
THE CRIME OF AGGRESSION AND INTERNATIONAL CRIMINAL ACCOUNTABILITY IN THE ISRAEL–HAMAS CONFLICT: A LEGAL ANALYSIS OF THE GAZA CONFLICT

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ABSTRACT

Investigating possible violations of international criminal law by Israeli governmental and military authorities during the ongoing Israel–Hammas conflict is the central focus of this research. The confrontation between Israel and Hamas in Gaza has raised serious concerns regarding alleged war crimes and breaches of international criminal law. The International Criminal Court (ICC) provides a potential mechanism for prosecuting individuals where applicable jurisdictional and evidentiary requirements are satisfied. At the same time, its Office of the Prosecutor continues to examine the Situation in the State of Palestine. Further, Human rights organisations have also raised concerns regarding alleged violations of international humanitarian and human rights law, highlighting the need for effective protection of civilian populations and compliance with international legal obligations. Although existing literature has examined alleged violations arising from the conflict, a research gap remains in integrating the applicable legal framework with an assessment of the jurisdictional and accountability limitations of international institutions, particularly the ICC.

Accordingly, this study aims to examine alleged violations under the Rome Statute, the Geneva Conventions and international humanitarian law, and to assess the effectiveness of existing international accountability mechanisms. It addresses whether the parties' conduct complies with international criminal law, what legal consequences may arise from alleged international crimes, and how the ICC and other international institutions respond to such violations. “The research adopts a qualitative methodology, combining doctrinal legal research, a literature review, and discourse analysis of publicly available sources, focusing on the Geneva Conventions, the Rome Statute, international humanitarian law, civilian protection, and alleged attacks on healthcare facilities and demonstrates the need for impartial investigation, protection of civilians and humanitarian personnel, effective humanitarian assistance, and strengthened international accountability. The study concludes that international institutions and policymakers should strengthen legal and institutional mechanisms to address alleged violations while ensuring that accountability is pursued impartially and consistently with established principles of international law.

Keywords: International Criminal Law, International Humanitarian Law, Israel–Hammas Conflict, Israel, Hamas, Palestine, Gaza, International Criminal Court, War Crimes, Crimes Against Humanity, Accountability.

INTRODUCTION

There is a great deal of historical, geopolitical, and legal debate surrounding the Israeli-Palestinian dispute. When it comes to Palestinian land, opinions vary as to whether or not Israel's acts violated international criminal law. *According to Ben-Meir (2023)¹ Israel's occupation of Palestinian territory, settlement construction, military operations, and other acts may violate international law, particularly international humanitarian law and human rights law.* Moreover, the construction of villages on the West Bank is a point of contention and relocating civilians from the occupying power into the occupied region is a violation of the Fourth Geneva Convention. Further, according to numerous international organisations and agencies, the settlements on the West Bank by Israel violate the Geneva Convention (2023). Concerns have also been raised concerning military operations and the use of force in densely populated "Palestinian" areas, particularly during confrontations.² Moreover, Claims of civilian casualties and property damage caused by excessive force have raised questions about adherence to the principles of proportionality and distinction, which are cornerstones of international humanitarian law. However, you must know that there is a huge range of viewpoints on this subject.³ *According to Pratiwi (2022)⁴ Israel claims it is acting defensively in reaction to security concerns and is following "international law"; it also admits that the situation is complicated. It is frequently necessary to conduct a comprehensive legal inquiry to identify violations of "international law," which is open to interpretation, especially in the context of occupations and wars.* The "Israeli" army and "Palestinian organisations have both been the subject of investigations by legal organisations looking into possible "war crimes."

One such body is *"The International Criminal Court" (ICC)*. Legal interpretations and implementations of these instances are challenging and often contested due to the conflict's political sensitivity and historical backdrop. A huge invasion against "Israel" was begun on October 7, 2023, by the Islamic Resistance Movement ("Hamas"), firing hundreds of missiles

¹ Ben-Meir, A. *Psychological Impediments Are at The Core of the "Israeli–Palestinian Conflict. Politics & Policy*, 51(3), 488-503, 2023.

² Mahaseth, H., & Karki, N. *Understanding The "Israel "- Palestine Issue and Its Relation with the International Criminal Court. Thailand Journal Of International Law*, 1(1), 37-53, 2022.

³ Lehrs, L., Markus, D. K., Miodownik, D., Sheaffer, T., & Shenhav, S. R. *What Happens to Peace When the Process Is Stalled: Competing International Approaches to the "Israeli–Palestinian Conflict, 1996–2021. Journal Of Global Security Studies*, 7(2), 2022.

⁴ Pratiwi, F. I., Syarafi, M. A. R., & Nauvarian, D. *" Israel-Palestinian Conflict Beyond Resolution: A Critical Assessment. Jurnal Ilmu Sosial Dan Ilmu Politik*, 26(2), 168-182, 2022.

from "Gaza". Meanwhile, militant groups crossed into "Israel" from "Gaza," where they attacked police stations and engaged in gun battles with "Israeli" forces. Several people were injured or killed as armed groups attacked so-called "Israeli" citizens. Armed factions in Gaza kidnapped civilians, claiming women, children, and the elderly among their victims.

Further, Members of the armed groups known as "Gazas" also assaulted the "Supernova Festival" that same day, killing multiple innocent bystanders. A significant number of young people attended the event. News outlets have reported that armed gangs from "Gaza" attacked the *Kfar Aza kibbutz*, killing multiple people there, including children and women. "Hamas" continued to aimlessly shoot hundreds of missiles against "Israel" as this was being written. In Israel, at least 4,121 have been injured, and 1,400 have been killed. In reaction to the continued "Israeli" atrocities against the "Palestinian" people and violations at the *Al-Aqsa Mosque*, the senior military commander of "Hamas" Al-Qassam Brigades announced a military campaign against the "Israeli" occupation on October 7, 2023. The "Palestinian" people are represented solely by the policies, programs, and decisions of the Palestine Liberation Organisation (PLO), not by the policies of any other organisation, according to "President Mahmoud Abbas" of the "Palestinian" Authority. Moreover, *according to Article 8 of the International Criminal Court Rome Statute*, armed groups in Gaza may have committed war crimes, such as intentional killings, kidnapping of hostages, violations of human dignity, and the deliberate targeting of civilians and their property. *As a result of the extensive and systematic targeting of civilians, armed groups operating out of Gaza may have committed crimes against humanity in violation of the Rome Statute.* These crimes may include killings, enforced disappearances, persecution, and other cruel acts, such as those committed against captives who return to Gaza.

BACKGROUND

The conflict dates to the mid-twentieth century, with the founding of the State of Israel in 1948 and successive conflicts involving neighbouring Arab states (UN, 2023). Chen (2023)⁵ noted "territorial disputes", particularly those involving East Jerusalem, the "West Bank", and the "Gaza" Band, have been critical to the war. Moreover, the development of "Hamas" as a political and militant entity in Gaza has worsened the situation. Periodic escalations characterised by violent and deadly exchanges of fire have distinguished the "Israel-Hamas" war in recent years. There have been numerous civilian casualties and extensive infrastructure damage as a consequence of military operations, airstrikes, and rocket assaults, which have attracted criticism and attention from throughout the world (Ishamali, 2023).⁶ Further, According to Imtiaz⁷ (2022), "Israel" has been accused of committing a crime of aggression due to its military operations in "Gaza". This includes concerns about the excessive use of force, the targeting of civilian areas, and potential breaches of "international humanitarian law".

Nonetheless, International organisations, human rights authorities, and advocacy groups have identified incidents that may constitute crimes of violence. The 'crime of aggression' is defined under international law, with essential provisions in the Rome Statute of the International Criminal Court (ICC).⁸. Acts of hatred are defined by the statute, which also gives the ICC jurisdiction over them. However, the fact that "Israel" has not ratified the Rome Statute makes the path to possible ICC prosecution more difficult. ⁹The following statistics show the maximum number of "Palestinian" deaths from 2008 to 2020.

⁵ Chen, S., & Guo, Z. *The Role Of The Us In The Un Conflict Resolution: The Case Of 2021 "Israeli-Palestinian Conflict*. *Journal Of Education, Humanities And Social Sciences*, 11, 282-289, 2023.

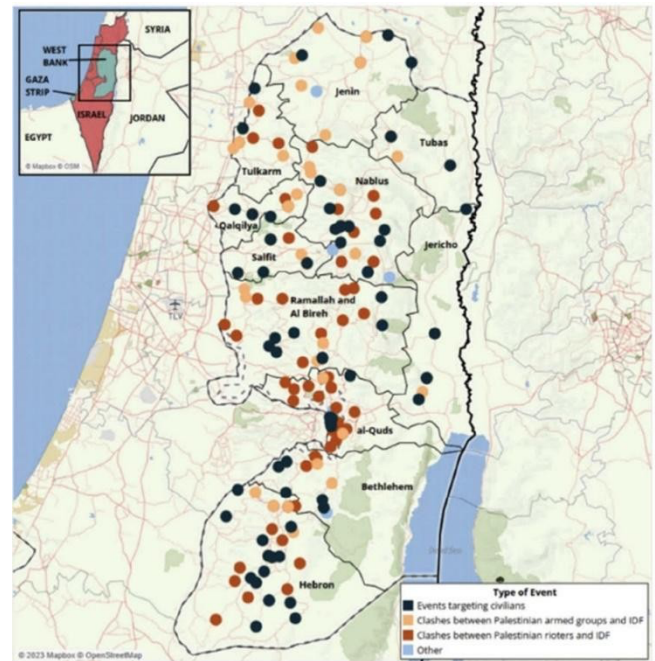
⁶ Arifuddin, M. T. *Why Media, Women, And Children Cry In Palestine: The Case Study Of The Israeli-Palestinian Conflict In May 2021*. In *Icgcs 2021: Proceedings Of 20 The 1st International Conference On Gender, Culture And Society*, Icgcs 2021, 30-31 August 2021, Padang, Indonesia (P. 480). European Alliance For Innovation, 2023.

⁷ Imtiaz, A., Khan, D., Lyu, H., & Luo, J. *Taking Sides: Public Opinion Over The "Israel"- Palestine Conflict In 2021*.

⁸ Mahwati, T., & Nanda, A. R. *Analysis Of The Palestinian And "Israeli" Conflict In The Perspective Of International Humanitarian Law*. *International Law Discourse In Southeast Asia*, 1(1), 23-42, 2022.

⁹ Pratiwi, F. I., Syarafi, M. A. R., & Nauvarian, D. *"Israel-Palestinian Conflict Beyond Resolution: A Critical Assessment*. *Jurnal Ilmu Sosial Dan Ilmu Politik*, 26(2), 168-182, 2022.

The most important points are the orange and red ones. The orange colour represents battles between "Palestinian" armed groups and the "Israeli" Defence Forces, while the red colour represents clashes between "Palestinian" rioters and the IDF.



RESEARCH QUESTIONS

1. Whether the conduct of Israeli military and governmental authorities and Palestinian armed groups during the Israel– Hamas conflict may constitute violations of international criminal law, including the crime of aggression, war crimes, and crimes against humanity?
2. How do the Rome Statute, the Geneva Conventions, and other applicable rules of international law regulate the use of force, the crime of aggression, and the conduct of hostilities in the Israel– Hamas conflict?
3. What are the legal consequences of conduct that satisfies the constituent elements of the crime of aggression, war crimes, or crimes against humanity, and under what circumstances may individuals incur criminal responsibility?
4. How effectively do international institutions, particularly the International Criminal Court and the United Nations, respond to allegations of international crimes arising from the Israel– Hamas conflict?

RESEARCH OBJECTIVES

1. To examine the legal basis and constituent elements of the crime of aggression under international criminal law and assess its relevance to the conduct occurring during the Israel–Hamas conflict.
2. To analyse the applicability of the Rome Statute, the Geneva Conventions, and other relevant principles of international humanitarian law to the conduct of Israeli forces and Palestinian armed groups.
3. To examine alleged attacks against civilians, civilian objects, healthcare facilities, and humanitarian personnel and assess their potential relevance to war crimes, crimes against humanity, and individual criminal responsibility.
4. To evaluate the jurisdiction, role, and effectiveness of the International Criminal Court and other international institutions in investigating and addressing alleged international crimes arising from the conflict.

SCOPE OF THE STUDY

This study plays a crucial role in illuminating any violations of international criminal law that occurred during the Israel-Hamas war. This study adds to the continuing discussion of responsibility and fairness by analysing the conduct of "Israeli" authorities, particularly regarding war crimes, crimes against humanity, and assaults on hospitals and other healthcare facilities. The results can help governments and human rights advocates address potential abuses, bring the matter to international legal attention, and ensure the safety of civilians in conflict zones. Lastly, this research is a tool for illuminating the nuances of the conflict and promoting humanitarian-minded resolutions.

RESEARCH METHODOLOGY

This study adopts a qualitative doctrinal and analytical research methodology, combining doctrinal legal research, a literature review, and discourse analysis. The doctrinal component examines the Rome Statute, the Geneva Conventions, applicable principles of international humanitarian law, relevant international instruments, and jurisprudence of the International Criminal Court and other international judicial and quasi-judicial bodies. The literature review examines existing academic scholarship concerning the crime of aggression, war crimes, crimes against humanity, ICC jurisdiction, and accountability in the Israeli–Palestinian context. The discourse analysis examines publicly available academic, institutional, and human rights materials to identify recurring legal themes and competing interpretations concerning alleged violations during the Israel– Hamas conflict. Particular attention is given to the principles of distinction, proportionality, military necessity, precaution, individual criminal responsibility, and the jurisdictional limitations of international criminal institutions. The methodology is designed to assess the legal character of alleged conduct while distinguishing among allegations, facts, and conduct that require further judicial determination.

ANALYSIS OF THE TOPIC

➤ Applicable Principles Of Criminal Law In The " Israel "- " Hamas " Conflict.

The present conflict between "Israel" and "Hamas" has raised serious legal problems concerning the applicable principles of criminal law. Several investigations and legal studies have provided insight into the matter. Munin's¹⁰ Research focuses on the law of 'armed conflict' (LOAC) during the "Israel-Hamas " conflict, also known as 'international humanitarian law'. It emphasises that the law is well-established and clear in certain areas but less so in others. Further, Devlaminck's (2023) paper addressed the International Criminal Court's (ICC)

¹⁰ Munin, N., & Sitbon, O. *The Psagot Case: An Innovative Cjeu Approach Towards The "Israel"-i-Palestinian Conflict*. Ariz. J. Int'l & Comp. L., 39, 297,2022.

jurisdiction in this scenario, noting that Palestine submitted an instrument of membership to the ICC in 2015.

However, the jurisdictional foundation of a criminal tribunal must be based on the strength of the state, which neither the "Palestinian" Authority nor the "entity" of Palestine now qualifies. Further, Rémond-Tiedrez¹¹ also conducted a legal analysis to identify potential violations of "international law" fundamental criteria, such as intentional killings, hostage holding, outrages against human dignity, and willful targeting of people and civilian property. It asserted that armed groups' activities in "Gaza" may constitute crimes against humanity, war crimes, and genocide.

According to Browne¹² The stability of the state is a necessary condition for a criminal tribunal's jurisdiction, but neither the "Palestinian" Authority nor the "entity" of Palestine meets this definition anymore. Various interpretations of the relevant criminal law principles in the "Israel-Hamas " conflict emerge from an examination of these facts and investigate possible war crimes, crimes against humanity, and the direct application of "international humanitarian law."¹³ Nevertheless, there are dissenting opinions over the applicability of the statutes and challenges to the ICC's authority. Given the complexity of the conflict's legal issues, these rulings emphasise the need for a comprehensive analysis of the facts and legal principles.

➤ ***Crime Of Aggression.***

The crime of aggression constitutes a distinct category of international crime under the Rome Statute and must be distinguished from war crimes and crimes against humanity. Article 8 bis of the Rome Statute defines the crime of aggression as an act of aggression that, by its character, gravity, and scale, constitutes a manifest violation of the United Nations Charter. The provision further establishes individual criminal responsibility where a person is in a position effectively to exercise control over, or direct, the political or military action of a State and participates in the planning, preparation, initiation, or execution of such an act. Accordingly, the crime of aggression contains both a State-level element, concerning the underlying act of aggression,

¹¹ Rémond-Tiedrez, J. *The International Criminal Court's Decision On Its Territorial Jurisdiction Over Palestine: Between Power Dynamics And Political Legitimacy. Confluences Mediterranee*, (2), 149-159,2021.

¹² Browne, B. C. *Pursuing International Criminal Justice, The Icc, And Palestine. In Transitional (In) Justice And Enforcing The Peace On Palestine* (Pp. 61-78). Cham: Springer International Publishing,2023.

¹³ Singh, H., Khare, P., & Sharma, A. *Major Challenges In Prosecuting " Israeli " Nationals Before The International Criminal Court. Review Of International Geographical Education Online*, 11(7). Sindhu, M. I., Mata, M. N., Naveed, M., Mata, P. N., Martins, J. N., Correia, A. B., & Rita, J. X. *Implications Of Corporate Social Responsibility On Credit Rating. Academy Of Strategic Management Journal*, 20(Si 2), 1-11,2021.

and an individual criminal responsibility element, concerning the leadership role of the accused.

The legal assessment of aggression must therefore be distinguished from the assessment of war crimes committed during hostilities. An attack against civilians, destruction of civilian objects, hostage-taking, or unlawful attacks on protected persons may potentially constitute war crimes under Article 8 of the Rome Statute. However, such conduct does not automatically amount to the crime of aggression. Similarly, the existence of an armed conflict does not by itself establish the commission of aggression. The relevant conduct must satisfy the specific elements prescribed by Article 8 bis and the jurisdictional requirements applicable to the Court.

The jurisdictional framework governing the crime of aggression is further regulated by Articles 15 bis and 15 ter of the Rome Statute. This creates a distinct jurisdictional framework from that applicable to genocide, crimes against humanity, and war crimes. Consequently, the question of whether the ICC may exercise jurisdiction over alleged aggression in the context of the Israel– Hamas conflict requires separate consideration of the Rome Statute's provisions concerning State consent, territorial jurisdiction, Security Council referral, and the status of the relevant States under the Statute.

➤ ***Rome Statute Of the International Criminal Court"***

The Rome Statute is the treaty that established the International Criminal Court. "The International Criminal Court" (ICC) is a "permanent international court" that prosecutes persons for the most heinous crimes under "international law"s, *"including genocide, war crimes, and crimes against humanity"*. The Act was passed on *July 17, 1998, and went into effect on July 1, 2002*. It consists of a preamble and 13 sections that hold each state responsible for exercising criminal jurisdiction over individuals who have committed international crimes. According to Adem, *"The International Criminal Court" does not replace national courts, and the legislation underscores the Court's complementary role alongside national authorities*. The Act also defines the ICC's organisation and jurisdiction, suspects' rights, and victims' involvement in court procedures. According to Mohammed Alashqar¹⁴ (2023), the Rome

¹⁴ Mohammed Alashqar, M., Abdul Rahim, A., & Abd Aziz, A. S. *War Crimes in Gaza Strip From Year 2008 2021: Individual Criminal Responsibility Under The Legal Framework Of Rome Statute Of The International Criminal Court. Journal Of International Studies (Jis)*, 19(1), 61-93,2023.

Statute, which established the ICC, *has inspired numerous publications and articles offering insights into the Court's jurisdiction, methodology, and the international criminal process's investigation phase*. The International Criminal Court acknowledges Palestine as a member state, but Israel rejects the Court's authority and refuses to participate.

➤ ***Applicable Trial, Penalties, And Enforcement.***

The ongoing armed conflict between Israel and Palestinian armed groups in the Gaza Strip has raised serious concerns regarding potential violations of international humanitarian law (IHL) and international criminal law (ICL). Under Article 8 of the Rome Statute of the International Criminal Court (ICC), certain acts committed in the context of an armed conflict may constitute war crimes, including wilful killing, hostage-taking, outrages upon personal dignity, and intentionally directing attacks against the civilian population or civilian objects.¹⁵ These provisions are relevant to allegations concerning the conduct of both Israeli forces and Palestinian armed groups during the conflict.

Further, the International Criminal Court's investigation into the Situation in the State of Palestine provides an important legal framework for examining allegations of international crimes arising from the conflict.¹⁶ The investigation should be conducted impartially and comprehensively, with due consideration of alleged violations by all parties, irrespective of their political or military status. Such an approach is essential to ensuring accountability under the principle of individual criminal responsibility and to determining whether the evidentiary threshold required under the Rome Statute has been satisfied. Moreover, International human rights organisations have also raised concerns regarding Israel's policies and practices in the Occupied Palestinian Territory, including the expansion and maintenance of settlements, restrictions affecting Palestinians, and the alleged failure to ensure effective accountability for violations of fundamental rights. Amnesty International and other international organisations have characterised certain Israeli policies as involving systematic discrimination and have called for greater international scrutiny and accountability. These allegations remain subject to legal and factual assessment within the relevant international accountability mechanisms.

¹⁵ Rome Statute of the International Criminal Court arts. 8, 25, July 17, 1998, 2187 U.N.T.S. 90; Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 3, 27, 32, 147, Aug. 12, 1949, 75 U.N.T.S. 287.

¹⁶ Human Rights Watch, *"I Can't Erase All the Blood from My Mind": Palestinian Armed Groups' October 7 Assault on Israel*, July 17, 2024, <https://www.hrw.org/report/2024/07/17/i-cant-erase-all-blood-my-mind/palestinian-armed-groups-october-7-assault-israel>

The regulation of armed conflict between Israel and Palestinian armed groups is grounded in a complex body of international humanitarian law that developed substantially following the Second World War. The four Geneva Conventions of 1949, their Additional Protocols, customary international humanitarian law, and the jurisprudence of international and hybrid criminal tribunals establish fundamental rules governing the conduct of hostilities and the protection of civilians. These rules apply to parties to an armed conflict irrespective of the legality or political justification advanced for their participation in hostilities. Accordingly, neither state forces nor non-state armed groups are exempt from compliance with applicable humanitarian obligations.

Human Rights Watch and other independent organisations have documented allegations of serious violations by Palestinian armed groups, including deliberate attacks against civilians, indiscriminate rocket fire, and hostage-taking. At the same time, the scale of civilian deaths, injuries, displacement, and destruction resulting from Israeli military operations in the Gaza Strip has generated substantial international concern regarding compliance with the principles of distinction, proportionality, and precautions in attack. The legality of particular incidents must, however, be determined based on the available evidence and the applicable rules of international humanitarian and international criminal law.

Consequently, the conflict presents a significant challenge for the contemporary international legal order. A comprehensive assessment requires an examination of the conduct of all relevant actors through the principles of distinction, proportionality, military necessity, and precaution, as well as the prohibition on the intentional targeting of civilians and civilian objects. An impartial investigation and effective accountability mechanisms are therefore essential to determining individual responsibility for alleged war crimes and other international crimes.

LITERATURE REVIEW

The establishment of the International Criminal Court (ICC) in 2002 represented a significant development in the enforcement of international criminal law, particularly by creating a permanent institution with jurisdiction over individuals responsible for the most serious international crimes, including genocide, crimes against humanity, war crimes, and, subject to the conditions prescribed by the Rome Statute, the crime of aggression. The historical

development, institutional framework, and normative significance of the ICC have been extensively examined by scholars such as William A. Schabas and Leila Nadya Sadat, whose works highlight the Court's role in addressing accountability gaps within the international legal system and strengthening the enforcement of international criminal norms.¹⁷ The jurisdiction and functioning of the ICC have further been examined through the principles of complementarity, state and Security Council referrals, and the legal conditions governing the exercise of prosecutorial jurisdiction, with scholars such as Mark Klamberg and Paola Gaeta analysing the interaction between the Court's judicial mandate and broader political structures within the international legal order.¹⁸ The question of Palestine's relationship with the ICC has generated a particularly significant body of scholarship, especially concerning Palestine's accession to the Rome Statute, the Court's territorial and personal jurisdiction, the admissibility of cases, and the implications of international criminal proceedings for the Israeli-Palestinian peace process. In this context, the works of John Dugard and Dov Jacobs provide important perspectives on the legal and political implications of ICC involvement in the conflict.¹⁹ Scholarly debate has also focused on the Prosecutor's discretion under the Rome Statute, including the interpretation of the "interests of justice" criterion and the extent to which prosecutorial decision-making should account for considerations of accountability, peace, reconciliation, and the broader objectives of international criminal justice. Carsten Stahn and Rod Rastan have contributed significantly to this debate by examining the relationship between prosecutorial discretion, complementarity, and the institutional objectives of the ICC.²⁰ Similarly, the role of the United Nations Security Council in referring or deferring situations to the ICC has attracted sustained criticism and scholarly attention, particularly regarding Article 16 of the Rome Statute and the potential politicisation of international criminal justice. The works of Roger Clark and Antonio Coco illustrate the continuing tension between the judicial independence of the ICC and the political authority of the Security Council in matters concerning international peace and security.²¹ Beyond questions of jurisdiction and institutional design, existing literature has assessed the practical effectiveness and limitations

¹⁷ William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (1st ed. 2010).

¹⁸ Rod Rastan, Jurisdiction, in *The Law and Practice of the International Criminal Court* 141, 141–78 (Carsten Stahn ed., 2015); Rome Statute of the International Criminal Court arts. 5–13, July 17, 1998, 2187 U.N.T.S. 90.

¹⁹ Mohamed M. El Zeidy, Ad Hoc Declarations of Acceptance of Jurisdiction: The Palestinian Situation Under Scrutiny, in *The Law and Practice of the International Criminal Court* 257, 257–79 (Carsten Stahn ed., 2015); Situation in the State of Palestine, ICC-01/18, International Criminal Court.

²⁰ Carsten Stahn, *The Law and Practice of the International Criminal Court* (1st ed. 2015); Rod Rastan, *The International Criminal Court and Complementarity: From Theory to Practice* (2017).

²¹ Rome Statute of the International Criminal Court art. 16, July 17, 1998, 2187 U.N.T.S. 90; Carsten Stahn ed., *The Law and Practice of the International Criminal Court* (2015).

of ICC investigations and prosecutions, including difficulties associated with evidence collection, witness protection, state cooperation, enforcement, and the implementation of judicial decisions. The scholarship of Diane Marie Amann and Kevin Jon Heller contributes to understanding these structural and practical challenges confronting the Court.²² More recent literature has increasingly examined the application of international criminal law and international humanitarian law to the Israeli-Palestinian conflict, particularly in light of the violence in Gaza and the broader Israel-Hamas conflict. Bracka's analysis provides a framework for understanding international criminal accountability in the context of the Israeli-Palestinian conflict. At the same time, Sabel examines the broader application of international law to the Arab-Israeli conflict and the responsibilities of states and individuals under international legal norms.²³ Masudi, Mehdi and Abbas similarly examine alleged human rights violations by Israel under international law and contribute to the broader debate concerning the applicability of international humanitarian and human rights law to the conflict. The literature further highlights the legal difficulties involved in distinguishing lawful self-defence from prohibited acts of aggression and in determining whether particular military conduct satisfies the constituent elements of international crimes.²⁴ Ben-Naftali and Diamond's analysis of Israeli military practices and judicial responses contributes to this discussion by examining allegations concerning harm to Palestinian civilians and the broader implications of Israel's conduct under international law. Taken collectively, the existing scholarship demonstrates that the ICC's involvement in conflict situations raises complex questions concerning jurisdiction, complementarity, prosecutorial discretion, political interference, accountability, and the relationship between international criminal justice and peace processes. However, despite the substantial body of literature addressing the ICC and the Israeli-Palestinian conflict, there remains a need for a more integrated examination of the legal framework governing alleged international crimes in Gaza, particularly one that evaluates the conduct of all relevant parties through the principles of distinction, proportionality, precaution, individual criminal responsibility, and the Rome Statute's provisions concerning war crimes and crimes against humanity. This study seeks to address this gap by examining the extent to which existing

²² Carsten Stahn ed., *The Law and Practice of the International Criminal Court* (2015).

²³ Jessica Bracka, International Criminal Justice, the ICC, and the Israeli-Palestinian Conflict, in *Transitional Justice for Israel/Palestine: Truth-Telling and Empathy in Ongoing Conflict* 159, 159–208 (2021); John Dugard, *Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine* (2016).

²⁴ J.A. Masudi, S.K. Mehdi & S.J. Abbas, Human Rights Violations by Israel Under International Law, 5(2) *Pakistan J. Int'l Aff.* (2022); Orna Ben-Naftali & Eyal Diamond, No Place for Palestinians: The Israeli High Court of Justice Fades Out of the Global Community of Courts—The Farcical Tragedy of the 2022 Judgment of Masafer Yatta, 41 *B.U. Int'l L.J.* 47 (2023).

international criminal law mechanisms can provide an effective and impartial framework for accountability while also considering the institutional and political limitations that may affect the ICC's ability to deliver justice in conflict-affected situations.²⁵

***INTERNATIONAL CRIMINAL LAW FRAMEWORK AND
JUDICIAL RESPONSES TO THE ISRAEL–HAMAS
CONFLICT.***

The ongoing Israel–Hammas conflict raises significant questions under international humanitarian law and international criminal law concerning the conduct of both Palestinian armed groups and Israeli forces. On 7 October 2023, Hamas and other Palestinian armed groups launched attacks involving rocket fire, incursions into Israeli territory, attacks against civilians, and hostage-taking, including the targeting of civilian gatherings and residential communities. Such conduct may engage the Rome Statute provisions relating to war crimes, particularly wilful killing, hostage-taking, outrages upon personal dignity, and intentionally directing attacks against the civilian population or civilian objects.²⁶ At the same time, Israeli military operations in Gaza have generated allegations concerning attacks affecting civilians and civilian objects, extensive destruction of property, restrictions on essential supplies and humanitarian assistance, attacks affecting medical and humanitarian facilities, and displacement of civilian populations. These allegations must be assessed against the principles of distinction, proportionality, military necessity and precautions in attack.²⁷ since civilian casualties or destruction alone do not automatically establish the commission of a war crime. The alleged restrictions on food, water, electricity, fuel and medical supplies, together with measures affecting the movement and displacement of civilians, have also raised questions concerning collective punishment, starvation as a method of warfare, the protection of civilians and the obligation to facilitate humanitarian relief.²⁸

²⁵ Rome Statute of the International Criminal Court arts. 5, 7–8, 17, July 17, 1998, 2187 U.N.T.S. 90; Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts arts. 48, 51, 52, 57, June 8, 1977, 1125 U.N.T.S. 3.

²⁶ Rome Statute of the International Criminal Court arts. 7–8, July 17, 1998, 2187 U.N.T.S. 90.

²⁷ Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts arts. 48, 51, 52, 57, June 8, 1977, 1125 U.N.T.S. 3.

²⁸ Rome Statute of the International Criminal Court art. 8(2)(b)(xxv), July 17, 1998, 2187 U.N.T.S. 90; Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 33, 55, Aug. 12, 1949, 75 U.N.T.S. 287.

The legal significance of these allegations is strengthened by the International Criminal Court's (ICC) existing jurisdictional position. Palestine accepted the jurisdiction of the ICC in 2015 and became a State Party to the Rome Statute on 1 April 2015; following Palestine's referral of the Situation to the Prosecutor in 2018, the Prosecutor opened a formal investigation in March 2021. In February 2021, Pre-Trial Chamber I determined, by majority, that the Court's territorial jurisdiction extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.²⁹ The legal position subsequently developed further in November 2024, when Pre-Trial Chamber I rejected Israel's jurisdictional challenges and issued warrants of arrest for Benjamin Netanyahu and Yoav Gallant. The Chamber found reasonable grounds to believe that both individuals bore criminal responsibility for, inter alia, the war crime of starvation as a method of warfare and the war crime of intentionally directing an attack against the civilian population, as well as the crimes against humanity of murder, persecution and other inhumane acts.³⁰ Importantly, these are findings at the arrest-warrant stage and do not constitute final convictions. The Chamber also confirmed that the situation involves the application of the law of international armed conflict between Israel and Palestine, as well as the law governing the non-international armed conflict between Israel and Hamas.

The present ICC position, therefore, provides an important legal basis for examining alleged crimes committed by different actors in the conflict and demonstrates that accountability is directed towards individual criminal responsibility rather than the responsibility of an entire population. The relevance of the ICC's previous jurisprudence can further be demonstrated through cases such as *Prosecutor v. Ahmad Al Faqi Al Mahdi*, in which the Court convicted the accused for intentionally directing attacks against religious and historic buildings³¹; *Prosecutor v. Thomas Lubanga Dyilo*³², in which the Court convicted Lubanga for conscripting, enlisting and using children under fifteen to participate actively in hostilities; and the situations concerning Kenya, Uganda, Darfur, Libya, Côte d'Ivoire and the Central African Republic, which demonstrate the Court's experience in addressing crimes committed by state officials and non-state armed groups in different conflict settings. These cases are particularly

²⁹ *Situation in the State of Palestine*, ICC-01/18, Decision on the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine, ¶¶ 118–127 (Pre-Trial Chamber I Feb. 5, 2021).

³⁰ *Situation in the State of Palestine*, ICC-01/18, Decision on Israel's Challenges to the Jurisdiction of the Court and the Court's Exercise of Its Jurisdiction, and on the Prosecution's Applications for Warrants of Arrest (Pre-Trial Chamber I Nov. 21, 2024).

³¹ *Prosecutor v. Al Mahdi*, ICC-01/12-01/15, Judgment, ¶¶ 41–44 (Sept. 27, 2016); *Prosecutor v. Lubanga*, ICC-01/04-01/06, Judgment Pursuant to Article 74 of the Statute, ¶¶ 1–3 (Mar. 14, 2012).

³² *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Judgment Pursuant to Article 74 of the Statute (Mar. 14, 2012).

relevant because they illustrate the application of individual criminal responsibility to conduct occurring during armed conflict and provide comparative guidance on assessing the evidentiary and contextual requirements for international crimes. The conflict also engages the obligations of third States under international law, including the obligation under Common Article 1 of the Geneva Conventions to respect and ensure respect for international humanitarian law, as well as the broader international responsibility to prevent genocide and other mass atrocities. The Responsibility to Protect framework further emphasises the international community's responsibility to respond to genocide, war crimes, ethnic cleansing and crimes against humanity. However, its operation must be distinguished from the ICC's separate criminal jurisdiction. Taken together, the applicable legal provisions, the developing status of the ICC investigation, and the Court's existing jurisprudence demonstrate the need for an impartial and evidence-based assessment of the conduct of all parties to the conflict. The central legal inquiry is therefore not simply whether serious violations have been alleged, but whether particular acts satisfy the constituent elements of war crimes or crimes against humanity and whether individual perpetrators can be held criminally responsible under the Rome Statute. This study accordingly examines the alleged conduct of Palestinian armed groups and Israeli forces through the principles of distinction, proportionality, precaution, military necessity and individual criminal responsibility, while also evaluating the ICC's jurisdiction, procedural limitations, evidentiary challenges and broader institutional constraints in determining the effectiveness of international criminal accountability in the Gaza conflict.

SUGGESTIONS

1. **Immediate Cessation of Hostilities and Peaceful Resolution:** All parties should immediately cease hostilities and refrain from threats or the use of force inconsistent with the United Nations Charter. Disputes should be resolved through peaceful means, consistent with the obligation to maintain international peace and security.
2. **Compliance with International Humanitarian Law:** All parties to the conflict must strictly comply with the Geneva Conventions and applicable rules of international humanitarian law. States and other relevant actors should refrain from encouraging,

assisting, or facilitating violations and should take appropriate measures to ensure respect for humanitarian obligations.

3. **Protection of Civilians and Humanitarian Personnel:** Effective measures should be adopted to protect civilians, medical personnel, humanitarian workers, and essential civilian infrastructure. Humanitarian assistance should be delivered promptly and without undue obstruction, with appropriate humanitarian arrangements or corridors where necessary to facilitate safe and unimpeded relief.
4. **Accountability for International Crimes:** Allegations of war crimes, crimes against humanity, and other serious violations should be investigated independently, impartially, and promptly. Individuals found responsible, including senior officials and commanders, should be held accountable in accordance with applicable international law and due-process guarantees.
5. **Strengthening International Accountability Mechanisms:** The investigation concerning the Situation in the State of Palestine before the International Criminal Court should receive appropriate financial, technical, and logistical support. States should also ensure that companies and other private entities operating within their jurisdictions do not contribute to, facilitate, or benefit from conduct amounting to violations of international human rights or humanitarian law.

CONCLUSION

In the concluding remark, the Israel– Hamas conflict demonstrates the continuing difficulty of enforcing international criminal law in situations where armed conflict, civilian suffering, political interests, and questions of state responsibility intersect. This study has examined the conflict through the framework of international humanitarian law and international criminal law, with particular emphasis on the Rome Statute, the Geneva Conventions, the principles of distinction, proportionality, military necessity and precaution, and the jurisdiction and functioning of the International Criminal Court (ICC). The analysis indicates that serious allegations have arisen concerning the conduct of both Hamas and Israeli forces. The attacks carried out by Hamas and other Palestinian armed groups against civilians, including killings,

hostage-taking and attacks on civilian gatherings, raise potential issues under the Rome Statute's provisions concerning war crimes and, where the requisite contextual elements are established, crimes against humanity. At the same time, Israeli military operations in Gaza have generated allegations concerning attacks affecting civilians and civilian objects, extensive destruction, restrictions on humanitarian assistance, attacks affecting medical and humanitarian facilities, and displacement of civilian populations. These allegations likewise require careful assessment under international humanitarian law and cannot be determined solely by the scale of civilian casualties; individual incidents must be examined in light of the intended target, anticipated military advantage, expected civilian harm, precautions taken and the applicable legal rules.

The study further demonstrates the importance of the ICC as an accountability mechanism in the Situation in the State of Palestine. Palestine's accession to the Rome Statute and the Court's determination concerning its territorial jurisdiction provide a legal foundation for investigating alleged international crimes committed within the Court's jurisdiction. The subsequent ICC proceedings, including the issuance of arrest warrants against senior Israeli officials in November 2024, demonstrate the continuing development of international criminal accountability in relation to the conflict. However, the existence of jurisdiction or an arrest warrant does not itself establish guilt. Criminal responsibility must ultimately be determined through an independent judicial process based on admissible evidence and the applicable elements of the alleged offences. The ICC's earlier jurisprudence, including *Prosecutor v. Thomas Lubanga Dyilo* and *Prosecutor v. Ahmad Al Mahdi*, further demonstrates that individual perpetrators, including members of non-State armed groups, may be held criminally responsible for serious violations of international humanitarian law.

The research also highlights the limitations of international criminal justice. The effectiveness of the ICC depends substantially on State cooperation, access to evidence, the protection of witnesses and victims, the enforcement of arrest warrants, and the broader willingness of States to comply with international legal obligations. Political considerations may further affect the practical operation of international accountability mechanisms. Consequently, the ICC should not be viewed as a complete solution to the conflict but as one component of a broader international legal framework. The obligations of third States are also significant, particularly their duty to respect and ensure respect for international humanitarian law and to take appropriate measures to prevent and respond to serious international crimes. Similarly, humanitarian protection must remain central to any response to the conflict, including the

protection of civilians, medical personnel, humanitarian workers and essential civilian infrastructure.

Ultimately, the findings of this study support the proposition that accountability must be impartial, evidence-based and applicable to all parties to the conflict. International criminal law cannot effectively serve its purpose if legal standards are selectively applied according to political affiliation or military status. The appropriate legal inquiry is therefore whether specific conduct satisfies the constituent elements of a recognised international crime and whether sufficient evidence exists to establish individual criminal responsibility. In this regard, immediate efforts should focus on the cessation of hostilities, strict compliance with international humanitarian law, uninterrupted humanitarian assistance, the protection of civilians and humanitarian personnel, and the independent investigation of alleged international crimes. The ICC's investigation into the Situation in the State of Palestine should receive appropriate institutional, financial and logistical support. At the same time, national and international authorities should cooperate in securing accountability for persons against whom sufficient evidence exists.

The study consequently concludes that the Israel– Hamas conflict represents a significant test of the credibility and effectiveness of the contemporary international criminal justice system. The strength of international law will ultimately depend not merely on the existence of treaties, institutions, and judicial decisions, but on their consistent and impartial implementation. A durable response, therefore, requires the simultaneous pursuit of humanitarian protection, cessation of violence, respect for international law and meaningful accountability. The recommendations advanced by this study—cessation of hostilities, compliance with international humanitarian law, protection of civilians and humanitarian personnel, accountability for international crimes, and strengthening of international accountability mechanisms—provide a framework through which the international community can move from condemnation of alleged violations towards effective legal and humanitarian action. In this sense, accountability should not be regarded as an obstacle to peace; rather, when pursued through impartial and lawful mechanisms, it forms an essential component of a sustainable and just resolution to the conflict.

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