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REVIEWING INTERNATIONAL LAW: GENOCIDE AND WAR CRIMES ON ISRAEL INVASION OF GAZA

1) INTRODUCTION

The Israel-Gaza conflict has been a focal point of international attention for debates, marked by recurring violence and deep-seated political, social, and religious tensions. The recent invasion of Gaza by Israeli forces has once again brought to the forefront critical questions about the application of international law, particularly concerning allegations of genocide and war crimes. This paper aims to review the legal frameworks governing these severe accusations, examining the definitions, historical precedents, and the role of international bodies like the International Criminal Court (ICC) and the United Nations (UN) in addressing these issues.

The concept of genocide, as defined by the 1948 Genocide Convention,¹ involves acts with intent to destroy, wholly or partially, a national, ethnic, racial, or religious group.² War crimes³ are also serious violations of the laws and customs of war, as outlined in the Geneva Conventions and other international treaties.⁴ Both terms carry significant legal and moral weight, and their application to the Israel-Gaza conflict requires a thorough and nuanced analysis.

The introduction herein sets the stage for a detailed exploration of the legal arguments, evidence, and international responses to the allegations of genocide and war crimes in the context of the Israel-Gaza conflict. By examining these issues through the lens of international law, this paper seeks to contribute to a thorough understanding of the complexities and challenges in achieving justice and accountability in one of the world's most enduring and contentious conflicts.

2) SOURCES OF LAW

The important sources of international law that cover genocide and war crimes and apply to the invasion of Gaza are:

¹ United Nations Human Rights Office of the High Commissioner, "Convention on the Prevention and Punishment of the Crime of Genocide," <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide>. (Accessed November 18, 2024).

² Ibid. See Article II of the Convention.

³ ICRC, "Rule 156. Definition of War Crimes," <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156>. (Accessed November 18, 2024).

⁴ Aljazeera, "Explainer: What is a war crime?" <https://www.aljazeera.com/news/2019/10/23/explainer-what-is-a-war-crime/#:~:text=According%20to%20the%20United%20Nations>. (Accessed November 18, 2024).

a) International Humanitarian Law (IHL):

The IHL, also known as the law of armed conflict or the law of war, is a set of rules that seek to limit the results of armed conflict for humanitarian reasons. It protects persons who are not, or no longer, taking a direct part in hostilities and restricts the means and method of warfare. The primary sources of IHL are the Geneva Conventions of 1949, Additional Protocols to the Geneva Conventions, Hague Conventions of 1899 and 1907, and customary international law consisting of accepted rules that have developed over time through the consistent practice of states and as legally binding. These rules apply to all states, regardless of whether states have ratified specific treaties, and the general principles of law recognized by civilized nations also form a part of IHL, providing a foundation for interpreting and applying specific rules.⁵

b) 1948 Convention on the Prevention and Punishment of the Crime of Genocide

The Convention is the foundational treaty for the prevention and punishment of the crime of genocide. It defines genocide and outlines the obligations of states to prevent and punish genocide. It is also known as the 1948 Genocide Convention.

c) The Geneva Conventions and Additional Protocols

These Conventions and Protocols collectively form the critical international humanitarian law, regulating the conduct of armed conflict and protecting individuals who are not or are no longer participating in hostilities:

⁵ International Committee of the Red Cross, "War Crimes under the Rome of the International Criminal Court and their source in International Humanitarian Law," https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/en_war_crimes_comparative_table.pdf. (Accessed November 18, 2024).

First Geneva Convention: "Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" (12 August 1949). This Convention protects the wounded and sick soldiers on land during war.⁶

Second Geneva Convention: "Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea" (12 August 1949). This Convention protects the wounded, sick, and shipwrecked military personnel at sea during war.⁷

Third Geneva Convention: "Convention Relative to the Treatment of Prisoners of War" (12 August 1949). This Convention protects prisoners of war.⁸

Fourth Geneva Convention: "Convention Relative to the Protection of Civilian Persons in Time of War" (12 August 1949). This Convention protects civilians, including those in occupied territory.⁹

Protocol I: "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts" (8 June 1977). This Protocol expands protections for victims of international armed conflicts, including rules on the conduct of hostilities and the protection of civilians.¹⁰

⁶ International Committee of the Red Cross, "The Geneva Conventions and their Commentaries," <https://www.icrc.org/en/law-and-policy/geneva-conventions-and-their-commentaries>. (Accessed December 9, 2024).

⁷ Ibid.

⁸ International Committee of the Red Cross, "The Geneva Conventions and their Commentaries,:" <https://www.icrc.org/en/law-and-policy/geneva-conventions-and-their-commentaries>. (Accessed December 9, 2024).

⁹ Ibid.

¹⁰ United Nations Office of Legal Affairs, "Protocols Additional to the Geneva Conventions of 12 August 1949," <https://legal.un.org/avl/ha/page/page.html>. (Accessed December 9, 2024).

Protocol II: "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts" (8 June 1977). This Protocol protects victims of non-international armed conflicts, such as civil wars.¹¹

Protocol III: "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive emblem" (8 December 2005). This Protocol introduces a new distinctive emblem (the red crystal) alongside the Red Cross and Red Crescent emblems.¹²

d) Hague Conventions of 1899 and 1907

These conventions primarily regulate the conduct of hostilities and the means and methods of warfare. It defines military occupation.¹³

e) 1998 Rome Statute of the International Criminal Court

The Statute establishes the International Criminal Court (ICC) and defines war crimes, genocide, crimes against humanity, and the crime of aggression.¹⁴ There are 124 member states to the Rome Statute.¹⁵ For example, African States such as South Africa, Kenya, and Nigeria. Asia-Pacific States such as Australia, Japan, and South Korea. Eastern

¹¹ Ibid.

¹² Ibid.

¹³ International Committee of the Red Cross, "Hague Conventions of 1899 and 1907," <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>. (Accessed December 9, 2024).

¹⁴ International Criminal Court, "Rome Statute of the International Criminal Court," <https://www.icc-cpi.int/publications/core-legal-texts/rome-statute-international-criminal-court#:~:text=The%20Rome%20Statute%20of%20the%20International%20Criminal%20Court,it%20establishes%20the%20governing%20framework%20for%20the%20Court>. (Accessed December 9, 2024).

¹⁵ International Criminal Court, "The States Parties to the Rome Statute," <https://asp.icc-cpi.int/states-parties>. (Accessed December 9, 2024).

European States such as Poland, Romania, and Hungary. Latin American and Caribbean States such as Brazil, Argentina, and Chile. Western European and Other States such as Germany, France, and the United Kingdom. The United States is not a member of the ICC.

The ICC has jurisdiction over four core international crimes: genocide, crime against humanity, war crimes, and the crime of aggression. The ICC can prosecute these crimes when committed in the territory of a state party, committed by a national of a state party, or the United Nations Security Council refers a situation to the ICC.¹⁶

f) United Nations Security Council Resolutions

The various resolutions have addressed the situation in Gaza and called for compliance with international humanitarian law and human rights law, namely:

Resolution 242 (1967):

The resolution calls for a withdrawal of Israeli armed forces from those territories Israel occupied in the Six-Day War, respecting the territorial integrity, sovereignty, and political independence of every state in the area.¹⁷

Resolution 338 (1973):

The resolution calls for a ceasefire in the Yom Kippur War and to implement Resolution 242 in all its parts.¹⁸

¹⁶ International Criminal Court, "How the Court Works," <https://www.icc-cpi.int/about/how-the-court-works>. (Accessed December 9, 2024).

¹⁷ United Nations Security Council, "Resolution 242(1967)," United Nations Digital Library System, <https://digitallibrary.un.org/record/90717?v=pdf>. (Accessed December 9, 2024).

¹⁸ United Nations Security Council, "Resolution 338(1973)," United Nations Digital Library System, <https://digitallibrary.un.org/record/93466?v=pdf>. (Accessed December 9, 2024).

Resolution 1869 (2009):

The resolution calls for an instant stop to fighting in Gaza and the withdrawal of Israeli troops, as well as the unimpeded provision and distribution of humanitarian aid.¹⁹

Resolution 2334 (2016):

The resolution reaffirmed that Israeli settlements occupying Palestinian territory since 1967, including East Jerusalem, have no legal acceptability and constitute a flagrant violation under international law.²⁰

Resolution 2720 (2023):

The resolution demanded the immediate, safe, and unhindered delivery of humanitarian assistance to the Palestinian inhabitants in Gaza and called for the establishment of a UN mechanism to accelerate aid consignments.²¹

Resolution 2735 (2024);

The resolution welcomed a new Gaza ceasefire proposal and urged both Israel and Hamas to implement it fully and without delay, including the release of hostages and the return of Palestinian civilians to their homes.²²

¹⁹ United Nations Security Council, “Resolution 1860(2009),” United Nations Library System, <https://digitallibrary.un.org/record/645525?v=pdf>. (Accessed December 9, 2024).

²⁰ United Nations Security Council, “Resolution 2334(2016),” United Nations Digital Library System, <https://digitallibrary.un.org/record/853446?v=pdf>. (Accessed December 9, 2024).

²¹ United Nations Security Council, “Resolution 2720(2023),” United Nations Digital Library System, <https://digitallibrary.un.org/record/4031189?v=pdf>. (Accessed December 9, 2024).

²² United Nations Security Council, “Resolution 2735(2024),” United Nations Digital Library System, <https://digitallibrary.un.org/record/4051310>. (Accessed December 9, 2024).

g) Reports from International Human Rights Organizations:

Human Rights Watch²³ and Amnesty International²⁴ reports provide detailed accounts and analyses of alleged violations of international law in the context of the Israel-Gaza conflict, namely:

UN Special Committee Report (November 2024):

The report found that Israel's warfare methods in Gaza were consistent with genocide, including the use of starvation as a weapon of war. It documented mass civilian casualties, life-threatening conditions, and systematic interference with humanitarian aid.²⁵

UN Human Rights Office Update Report (November 2024):

The six-month update report covered the human rights situation in Gaza from November 2023 to April 2024. It detailed violations such as the killing of civilians, use of human shields, indiscriminate attacks, and limitations on humanitarian aid.²⁶

²³ Human Rights Watch, "Hopeless, Starving, and Besieged: Israel's Forced Displacement of Palestinians in Gaza," <https://www.hrw.org/news/2024/11/14/israels-crimes-against-humanity-gaza>. (Accessed December 9, 2024).

²⁴ Amnesty International, "You Feel Like You Are Subhuman: Israel's Genocide Against Palestinians in Gaza," <https://www.amnesty.org/en/documents/mde15/8668/2024/en/>. (Accessed December 9, 2024).

²⁵ United Nations Human Rights Office of the High Commissioner, "UN Special Committee finds Israel's warfare methods in Gaza consistent with genocide, including use of starvation as weapon of war," <https://www.ohchr.org/en/press-releases/2024/11/un-special-committee-finds-israels-warfare-methods-gaza-consistent-genocide>. (Accessed November 25 and December 9, 2024).

²⁶ United Nations Human Rights Office of the High Commissioner, "Update Report. Six-month update report on the human rights situation in Gaza: 1 November 2023 to 30 April 2024," <https://www.ohchr.org/sites/default/files/documents/countries/opt/20241106-Gaza-Update-Report-OPT.pdf>. (Accessed December 9, 2024).

UN Human Rights Chief Report (November 2024):

The report emphasized the need for a "due reckoning" for horrific violations and possible atrocity crimes in Gaza. It highlighted breaches of international law that could amount to war crimes and crimes against humanity.²⁷

These reports provide a comprehensive overview of the human rights situation in Gaza and the alleged violations committed during the conflict.

3) A BRIEF OVERVIEW OF ISRAEL, GAZA AND THE WEST BANK

In modern history, after World War I, the British took control of the region, then known as Palestine, under a mandate from the League of Nations. The United Nations had, in 1947, voted to divide Palestine into two separate states, Jewish and Arab states. The State of Israel was proclaimed in 1948, leading to the first Arab-Israeli war. Israel has been involved in several wars, including the Six-Day War in 1967, which resulted in the military occupation of the Gaza Strip, Golan Heights, West Bank, and East Jerusalem. The present-day Israel is that it is a diverse country with a population of about 9.2 million people, including Jews, Arabs, and other minorities. Israel has a mixed economy with solid technology, agriculture, and manufacturing. Israel is a multiparty parliament democratic country with a president as the head of state and a prime minister as the head of government. Israel's history is complex and marked by periods of conflict and cultural

²⁷ United Nations Human Rights Office of the High Commissioner, "There must be "due reckoning" for horrific violations, possible atrocity crimes in Gaza – UN Human Rights Chief," <https://www.ohchr.org/en/press-releases/2024/11/there-must-be-due-reckoning-horrific-violations-possible-atrocity-crimes#:~:text=%E2%80%9CIt%20is%20essential%20that%20there%20is%20due%20reckoning.and%20evidence%20are%20collected%20and%20preserved%2C%E2%80%9D%20he%20said.> (Accessed November 25 and December 9, 2024).

development. It continues to be a focal point of geopolitical interest and a place of significant historical and religious importance.²⁸

In modern history, Gaza has experienced periods of prosperity and decline under Ottoman rule, particularly during the 16th century under the Ridwan dynasty.²⁹ Gaza came under British control after World War I and saw significant growth during the Mandatory period.³⁰ Following the establishment of Israel in 1948, Gaza became a refuge for Palestinian refugees. Egypt was in control of Gaza until the Six-Day War in 1967, when Israel seized the territory.³¹ Since 2007, Gaza has been governed by Hamas, leading to ongoing conflict with Israel. The territory is under a blockade imposed by both Israel and Egypt. Present-day Gaza is a small land on the east coast of the Mediterranean Sea, bordering Egypt and Israel. It is one of the most densely populated areas in the world, with over 2 million people.³² Gaza has been a center of confrontation in the Israel-Palestinian conflict, with frequent military operations and violence.³³

The strategic location and the various empires and powers that have controlled it over millennia created the history of Gaza. The region continues to be a focal point of

²⁸ Britannica, "Israel summary," https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/en_war_crimes_comparative_table.pdf. (Accessed November 18, 2024).

²⁹ Have Fun With History, "Gaza Timeline," <https://www.havefunwithhistory.com/gaza-timeline/>. (Accessed December 9, 2024).

³⁰ TheCollector, "British-Controlled Mandatory Palestine (1920-1948): A History," <https://www.thecollector.com/british-controlled-mandatory-palestine/>. (Accessed December 9, 2024).

³¹ History, "Gaza: The History That Fuels the Conflict," <https://www.history.com/news/gaza-conflict-history-israel-palestine>. (Accessed December 9, 2024).

³² Benedetta Beri, "Non-State Actors as Providers of Governance: The Hamas Government in Gaza between Effective Sovereignty, Centralized Authority, and Resistance," *Journal of Conflict Resolution* 58, no. 4 (2014): 650-671, <https://www.jstor.org/stable/43698207>. (Accessed December 9, 2024).

³³ History, "Gaza: The History That Fuels the Conflict," <https://www.history.com/news/gaza-conflict-history-israel-palestine>. (Accessed December 9, 2024).

geopolitical and humanitarian concerns. Gaza, officially known as the Gaza Strip, is a Palestinian territory.³⁴

There was a landlocked territory known as the West Bank. It borders Jordan to the east and Israel to the south, west, and north. The Gaza Strip and West Bank comprise the State of Palestine. After World War I, it became part of the British Mandate of Palestine. Following the 1948 Arab-Israeli War, Jordan annexed the West Bank, a move recognized by only two countries. Since the 1967 Six-Day War, the West Bank has been under Israeli occupation. The international community considers the occupation illegal under international law. In the mid-1990s, the Oslo Accords divided the West Bank into three areas: A (complete Palestinian control), B (joint Palestinian and Israeli control), and C (complete Israeli control). The West Bank is also central to the Israeli-Palestinian conflict.³⁵

4) SIX-DAY WAR IN 1967

Israel first invaded and occupied Gaza during the Six-Day War in 1967. The conflict took place from June 5 to June 10, 1967, and resulted in Israel capturing West Bank, East Jerusalem, and Gaza.³⁶

The reasons for Israel's attack on Gaza in 1967, during the Six-Day War, were multifaceted and rooted in a complex mix of historical, political, and security concerns. In 1948, the birth of Israel led to ongoing conflicts with its Arab neighbors, including Egypt, which controlled Gaza at the time. There were border clashes. In the years leading up to

³⁴ Britannica, "Gaza Strip," <https://www.britannica.com/place/Gaza-Strip>. (Accessed November 18, 2024).

³⁵ Britannica, "West Bank," <https://www.britannica.com/place/West-Bank>. (Accessed November 25, 2024).

³⁶ Britannica, "Six-Day War," <https://www.britannica.com/event/Six-Day-War>. (Accessed November 18, 2024).

the war, there were numerous border clashes between Israel and its Arab neighbors, particularly Syria and Egypt. In May 1967, the Soviet Union provided misinformation to Egypt, suggesting that Israel was planning a military campaign against it. That heightened tensions and led Egypt to expel UN peacekeepers from the Sinai Peninsula and blockage the Straits of Tiran, which Israel considered an act of war. Faced with the blockage and the mobilization of Arab armies, Israel launched a preemptive strike on June 5, 1967, targeting Egyptian airfields and military installations, marking the beginning of the Six-Day War. Israel aimed to neutralize the immediate army threats posed by its neighbors and secure its borders. The Six-Day War resulted in Israel capturing the Gaza Strip, along with the Sinai Peninsula, West Bank, East Jerusalem, and the Golan Heights. The war had significant long-term implications for the region and remained a pivotal event in the history of the Israel-Palestinian conflict.³⁷

What causes Israel to prolong the war in Gaza? The Six-Day War ended relatively quickly due to Israel's decisive military victory, which achieved its primary objectives of neutralizing immediate threats from neighboring Arab states and securing its borders. The reasons for Israel's prolonged military presence and actions in Gaza are more complex and multifaceted. Israel has cited ongoing security threats from militant groups in Gaza, particularly Hamas, as a primary reason for its military actions. The frequent rocket attacks and attempts to smuggle weapons into Gaza have led to continued military operations. Some analysts suggest that political considerations, including internal political dynamics and leadership decisions, have played a role in prolonging the conflict. For example, there have been accusations that Israeli Prime Minister Benjamin Netanyahu has prolonged the

³⁷ Ibid.

war for political gain. The conflict in Gaza is part of the broader Israeli-Palestinian conflict, which involves multiple regional and international actors. The ongoing violence and lack of trust between the parties have complicated efforts to reach a lasting peace agreement. The humanitarian situation in Gaza is dire, with significant civilian casualties and widespread destruction. Israel and Egypt's involvement in the ongoing conflict and the blockage failed to address the humanitarian crisis in Gaza, resulting in the restriction of the flow of essential goods, for instance, food, medicine, and fuel, exacerbating the suffering of the population. These factors contribute to the situation's complexity in Gaza and the challenges in achieving a lasting resolution. The conflict remains a significant issue in international relations and continues to draw attention from the global community.³⁸

5) **MILITARY OCCUPATION**

Military occupation or occupation shares the same meaning. The Fourth Hague Convention of 1907 defines occupation as a situation where a hostile army enters into and has control over a territory. Applying Article 42 of the Fourth Hague Convention, Israel became the occupier of Gaza on June 5, 1967, the day Israeli armed forces landed in Gaza.³⁹ Although Israel claims it disengaged from Gaza in 2005, many international bodies and legal experts argue that Israel still maintains effective control over Gaza through various means, such as blockages and military actions.⁴⁰ The Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 govern an occupier's responsibility. That means the

³⁸ Britannica, "Six-Day War," <https://www.britannica.com/event/Six-Day-War>. (Accessed November 18, 2024).

³⁹ Atlantic Council, "Israel claims it is no longer occupying the Gaza Strip. What does the international law say?" <https://www.atlanticcouncil.org/blogs/menasource/gaza-israel-occupied-international-law/>. (Accessed November 19, 2024).

⁴⁰ Ibid.

occupier must respect the laws in force in the occupied territory unless there is a threat to its security or obstruction of the application of international law. The occupier must ensure the safety and well-being of the civilian population, including providing food, medical care, and shelter. The occupier must maintain public order and safety and ensure the judicial system continues functioning. The occupier must not exploit the resources of the occupied territory for its benefit.⁴¹ An International Court of Justice (ICJ) *Case Concerning Armed Activities on the Territory of the Congo (DRC v. Uganda)* ruled on an occupier's responsibility. In this case, the ICJ found Uganda responsible for violating international humanitarian law by occupying parts of the Democratic Republic of Congo (DRC) and committing acts of looting, exploitation, and human rights abuses.⁴²

6) **ABOUT HAMAS**

Hamas is a Palestinian nationalist and Islamist political organization with a military wing known as the Izz ad-din al-Qassam Brigades. Founded in 1987 by Palestinian Islamic scholar Ahmed Yassin, Hamas emerged during the First Intifada, a Palestinian uprising against Israeli occupation. Hamas operates both a political wing, which governs the Gaza Strip, and a military wing, which conducts armed operations. The group's ideology combines Palestinian nationalism with Islamic fundamentalism. It aims to establish an

⁴¹ International Committee of the Red Cross, "What does the law say about the responsibilities of the Occupying Power in the occupied Palestinian territory?" <https://www.icrc.org/en/document/ihl-occupying-power-responsibilities-occupied-palestinian-territories>. (Accessed November 19, 2024).

⁴² United Nations Human Rights, "Belligerent Occupation: Duties and Obligations of Occupying Powers," https://www.onlinelibrary.ihl.org/wp-content/uploads/2022/08/ohchr_syria_-_belligerent_occupation_-_legal_note_en.pdf. (Accessed November 19, 2024).

Islamic state in the historic region of Palestine. Since 2007, Hamas has governed the Gaza Strip after seizing control from the rival Palestinian faction Fatah.⁴³

7) ATTACKS ON ISRAEL

There were numerous attacks on Israel by Hamas, including rocket attacks, suicide bombings, and other forms of armed conflict. One of the most significant recent attacks occurred on October 7, 2023, when Hamas launched a coordinated assault on Israel involving rockets, ground incursions, and other tactics. That attack marked a significant escalation in the ongoing Israel-Hamas conflict.⁴⁴

8) THE ALLEGED CRIMES AND THE LAW

What has Israel done in Gaza as an occupying power? There are several reasons why the international community has raised allegations of genocide and war crimes against Israel, particularly about its actions in Gaza. Firstly, specific events and escalations are attacks on health facilities. The United Nations Commission said Israel deliberately targeted healthcare facilities in Gaza, including hospitals and ambulances, resulting in the deaths of medical personnel and civilians, including children.⁴⁵ Secondly, the UN Commission also investigated both Israeli and Palestinian armed groups responsible for torture and sexual and gender-based violence against detainees and hostages.⁴⁶ Thirdly, the

⁴³ Britannica, "Hamas," <https://www.britannica.com/topic/Hamas>. (Accessed November 18, 2024).

⁴⁴ Aljazeera, "What happened in Israel? A breakdown of how Hamas attack unfolded," <https://www.aljazeera.com/news/2023/10/7/what-happened-in-israel-a-breakdown-of-how-the-hamas-attack-unfolded>. (Accessed November 19, 2024).

⁴⁵ United Nations Human Rights Office of the High Commissioner, "UN Commission finds war crimes and crimes against humanity in Israeli attacks on Gaza health facilities and treatment of detainees, hostages," <https://www.ohchr.org/en/press-releases/2024/10/un-commission-finds-war-crimes-and-crimes-against-humanity-israeli-attacks>. (Accessed November 25, 2024).

⁴⁶ Ibid.

UN Special Committee found Israel using starvation as a method of war by imposing a blockage on Gaza, restricting the entry of food, water, and fuel.⁴⁷ Fourthly, there were mass displacement and evacuation orders issued by the Israeli military, forcing large numbers of civilians to leave their homes.⁴⁸ Lastly, Israel's extensive bombing destroyed civilian infrastructure, destroying schools, homes, hospitals, and other essential infrastructure in Gaza.⁴⁹

The current circumstances of the conflict reveal a high casualty rate. As of November 2024, over 44,700 Palestinians and 1,139 people in Israel have been killed.⁵⁰ The conflict caused a severe humanitarian crisis, with widespread destruction of homes, schools, and healthcare facilities.⁵¹ Hamas took 100 Israeli and foreign hostages, which remain unaccounted for.⁵² The conflict has increased regional tensions, with cross-border skirmishes involving Hezbollah in Lebanon and missile attacks by Yemen's Houthi rebels.⁵³

The applicable jurisdiction and laws against the actors include war crimes for the deliberate targeting of civilians' healthcare facilities and the use of starvation as a

⁴⁷ United Nations Human Rights Office of the High Commissioner, "UN Special Committee finds Israel's warfare methods in Gaza consistent with genocide, including use of starvation as weapon of war," <https://www.ohchr.org/en/press-releases/2024/11/un-special-committee-finds-israels-warfare-methods-gaza-consistent-genocide>. (Accessed November 25, 2024).

⁴⁸ Aljazeera, "Israel-Gaza war in maps and charts: Live tracker," <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>. (Accessed November 25, 2024).

⁴⁹ Ibid.

⁵⁰ Aljazeera, "Israel-Gaza war in maps and charts: Live tracker," <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>. (Accessed November 25, 2024).

⁵¹ Ibid.

⁵² Global Conflict Tracker, "Israeli-Palestinian Conflict," <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>. (Accessed November 25, 2024).

⁵³ Ibid.

weapon.⁵⁴ These acts are considered war crimes under international humanitarian law, namely the Geneva Conventions, particularly Article 147 of the Fourth Geneva Convention, outline these violations as war crimes.⁵⁵ The systematic and widespread attacks on civilians, including the destruction of healthcare infrastructure, could amount to crimes against humanity.⁵⁶ The Rome Statute of the International Criminal Court (ICC), particularly Articles 7 and 8, defines these acts as crimes against humanity. If the attacks are with an intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, it could potentially be classified as genocide.⁵⁷ The 1948 Genocide Convention, specifically Article II, defines the crime of genocide. When Israel and Hamas had detainees and hostages with them, they were not subject to torture and inhuman treatment. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) outlines the prohibition and obligations related to torture. Suppose there is evidence to show that Israel is using starvation of civilians as a method of warfare. In that case, Israel is subject to Protocol I of the Geneva Conventions (Article 54), which prohibits starvation of civilians as a method of warfare. Suppose there is evidence to show Israel has exercised forced transfer of civilians. Israel is subject to the Fourth Geneva

⁵⁴ United Nations Human Rights Office of the High Commissioner, “UN Special Committee finds Israel’s warfare methods in Gaza consistent with genocide, including use of starvation as weapon of war,” <https://www.ohchr.org/en/press-releases/2024/11/un-special-committee-finds-israels-warfare-methods-gaza-consistent-genocide>. (Accessed November 25, 2024).

⁵⁵ United Nations Human Rights Office of the High Commissioner, “UN Commission finds war crimes and crimes against humanity in Israeli attacks on Gaza health facilities and treatment of detainees, hostages,” <https://www.ohchr.org/en/press-releases/2024/10/un-commission-finds-war-crimes-and-crimes-against-humanity-israeli-attacks>. (Accessed November 25, 2024).

⁵⁶ United Nations Human Rights Office of the High Commissioner, “There must be “due reckoning” for horrific violations, possible atrocity crimes in Gaza – UN Human Rights Chief,” <https://www.ohchr.org/en/press-releases/2024/11/there-must-be-due-reckoning-horrific-violations-possible-atrocity-crimes>. (Accessed November 25, 2024).

⁵⁷ Ibid.

Convention (Article 49), which prohibits the forcible transfer or deportation of protected persons from occupied territories unless the security of the civilians involved or imperative reasons so demand or Article 8(2)(a)(vii) of the Rome Statute, which classifies the unlawful deportation or transfer of civilians as a war crime. The Rome Statute (Article 7(1)(d)) defines the deportation or forcible transfer of population as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population.⁵⁸ Several international treaties, such as the Geneva Conventions and the Convention Against Torture, establish the principle of universal jurisdiction. That principle allows states to prosecute individuals responsible for severe violations of international law, regardless of where the crimes occurred.

The alleged crimes and accusations described above triggered the International Criminal Court (ICC) to issue arrest warrants for Israeli Prime Minister Benjamin Netanyahu, former Defence Minister Yoav Gallant, and Hamas military leader Mohammed Deif for alleged war crimes and crimes against humanity related to the Israel-Gaza conflict⁵⁹. Still, the enforcement success would depend on the cooperation of the state parties to the Rome Statute. Finally, universal jurisdiction permits states to be obliged to prosecute individuals responsible for severe violations of international law, even if committing crimes outside their territory.⁶⁰

⁵⁸ ICRC, “Rule 129. The Act of Displacement,” <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule129>. (Accessed November 26, 2024).

⁵⁹ Yahoo News, “ICC issues arrest warrants for Netanyahu, Gallant and Hamas leader,” <https://www.yahoo.com/news/icc-issues-arrest-warrants-netanyahu-171215834.html>. (Accessed November 25, 2024).

⁶⁰ United Nations Human Rights Office of the High Commissioner, “There must be “due reckoning” for horrific violations, possible atrocity crimes in Gaza – UN Human Rights Chief, “ <https://www.ohchr.org/en/press-releases/2024/11/there-must-be-due-reckoning-horrific-violations-possible-atrocity-crimes>. (Accessed November 25, 2024).

What are the defenses available for the accused? The accused in international criminal law can invoke several defenses to challenge the allegations against them. Some of the common defenses and the applicable laws or instruments:

- The accused may argue that they were following orders from a superior and had no choice but to comply with those superior orders. Article 33 of the Rome Statute states that this defense is not applicable if the order was manifestly unlawful and the person knew it was illegal.⁶¹
- The accused can claim they acted in self-defense or defense of others. This defense is recognized under international humanitarian law but must be proportionate and necessary.⁶²
- The accused may argue that they were compelled to commit the crime due to an imminent threat of death or severe injury. Article 31 of the Rome Statute includes duress as grounds for excluding criminal responsibility.⁶³
- The accused can claim they made an honest mistake regarding a fact or law that negates the criminal intent required for the offense. Article 32 of the Rome Statute provides these defenses.⁶⁴
- The accused may argue that they were suffering from a mental defect or illness that impaired their ability to understand the nature and consequences

⁶¹ SSRN, "Defences in International Criminal Law," https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1971278. (Accessed November 26, 2024).

⁶² International Criminal Law Services, "Defences," <https://iici.global/wpd/wp-content/uploads/2024/05/icls-training-materials-sec-11-defences-and-other-grounds-for-excluding-liability.pdf>. (Accessed November 26, 2024).

⁶³ SSRN, "Defences in International Criminal Law," https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1971278. (Accessed November 26, 2024).

⁶⁴ Ibid.

of their actions. Article 31 of the Rome Statute includes this as grounds for excluding criminal responsibility.⁶⁵

- The accused may argue that their actions were necessary for military purposes, but this defense is limited and must be balanced proportionately against the principle of humanity.⁶⁶
- The accused may claim that their actions were reprisals in response to unlawful acts by the opposing side. Still, reprisals are highly restricted under international law and must meet strict conditions.⁶⁷
- The accused may claim immunity from the prosecution based on their official capacity. The Rome Statute (Article 27) states that official capacity as a head of state or government does not exempt a person from criminal responsibility.⁶⁸

These defenses can be complex and require careful legal analysis to determine their applicability in specific cases.

9) **CONCLUSION**

The Israel-Gaza conflict has escalated into a major humanitarian crisis with significant allegations of war crimes and crimes against humanity. The International Criminal Court (ICC) has taken a notable step by issuing arrest warrants for critical actors, including Israeli Prime Minister Benjamin Netanyahu and Hamas military leader

⁶⁵ Ibid.

⁶⁶ SSRN, "Defences in International Criminal Law," https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1971278. (Accessed November 26, 2024).

⁶⁷ Ibid.

⁶⁸ Ibid.

Mohammed Deif, for their alleged roles in the violence. Still, the enforcement success would depend heavily on the cooperation of state parties to the Rome Statute and the willingness of the international community to uphold the principles of global justice.

The principle of universal jurisdiction highlights the global community's responsibility to prosecute individuals responsible for serious violations of international law, emphasizing the importance of justice and accountability, no matter where the crimes occurred. This principle serves as a cornerstone for ensuring that perpetrators of grave offenses do not evade justice simply due to geographic or political boundaries.

In addition to legal mechanisms, addressing the root causes of the conflict and promoting peacebuilding efforts are crucial for achieving long-term stability in the region. Diplomatic engagement, humanitarian assistance, and support for reconstruction are necessary to alleviate the suffering of civilians and create an environment conducive to lasting peace.

Resolving the Israel-Gaza conflict requires a multifaceted approach that includes legal accountability, diplomatic efforts, and humanitarian support. By addressing the immediate needs of those affected and working towards a just and peaceful resolution, the international community can contribute to ending the cycle of violence and fostering a more stable and secure future for all parties involved.

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