading terror among the civilian population as an independent objective of a joint criminal enterprise, underscoring that psychological intimidation may constitute a war crime.<sup>65</sup> Scholarly commentary has further noted possible overlaps between Article 51(2) and evolving definitions of terrorism in international law, while emphasising that, irrespective of terminological debates, the prohibition is firmly embedded in customary IHL.<sup>66</sup>

In the Evin prison strike, Israeli officials themselves characterised the attack as “symbolic,” explicitly framing it as psychological and political signaling rather than military necessity. This admission aligns squarely with the essence of Article 51(2): the deliberate use of violence against a civilian object with the primary purpose of spreading fear. While the term “State Terrorism” remains politically charged and doctrinally unsettled in international law, the attack is more precisely described as an act of terror against civilians prohibited under IHL. Such framing avoids conceptual ambiguities while highlighting the legal novelty of the Evin case: the normalisation of symbolic violence as a method of warfare.

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**64.** The indictments in the *Dukić, Karadžić, Mladić, and Galić cases before the ICTY* included charges of terrorising the civilian population as violations of the laws and customs of war. In the *Karadžić* and *Mladić* cases, such charges were framed as part of unlawful attacks. For more information, see e.g. Henckaerts et al., *Customary International Humanitarian Law: Volume I – Rules*, 10.

**65.** ICTY, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5/18-PT, Third Amended Indictment, 27 February 2009, paras. 15, available at: <https://www.icty.org/x/cases/karadzic/ind/en/090227.pdf> Accessed on 8/20/2025.

**66.** *Ibid.*, p. 10.

#### 4. Mechanisms of Accountability and Legal Remedies

Ensuring accountability for the Evin Prison strike involves examining both individual criminal responsibility and state responsibility. The following subsections outline the main legal avenues available, beginning with the ICC's jurisdictional framework.

##### 4-1. International Criminal Court (ICC)

ICC is the primary permanent judicial body mandated to prosecute individuals responsible for war crimes, crimes against humanity, and genocide. However, neither Iran nor Israel are States Parties to the Rome Statute,<sup>67</sup> which creates significant jurisdictional obstacles. In principle, the ICC can only exercise jurisdiction over crimes committed on the territory of a State Party or by its nationals. One possible avenue is referral by the United Nations Security Council under Article 13(b) of the Rome Statute. This mechanism has been used in the past, for example, in cases of Darfur (Sudan) and Libya. Yet, the political reality of the Security Council, particularly the likelihood of a United States veto, poses a serious limitation to this path.<sup>68</sup>

Another alternative lies in Article 12(3) of the Rome Statute, which allows a non-State Party to accept the Court's jurisdiction by lodging a declaration with the Registrar. This mechanism has been successfully employed by Ukraine, which accepted ICC jurisdiction retroactively for crimes committed on its territory since 2014, despite not being a State Party.<sup>69</sup> By analogy, Iran could lodge a similar declaration, thereby granting the ICC jurisdiction over the Evin Prison attack and other crimes committed during the conflict. Importantly, such acceptance may be retroactive (*ex tunc*), meaning that Iran could request that the Court investigate crimes already committed, including the June 2025 strike. This pathway, while legally viable, requires strong political will and readiness to cooperate with the ICC, including facilitating investigations and evidence collection. It also entails the potential for reciprocal scrutiny of Iran's conduct during the conflict, which must be carefully considered.

<sup>67</sup>. International Criminal Court (ICC), Assembly of States Parties to the Rome Statute, at: <https://asp.icc-cpi.int/states-parties/states-parties-chronological-list> Accessed on 1/2/2026.

<sup>68</sup>. The referral of the Darfur situation to the ICC under Article 13(b) of the Rome Statute marked the first instance in which the Court's jurisdiction was activated over a non-State Party. Resolution 1593 was adopted despite abstentions by the United States and China, reflecting political compromise rather than purely legal consensus. While the referral was hailed as a significant step in strengthening international criminal accountability, it simultaneously exposed unresolved ambiguities in the Statute and highlighted the influence of geopolitical considerations on the exercise of ICC jurisdiction. Jianqiang Song, "Article 13(b): Intentionally Left Unresolved by the Rome Statute? An On-the-spot Focus on Darfur's Situation", (Paper prepared for the Symposium on the International Criminal Court, Beijing), , *International Centre for Criminal Law Reform and Criminal Justice Policy* 3-4 (2007): 2-13.

<sup>69</sup>. See: Embassy of Ukraine to the Kingdom of the Netherlands, *Note Verbale to the Registrar of the International Criminal Court Recognizing the Court's Jurisdiction under Article 12(3) of the Rome Statute*, The Hague, April 2014 at: <https://www.icc-cpi.int/sites/default/files/declarationRecognitionJurisdiction09-04-2014.pdf> Accessed on November 17, 2025.

#### 4-2. Universal Jurisdiction

Beyond the ICC, another mechanism is the exercise of universal jurisdiction by national courts. Several States, particularly in Europe (such as France, Germany, and Spain), have enacted legislation enabling their courts to prosecute grave breaches of IHL regardless of where they occurred or the nationality of the perpetrators. This mechanism has been used in cases involving atrocities in Rwanda<sup>70</sup> and Syria.<sup>71</sup> Universal jurisdiction provides a practical avenue for accountability when international tribunals are inaccessible. Its effectiveness depends on political will, credible evidence, and the presence of suspects. In line with the Rome Statute's complementarity principle, it is viewed as an effective alternative to the ICC, reinforcing the primary role of domestic courts in prosecuting grave breaches of humanitarian law.<sup>72</sup> In addition to the practice of several European States, Iran's Penal Code contains provisions that appear, at least in principle, to enable the exercise of universal jurisdiction. Article 9 of the Islamic Penal Code allows for jurisdiction over offences that Iran is obliged to prosecute under international treaties to which it is a party, including the four Geneva Conventions, which explicitly require States Parties to prosecute persons responsible for grave breaches. On this basis, Iran could theoretically assert jurisdiction over war crimes.

However, this theoretical possibility is substantially constrained by the principle of legality (*nulla poena sine lege*), which is firmly embedded in the Iranian legal system. The Islamic Penal Code does not contain specific domestic criminal provisions defining and prescribing penalties for core international crimes such as war crimes, crimes against humanity, or grave breaches of the Geneva Conventions. In the absence of such explicit criminalization, Iranian courts lack the statutory basis required to prosecute

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**70.** In its 2025 submission to the United Nations pursuant to General Assembly Resolution 79/127, Rwanda reaffirmed universal jurisdiction as a vital tool against impunity for genocide, war crimes, and crimes against humanity. The submission emphasised that such jurisdiction must be exercised impartially, with respect for due process and national sovereignty. It noted Rwanda's own practice through domestic prosecutions, cooperation with the ICTR, and extensive extradition efforts. Republic of Rwanda, Submission Pursuant to General Assembly Resolution 79/127 (4 December 2024): Information and Observations on the Scope and Application of Universal Jurisdiction, Permanent Mission of Rwanda to the United Nations, New York, 25 April 2025 at: [https://www.un.org/en/ga/sixth/80/universal\\_jurisdiction/rwanda\\_e.pdf](https://www.un.org/en/ga/sixth/80/universal_jurisdiction/rwanda_e.pdf)

**71.** Universal jurisdiction has been actively applied in relation to atrocities committed in Syria, particularly by national courts in Germany, France, and Spain. German courts, most notably in Koblenz, secured landmark convictions against former Syrian officials for crimes against humanity. French courts initiated proceedings against Syrian medical and security personnel, while Spanish courts admitted complaints against Syrian officials under universal jurisdiction statutes. These cases illustrate how universal jurisdiction provided one of the few practical avenues for accountability when international tribunals were inaccessible. However, its effectiveness remained contingent on political will, access to evidence, and the presence of suspects within the prosecuting State's territory. Dana Ahdab, "The Rebirth of Universal Jurisdiction: How the Syrian Conflict Has Led to the Expansion of the Use of Universal Jurisdiction," *Columbia Journal of Transnational Law* 61,1 (2023): 185–212.

**72.** Ghasem Zamani & Haleh Hosseini Akbarnejad, "The Principle of Universal Jurisdiction in the Mirror of the International Criminal Court," *Public Law Research Quarterly* 11, 26 (2009): 203–243.

these offences, notwithstanding treaty obligations. Article 9 further conditions jurisdiction on the physical presence of the accused in Iran, a requirement that is unlikely to be met in practice.<sup>73</sup> Taken together, the absence of domestic penal provisions incorporating international humanitarian law violations, combined with the requirement of physical presence, renders the practical exercise of universal jurisdiction by Iran highly improbable.

#### 4-3. Legal Remedies for Reparations

Beyond criminal accountability, international law also provides mechanisms for state responsibility and reparations. Under the law of state responsibility, Israel may be held internationally liable for violations of IHL resulting from the Evin Prison attack. One possible avenue is the International Court of Justice (ICJ). Iran, as a UN Member State, could initiate proceedings against Israel before the ICJ, alleging breaches of the Geneva Conventions and customary IHL. Such a claim would seek reparations for the harm caused, including compensation for civilian casualties, infrastructure damage, and moral damages.

However, this pathway faces significant jurisdictional hurdles. The ICJ's jurisdiction is based on the consent of the parties, either through declarations under Article 36(2) of the ICJ Statute (optional clause) or through compromissory clauses in treaties.<sup>74</sup> Unlike the Genocide Convention of 1948, which in Article IX expressly confers jurisdiction on the ICJ and has been used in several cases against Israel, the four Geneva Conventions of 1949 contain no such clause. The Diplomatic Conference of Geneva merely adopted Resolution 1, recommending that states "endeavor to agree" to refer disputes to the ICJ, a political suggestion rather than a binding obligation. Similarly, Common Article 1 of the Geneva Conventions and Article 90 of Additional Protocol I establish *erga omnes partes* obligations and fact-finding mechanisms, but they do not create compulsory jurisdiction for the Court.

Moreover, initiating proceedings could carry political implications. Some observers caution that such a move might be interpreted as implicit recognition of Israel.<sup>75</sup> At the same time, Israel might respond with a counterclaim against Iran, such as attacks during the twelve-day conflict.<sup>76</sup> In practice, without a clear jurisdictional basis, any case brought by Iran would primarily

73. S. H. Mirjafari, S. Zarneshan and S. Rahmatifar, "Universal Jurisdiction of Iranian Courts in International Criminal Law," *Public Law Studies Quarterly*, 53, 3 (2023): 1653-1675.

74. Abdollah Abedini and Bahman Bahri Khiyavi, "The Jurisdictional Basis of the International Court of Justice in Compensation for the Iraq War against Iran," *Legal Research Quarterly* 26, 102 (2023): 399-426, <https://doi.org/10.48308/jlr.2022.227435.2231>. 339-426, 403-404

75. Mahin, Sobhani, "Legal Interpretation or Political Condemnation? Third-Party Intervention before the International Court of Justice with Reference to Iran in *South Africa v. Israel*," *International Law Review*-, -(2025): 5.

76. Abdollah Abedini and Bahman Bahri Khiyavi, "The Jurisdictional Basis of the International Court of Justice in Compensation for the Iraq War against Iran," *Legal Research Quarterly* 26, 102 (2023): 399-426.

serve as a political and legal signal, underscoring that the attack on Evin Prison constitutes a grave breach of international humanitarian law and an evident war crime.

#### **4-4. Fact-Finding and Investigative Mechanisms**

International bodies such as the United Nations Human Rights Council may establish fact-finding missions or commissions of inquiry to investigate alleged violations of international humanitarian law. These mechanisms play a crucial role in collecting evidence, identifying those responsible, and preparing the ground for future prosecutions. Although they do not themselves impose criminal responsibility, their reports often serve as authoritative references in later judicial proceedings and help shape international opinion and diplomatic pressure. Reports by human rights organizations have also played a decisive role in documenting atrocities and initiating judicial proceedings. For example, Human Rights Watch and other observers provided early accounts of the Dubrava Prison massacre in Kosovo (May 1999), where more than one hundred ethnic Albanian detainees were killed.<sup>77</sup> These reports laid the groundwork for later indictments by the Kosovo Special Prosecutor's Office, including the case against former prison officer Gavriilo Milosavljevic, who was tried for war crimes but acquitted in June 2025 due to insufficient evidence.<sup>78</sup> The proceedings illustrate both the importance and the limitations of fact-finding. While documentation by NGOs and international bodies can trigger prosecutions, securing convictions remains difficult when access to witnesses and corroborating evidence is restricted. Other alleged perpetrators identified in reports have not yet been arrested or prosecuted, underscoring the ongoing challenges of achieving full accountability.

#### **5. Conclusion**

The airstrike on Evin Prison exemplifies a grave departure from the foundational principles of IHL, particularly the obligation to distinguish between civilian and military targets and the prohibition of disproportionate harm. The absence of a concrete military objective, coupled with the explicitly symbolic framing of the attack, indicates a deliberate strike against civilian infrastructure in violation of customary IHL and potentially amounting to a war crime under Article 8 of the Rome Statute. Although the legal classification of state terrorism remains unsettled under international law, the symbolic framing of the strike suggests the deliberate use of violence for psychological and political signaling.

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<sup>77</sup> Human Rights Watch, "Under Orders: War Crimes in Kosovo," published in 2001 at: <https://www.hrw.org/reports/2001/kosovo> Accessed on 8/10/2025.

<sup>78</sup> Balkan Transitional Justice, "Kosovo Court Acquits Serb of Involvement in Dubrava Prison Massacre," Retrieved from: <https://balkaninsight.com/2025/06/16/kosovo-court-acquits-serb-of-involvement-in-dubrava-prison-massacre/> Accessed on 1/4/2024.

At a minimum, this conduct resonates with the prohibition on terrorizing civilians under IHL and underscores the risk of eroding the protective boundaries of humanitarian law.

Unlike earlier cases where military necessity was at least cited as a justification for attacks on prisons, the strike on Evin represents a clear break from that pattern. By openly admitting the symbolic nature of the attack, Israeli officials effectively acknowledged the civilian character of the prison, thereby stripping away any claim to lawful targeting. This is not a contested proportionality assessment but rather a direct and unequivocal breach of the principle of distinction. Such a rationale threatens to normalize “symbolic violence” as a purported justification for striking civilian infrastructure, thereby undermining the normative clarity of IHL.

This incident illustrates a broader erosion of humanitarian protections, as civilian facilities are increasingly instrumentalized for purposes of political signaling or psychological warfare. The Evin Prison strike constitutes a grave breach of international humanitarian law. Accountability may be pursued through multiple mechanisms: criminal responsibility before the ICC, including *ad hoc* acceptance under Article 12(3), universal jurisdiction in foreign courts, fact-finding commissions, and diplomatic measures. In addition, state responsibility and reparations claims before the ICJ remain a legal avenue for addressing the harm caused. While each mechanism faces political and jurisdictional constraints, their combined use is essential to resist impunity and reaffirm the integrity of humanitarian protections.

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