
RESEARCH PAPER

Prosecuting Israeli War Crimes: ICC's Jurisdiction and Palestine's Quest for Justice

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ABSTRACT

This article discusses the International Criminal Court (ICC) jurisdictional policy to prosecute Israeli war crimes perpetrated on Palestinian civilians where, on October 7, 2023, Israel attacked Gaza. Using articles of the Rome Statute, the article proves that Israel committed war crimes and crimes against humanity on October 7, 2023, which means the ICC is authorized to respond to this situation. The latest update is that Israel will not be a part of the non-member states of the ICC whereas ICC policy towards conflict took action to continue the investigative process and accelerate investigations concerning the conflict, in 2024. However, because of the compulsory jurisdiction of the ICC, it has jurisdiction over its investigation, in other countries, not to be the parties of ICC. Several aspects have played a major contribution to upholding the jurisdictional investigation law of the ICC against Israeli criminals even though Israel is not an ICC member state: Firstly, the ICC has Palestine as a state party and which, for the purpose of civil society, should be given justice. Secondly, there is push and enticement from the part of ICC member States and non-member States to start investigating the conflict attack in October 2023.

Keywords: ICC Jurisdiction, International Law, Israel, Palestine.

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INTRODUCTION

This study is meant to have a sense of ICC policy as an international institution to prosecute Israeli criminals aiming at Palestinian civil society. On October 7, 2023, there was a recent devastating and unprecedented Hamas attack on Israeli communities near Gaza. So, Israel was counterattacking by pretty much attacking the whole of Gaza City and changing the entire neighborhood of Gaza and the Strip. To exterminate Hamas, Gaza is reduced to rubble and worse things will happen. By any measure, Israel is now recognized to have killed civilians at a higher rate than in any other 21st-century war. These attacks have now become part of ongoing aggression and persecution by Israel aimed against Palestinian civilians (Brockhill & Cordell, 2019) and by

committing crimes under international law, human rights violations and cruel and malevolent acts against Palestinian civilians in the exercise of oppressive domination, Israel has also become a perpetrator. In its systematic attack on the Palestinian people, this upholds the status quo and causes extensive civilian casualty and innocent Palestinian population harm (Bo, 2021).

It denies the internationally enforced rights of civilians. In this case, Israel is a State that has satisfied the criteria of the war crime and the crime of humanity. Furthermore, the legal approach linked with the articles on crimes against humanity and war crimes has three stages. The first level is based on Article 49 paragraph 1 of the 1949 Geneva Convention; so, if a country has ratified the 1949 Geneva Convention it is obliged to issue national laws obliging any person who commits an act or orders to commit serious violations of the Convention. Second, the existing Ad hoc War Crimes Tribunal could try these violations. Thus, for instance, two Tribunals tried World War II criminals: the Tokyo Tribunal of Japanese war criminals and the Nuremberg Tribunal of Nazi war criminals in Germany. After World War II the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (International) were established. The last is the ICC created pursuant to the Rome Statute of 1998. This court tries serious crimes, and the court is permanent. The ICC is authorized to prosecute four crimes: genocide, crimes against humanity, war crimes and crimes of aggression (Flores-Liera, 2023).

International law, also known as international humanitarian law (IHL). The rules are a set of rules that try to keep civilians, people not taking, or no longer taking part, in a war, and people who are taking part, such as with combatants, from suffering the consequences of war. To achieve this goal, IHL covers two areas: Means and methods of warfare for human protection. Contents of IHL are endowed by international law and specific treaties. Apart from that, the rules of IHL are constituted by different instruments such as the Geneva Conventions (IV), which provide protection for civilians and the convention relating to the prohibition of the development, manufacture, storage and use of chemical weapons and their destruction. So ultimately it has a direct link with the humanitarian conflict of Palestinian civilians, and therefore a Palestinian civilian's law system and their rights (Woodcock, 2024).

Since crimes against humanity have been committed, Israeli perpetrators have bombed and destroyed public facilities like hospitals for Palestinian civilians on October 7, 2023, for having nothing to do with this conflict. Over 12,000 Palestinians, over 5,500 children and 3,500 women have been killed by Israel's massive attacks on Palestinian Gaza since then. Israel's decades of war crimes have included: using disproportionate force, perpetrating massacres and shooting at Palestinian civilians as a means of revenge, punishment and deterrence. Israel denied this, saying that the Palestinian rockets allegedly hit the public facilities and hospitals in Gaza, such as Al-Ahli Hospital (Obermaier, 2024), while the analysts revealed that the bombing of the hospital in Gaza was due to the Israeli fire. One may certainly consider Israel to show war crimes; given that IHL forbids war destroying public places like places of worship, hospitals and schools. Hospitals were raided, even schools were destroyed, and water and the internet were blocked. These Israeli behaviors are therefore classified as war crimes or crimes of aggression (Hakki, Stover, & Haar, 2020).

From decades until October 7, 2023, crimes tried by the ICC mechanism (genocide, crimes of humanity, war crimes, aggression) assume Israel's conduct toward the Palestinian civilian population qualifies as genocide, crimes of humanity, war crimes, or aggression. It backs up an accusation that Israel is committing an international criminal act. Israel has broken international law and has committed the ICC type of crime. Since 1948, all this time, the UN or the ICC Judiciary has not been clear about Israel, which violated international law and the IHL against Palestinian civilians. And, as that means Israel can keep attacking the Palestinians to this very day. This stain also makes Israel immune to international law (Nedilko, 2021).

Many studies have touched on the Israeli Palestinian conflict as far as diplomatic relations, the role of Non-Governmental Organizations (NGOs) and international law are concerned. Past research is important for what we know, but also gaps that can be exploited for the sake of the article. Consequently, this article is the result of previous research that began by discussing international law issues in particular how ICC jurisdiction handled Israeli crimes against Palestinian civilians during the October 7, 2023, counterattack and what led Israel to reject its jurisdictional investigation of Israel's conflict with Palestine as well as explaining the factors affecting ICC investigations in securing the enforcement of laws against the Israeli perpetrators regarding the October 7, 2023 conflict (Prihandono & Yuniarti, 2022). For example, John Quigley (2023) wrote in his research about Israeli crimes against humanity against Palestinians. This conflict results in seven million Palestinians being made refugees and having to flee to such countries as Palestine, Syria, Jordan and Lebanon. In Israel, they are forbidden to enter their own home territory (Quigley, 2023). Apart from this, Qandeel (2023) also talked about Israeli aggression. The article discusses three claims. First, they are acts of Israeli-perpetrated violence encouraged or enabled by Israeli security personnel, who are usually not themselves settler personnel. Furthermore, the study conduct an analysis of violent crimes committed by settlers and discover that they are categorized as state-sponsored crimes. Thirdly, it also represents an agreement on what constitutes a violation and their commission by a state within the meaning of international law, concerned as it is with the definition of state responsibility (Mais, 2023).

In her research discussing Israel's attacks on Palestine, Aroosa Kanwal (2022)² discusses how these attacks constructed an invisible "drone sphere" to strip the voices of resistance and protest away from Gaza (Kanwal, 2022). Pearce Clancy and Richard Falk, authors of a recent essay, argue that a recent ICC decision 14 implying territorial jurisdiction over the West Bank, including East Jerusalem, and Gaza may at first resemblance be nothing more than a procedural decision setting forth the court's power to examine Israeli criminality in 2021 (Clancy & Falk, 2021).

The research about the crimes of Israeli sexual aggression, Israeli activists Rabinovitch and Morani Kornberg talked (2019) about committing rape in times of war against Palestinian Arab women which represented such aggression. War crimes, Crimes against Humanity in Gaza, Palestine's accession to the Rome Statute in 2015, and the reasons behind the ICC's investigations are all at the heart of complex and controversial circumstances. This conflict lasts and continues thus many researchers have written on this conflict as research or papers have been published for many years. According to Ronen (2010) and Quigley (2011), when Palestinians declare their

acceptance of ICC jurisdiction, Ronen claims that the lack of a Palestinian state and Quigley focuses on whether there is statehood. To understand the conflict, Malekian (2012) illustrates the historical and cultural context of the conflict and underlines the requirement of legitimate coexistence together with respect for criminal law and international human rights. Israel's [lack of investigation] into the Gaza conflict, which Azarov (2012) points out, set a precedent for policies extending impunity for the perpetrators by simply protecting them. Collectively, these studies draw attention to the difficulties and challenges faced in addressing war crimes in Gaza within the framework of international law. There are many other studies mentioned in the literature review, one of which is: Pearce Clancy and Richard Falk talk about the ICC's recent decision that Israel has jurisdiction in the West Bank, including East Jerusalem, and the Gaza Strip in the context of the 2021 conflict. Some prior studies leave gaps within the article. Namely discussing Israeli war crimes and crimes against humanity in Gaza in 2023 in relation to the Jurisdiction of ICC. This conflict has just happened and relatively speaking, it's a rare topic for people to talk about the 7 October 2023 attack conflict. On this issue, a discussion of ICC's policy of not committing war crimes and humanity on 10-7-2023, against Palestinian civilians, and the factors that are in play in ICC investigation and enforcing law in the conflict 10-7-2023. These are the center of discussion in the article.

LITERATURE REVIEW

The International Criminal Court's (ICC) jurisdiction over non-member states has been extensively examined in academic and legal scholarship. Articles 12(2)(a) and 13(b) of the Rome Statute permit the ICC to investigate and prosecute crimes committed on the territory of a state party or referred by the United Nations Security Council. Palestine's status as a state party to the ICC since 2015 provides the legal foundation for investigations into alleged war crimes committed on its territory, even though Israel is not a party to the Rome Statute. Schabas (2021) and Cryer et al. (2019) have highlighted this mechanism as a crucial means of addressing accountability gaps in complex conflicts.

War crimes and crimes against humanity, as defined under Articles 7 and 8 of the Rome Statute, include acts such as indiscriminate attacks on civilians, disproportionate use of force, and targeting protected sites. Legal and human rights organizations, including Amnesty International and Human Rights Watch (2023), have documented incidents consistent with these definitions in the October 2023 Gaza attacks. Such findings are supported by legal analyses emphasizing the applicability of these provisions to conflict zones like Gaza, where civilian populations are disproportionately affected (Akande, 2020; Simmons, 2017).

The ICC's efforts in politically sensitive conflicts, including Israel-Palestine, face significant challenges. Non-cooperation by Israel, external diplomatic pressures, and limited resources are among the key barriers identified in the literature. However, the ICC's investigations in other jurisdictions, such as Afghanistan and Myanmar, demonstrate that it can pursue justice in the face of similar obstacles (Nouwen & Werner, 2011; Bosco, 2014). These precedents bolster the ICC's credibility and capacity to address the October 2023 Gaza conflict.

The role of member and non-member states in advocating for ICC investigations is a recurring theme in academic discourse. Kersten (2019) and Stahn (2022) argue that coordinated efforts by states and civil society organizations are instrumental in ensuring that the ICC prioritizes accountability for international crimes. Evidence-based submissions from non-governmental organizations documenting violations of international law serve as critical tools for advancing these cases.

The justice gap for Palestinian civilians has been a focal point in the literature, with scholars and human rights advocates underscoring the importance of the ICC in providing a legal forum for addressing decades of impunity. Palestine's state party status within the ICC framework is seen as a significant step toward amplifying its representation in global justice mechanisms. This status also strengthens the argument for the ICC's jurisdiction over the October 2023 Gaza attacks, highlighting the imperative of addressing the conflict through international legal avenues (Kretzmer, 2017; Ben-Naftali & Shany, 2020).

The literature reveals a complex interplay of legal, political, and practical considerations shaping the ICC's role in investigating alleged war crimes in Gaza. Despite the challenges, the Court's jurisdictional framework, combined with international advocacy and Palestine's state party status, underscores its potential to contribute meaningfully to justice and accountability in the Israel-Palestine conflict.

CONCEPTUAL AND THEORETICAL FRAMEWORK

The conceptual and theoretical framework for this study is grounded in the principles of international criminal law, particularly the jurisdictional provisions of the Rome Statute of the International Criminal Court (ICC). It draws on the theory of universal jurisdiction, which asserts that certain crimes, such as war crimes and crimes against humanity, are so egregious that they warrant accountability regardless of territorial or national affiliations. The framework also incorporates legal positivism, emphasizing the binding nature of international treaties and customary international law in holding states and individuals accountable for violations. Palestine's statehood recognition under the ICC provides a conceptual basis for jurisdiction, reinforcing the application of international law to address crimes committed on its territory. The study further aligns with the theory of global justice, which advocates impartial and equitable legal responses to atrocities, transcending political and diplomatic barriers. Together, these frameworks guide the analysis of ICC jurisdiction and its role in addressing the alleged war crimes in the Gaza conflict of October 2023.

RESEARCH METHODOLOGY

The article uses qualitative methods and normative legal approaches, i.e. cases are studied which violate the laws currently existing in society. The primary, secondary and tertiary legal materials are analyzed (Suherman & Sugiyono, 2024). In the article, data was processed in a deductive way, i.e. we drew the essence of a conflict from the general problem to a specific one. In addition, data obtained from legal materials shall be further identified, along with international legal provisions and the use of the legal framework using a statutory and contextual approach. The analysis is thus intended to be a reference for the material of this study.

JURISDICTIONAL PERVASIVENESS OF ICC

The ICC is an international judicial body established in The Hague, Netherlands in 1998 by the Rome Statute and that has a direct concern with terrible offences in this world. It is different from that of another international judiciary institution, like (ICJ). Attached to the UN Charter is the provision for the International Court of Justice (ICJ), one of the UN's own sections. The operational budget and organizational structure of the ICC are determined by the contributions made by parties to the 1998 Rome Statute. The ICC is under int. law as a subject with international personality, (Braumann, 2023) and can perform its functions in its member States' territories and other States with special agreements. Thus, due to the narrow time and geography of the ICC, the ICC judiciary is limited in its jurisdiction and the power of its judges due to the fact that the only legal subjects of the ICC are certain areas. The ICC can only try individuals based on those offences that can be charged (admissible': *ratione materiae*) or personal jurisdiction (*ratione personae*). Those committing crimes under the ICC jurisdiction require individual accountability. Civil servants and military and civilian commanders are included in this. As, under the statute of Rome, it is the jurisdiction of the ICC over offences that are complementary to those of national jurisdiction. The most serious crimes, war crimes, crimes against humanity and genocide, are dealt with by a new system of domestic and int. courts created by the ICC.

These crimes are qualified by the world community as the most serious, postulated in Articles 5-8 of the 1998 Rome Statute. Genocide encompasses harmful acts such as murder or alternatively such as abuse, the prevention of birth and removal of children to another group. According to Article 7, under the Statute, a crime against humanity includes any act of direct assault, on a widespread or organized basis, against the civilian population. Article 9 of the Statute defines war crimes as serious violations of the 1949 Geneva Conventions. Other included, depriving them of the right to trial, to practice systematic deportations and detention and torture practices, or inhuman and degrading treatment, including the utilization of the biological tests. Other violations are deliberate intent to cause great suffering or serious body injury, extensive destruction, destruction not justified by military necessity, or extremely injurious taking of property or hostage taking. Different from the three types of criminal acts, the latter do not comprise this law and they neither clarify criminal acts of aggressiveness. It should not be read that every violation of the law-and-order conflict is a violation of the UN charter. Unfortunately, the Charter has not defined precisely what the crime of aggression is, save that, in the case of acts threatening peace and aggression, the Security Council, under paragraph 7 of the Charter, may adopt such lawful measures as appropriate, including actions up to and including the sending abroad of multinational forces (Hassan & Rusli, 2022).

PALESTINIAN CIVILIANS TARGETED FROM RETALIATORY ATTACKS RESULTED FROM ISRAELI WAR CRIMES VIOLATIONS

IHL violations seriously affect civilians or enemy fighters during armed conflicts known as war crimes. Such crimes originate with the Geneva Conventions, Hague Conventions, and the Rome Statute for the ICC. This is codified most recently in Article 8 of the 1998 Rome Statute. They usually always entail prohibited acts such as murder, rape, attack of civilians, looting and destruction, which are key to the survival of civil society. Because the Geneva Conventions protect

civilians and anybody excluded from combat, etc., protected people are those individuals who do not take part in hostilities. These are people in refugee camps that are civilians that don't take refuge in shelters where the military is present. Since 1996, most violent incidents have taken place in the ambit of armed conflict, whether internal or external (Mullins, 2023).

Violations, serious or otherwise, of the rules of war, whether carried out intentionally or not, are known as war crimes. Such a war crime is what Israel does by carrying out planned hostage-taking attacks against civilians. The same is true of attacks in which Israeli airstrikes or rockets are fired indiscriminately or that target Palestinian civilians. Those by whom war crimes are committed and those who lead, support or facilitate them may face criminal penalties. Under this principle, the command is responsible: civilian leaders who are aware of crimes by other countries and do nothing to prevent them or against the perpetrator who commits the crime are criminally responsible. Because Israel has faced great fear of attacks from Hamas, war crimes have been and are being committed over the past months by Israel. Indiscriminate attacks violating the law, targeting civilians, are carried out by the forces. Nearly 1,400 Palestinians have lost their lives since October 7, 2023. But Israel keeps pounding the Gaza Strip, which has 2.3 million inhabitants. Since October 7, nearly 7,000 Palestinians have died elsewhere in Gaza, the Gaza Health Ministry said, including about 3,000 children (Al-Yagon, Garbi, & Rich, 2023). Sometimes entire blocks, even entire communities, are destroyed by bombs. In the latest conflict, even in dense population centers, Israeli forces did use white phosphorus, a chemical compound that burns up when it encounters oxygen and causes horrific, severe burns. White phosphorus can burn to the bone; 10 per cent of a human body burned is usually fatal. Israel also has imposed collective punishment on Gazans, blocking electricity, food and water. Secondly, a war crime, Israel deliberately obstructed humanitarian aid getting to those in need. The Israeli orders and directives to evacuate most of Gaza's civilian population thereafter, for their own purposes and military purposes instead of partly protecting Palestinian civil society are the violations followed by the October 7, 2023, attack. Thirdly, evacuation in this case is illegal, and it must have as a condition that civilians be allowed to return as soon as possible to their place of origin (Sefriani & Erlangga, 2022).

Research by one of the International Organizations (Amnesty) shows that the attacks of Israel are very intense and indiscriminate, with all buildings, facilities and especially Palestinian civilian residents of Gaza being completely destroyed. The terrible destruction and, in some cases, the death of entire families, were a result of the aerial bombardment carried out by Israeli forces between October 7 and 12. Every case of violation of the law committed by Israel has violated the law, including that it has acted in breach of IHL, failed to take precautions to spare civilians, carried out indiscriminate attacks that do not discriminate between civilians and combatants or attacks which may be aimed at civilian objects. Israel's intent is to wipe out Hamas, but the retaliatory targets brush lives free. Their bulldozers fell on the street after street of residential buildings. Massive scale killing of civilians and destroying of critical infrastructure. Shortly after, new restrictions drained Gaza of water, medicine, fuel and electricity. Eyewitness and survivors' testimonies repeatedly highlighted the Israeli attacks on Palestinian families, resulting in so much destruction that those who even survived have great disabilities (Alashqar, Abdul Rahim, & Abd Aziz, 2023).

Israeli violations against Palestinian civil society were researched by the Amnesty International organization. However, if we look at the start of Israel's conflict with Palestine there are many cases of Israeli violations toward the Palestinian people. For more than 16 years, Israel's illegal blockade has turned Gaza into the world's largest outdoor prison. It must not be turned into a giant graveyard, and the international community must act now to prevent that, said Amnesty Int. In addition, with this situation, Palestinian civilians are cut off from all access, as is access to citizenship and access to aid. In the occupied West Bank, including East Jerusalem, meanwhile, Israeli forces or settlers have killed at least 79 Palestinians, including 20 children, as the use of excessive force by the Israeli army has increased. In that sense, Israel is a customer not only to Gaza residents but to all Palestinian people in the West Bank with Israel's actions during the war, which was declared a war crime according to (2) (b) (i) Rome Statute, article "*war crime against civilians*" (Gillett, 2023).

CONDUCT OF INTERNATIONAL CRIMINAL COURT TOWARDS ISRAELI VIOLATIONS

As stated in paragraph 7 of the Rome Statute "crimes against humanity" and paragraph 8 "war crimes" each of the following actions was undertaken as a part of the mass attack or a systematic action against the civilian population, and paragraph 8 article 2 of the Rome Statute "(a) Grave breaches of Geneva Conventions of 12 August 1949, namely of any of the prohibited acts with respect to persons and property protected by Geneva convention". The Israeli military counterattack in October 2023 is a war crime and crimes against humanity (Uin Maulana Malik Ibrahim Malang, 2021). Because of these findings, ICC jurisdiction can exercise full power in prosecuting and investigating Israel's war crimes and crimes against humanity. The statute of the ICC says now the ICC is complementary with national jurisdiction. There are 139 states which ratified the ICC agreement. This agreement establishes a new system linking national and international court systems to deal with the most horrific crimes: As well as war crimes, and crimes against humanity, genocide organizes the crimes into categories which are based on the Rome Statute of Articles 5. For the enforcement of international criminal law, dating back centuries, a permanent and independent international organization were the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The fact that the international community has an institution that comes after the above two is the ICC, which recognizes victims of international crimes and that the prohibitions of the ICC are permanent, where national mechanisms and institutions do not have to do so, ensures that the crimes committed will never go unpunished. When national courts cannot fulfil their function in this regard, these international institutions must either investigate or do something about the violations (Benini, 2024).

The incompetence and reluctance of national courts to face such situations, when law enforcement in the National Court Forum is compelled to do so, are due to some considerations (particularly political considerations). Thus, the ICC has only secondary jurisdiction after national courts and has only the power to act in limited situations when the state in question is unwilling or unable to bring to trial 'crimes falling within its jurisdiction.' It follows that cooperation and

complementarity between national courts and international courts must, therefore, be achieved in the application of criminal law (Lubis, 2016).

This is the basic functioning of the principle of complementarity carried out by the ICC in its Articles 17 and 53 of the Rome Statute meaning that a case cannot be admitted to the ICC if the country that has jurisdiction to investigate it is proceeding with an investigation of the case. However, the concept of complementarity provides for the ICC jurisdiction in cases where a state is unable or unwilling either to proceed further with an investigation or when there is bad faith in the state investigation i.e. when it is abused to shield the individual from criminal liability. It simply means that the ICC has secondary competence, and it should be competent only when states have failed in prosecuting international crimes. Complementarity being case-dependent, the ICC and the states must work together to guarantee that all atrocities in each situation are covered (Yang, 2023).

Regarding the attack in which several civilians were killed, their houses and facilities turned to rubble. It is so interesting that we have so many groups, organizations, and so many countries filing lawsuits against the ICC, and so there have been Palestinian human rights groups that have urged the ICC to have jurisdiction to look into war crimes in Gaza. The ICC immediately stated that the court is investigating methods to try Israeli leaders for alleged war crimes in Gaza while 'so', the ICC's current policy is stated to investigate cases under Palestinian jurisdiction for alleged atrocities committed in Gaza. The Palestinian cases before the court relate to cases being examined in which Palestinian jurisdiction over crimes allegedly committed in Gaza is being considered (Yusoff & Nordin, 2021).

During the visit to Egypt's Rafah border crossing on October 29, ICC prosecutor Karim Khan confirmed that there were additional crimes in the investigation, adding that under the Rome Statute, blocking humanitarian aid to civilians could be criminalized. When Israel had agreed to no denial of court jurisdiction in the context of the conflict of the October 7 attack, then, The Rome Statute, which provides the legal basis for the ICC to investigate alleged crimes in its member territories, was the founding Rome Statute of the ICC (Zavorotko, 2023). The actions of Israel against Palestinian civilians on October 7, 2023. An ICC jurisdiction policy confirms that there is currently ICC jurisdiction investigating the situation in Palestinian Gaza and trying to speed up the investigation. The ICC will still go for justice and will try to achieve accountability, even in 2024 and in the current update; Israel is still not among the ICC member states. Then, the ICC also insisted that it is in charge of 'crimes committed inside of the state party and with reference to nationals of the state event with the aim to realizing justice for victims and respecting the Declaration of Rome Statute as an impartial state (Clancy & Falk, 2021).

Until a decade ago, Israeli criminals were still in the process of applying to be investigated for the crimes they had committed in the previous decades, war crimes and humanity against the Palestinian civilian population. The first reason is that constraints on the ICC's investigation into its jurisdiction are such that the legal process may have important implications for broader efforts to render accountability, which future may well come to be significant. Furthermore, this obstacle also impedes the investigation because Israel is not a signatory to the state members of the ICC

and the ICC fails to issue arrest warrants against Israeli war crimes and crimes against humanity on Palestinian civilians (Omerović & Grande, 2023).

ICC LAW NOT TO BE RATIFIED BY ISRAEL

Israel is not a state party to the ICC Treaty and Israel has done its best to ensure that there is no accountability for Israel's violations against Palestinian civil society and that the ICC's jurisdiction has never worked in relation to Israel's violations in relation to war crimes and humanitarian crimes against the Palestinian civilian population. Initially, a very active and consistent supporter of the very idea of the International Criminal Court and its materialization as the Rome Statute, the Government of the State of Israel loudly and proudly asserts its recognition of the vital, and in any event indispensable, importance of an effective judicial body of the rule of law and the prevention of impunity. Israel has been one of the originators of the concept of the ICC, and through its leading lawyers and statesmen has actively participated in all stages of establishing such courts since the early 1950's. Its representatives, who, in their hearts and minds, possess, individually or collectively, in entirety or in part, the collective, and often personal, memories associated with the Holocaust and of unparalleled horror in the course of human history, enthusiastically, with acutely sincere and serious feeling, have taken part in all stages of the drafting of the Statute (Chlevickaitė, Holá, & Bijleveld, 2023). Israel said at the Rome Conference in 1998 that it was deeply disappointed and hurt that the Statute contained formulations tailored to meet the political agendas of some countries. Further, Israel warned that this unfortunate practice could amount to an abuse of the Statute as a political tool (Alasttal et al., 2023).

Today, in that spirit, the Government of the State of Israel signs the Statute, while rejecting any effort to give political reinterpretations to its provisions aimed at jeopardizing the existence of Israel as a Jewish state or denying its citizens their rights. Israel's hope is that its statement of concern about the move will be remembered as a fundamental warning against politicization — a danger that could cripple what should be a dispassionate central body and at the same time serve the world. Nevertheless, Israel maintains the character of a democratic society, continuing to hold political and academic debates on the ICC and its relevance for international law and for the community of nations. An important means of assuring that truly heinous criminals can be brought to justice is the essence of the Court. Meanwhile, those who violate basic principles of humanity and the public conscience will be punished, while those violating those simply have never been written into guidelines. As such the signing of the Rome Statute by Israel could allow Israel to ethically associate with this basic idea, which precipitated the creation of the Court. According to Article 127 of the Statute, which adds: "allowing a State to withdraw from the ICC, and withdrawal takes effect one year after notification of deposit and does not affect prosecutions that have already been initiated" it withdrew its signing in 2002 (Ablamsky et al., 2023). The withdrawal from ICC members regarding its conflict with Palestine was taken advantage of by Israel. One, who committed war and humanitarian crimes against Palestinian civilians. It is under ICC treaty law that a country is only required to adhere to a treaty if it has 'signed up' and 'ratified' that treaty. The ICC cannot issue arrest warrants for said Israeli military for the reason that Israel is not a member state of the ICC and is thus principally unable to prosecute the Israeli military for the war crimes and crimes against humanity committed against Palestinian civilians. It is also an

impediment for the ICC to investigate. The reason why it always leads with its role as a non-party state to the ICC, employing state sovereignty as a limiting fact in the ICC's jurisdiction (Aasi, 2022).

An obstacle for the ICC to exercise its jurisdiction? (Grzybowski & dos Reis, 2024). Israel had previously withdrawn from the Rome Statute agreement, leading the ICC to say it couldn't handle a case involving Israel. However, if the UN Security Council refers the situation to the ICC, or if the state accepts its jurisdiction, the ICC may still have jurisdiction for crimes that took place on a non-party state's territory. As a non-ICC member country, Israel has no obligation to a treaty. Thus, during the 7 October conflict period, the ICC's (Interim) policy was to commence investigations of the cases surrounding the 7 October case in Gaza, Palestine, in terms of the atrocities resulting from actions by Israeli perpetrators. Immediately following these statements, the court said the ICC was looking into cases of alleged war crimes and humanity in Gaza, and investigated by these means to try Israeli leaders for alleged war crimes in Gaza (Khoirunnisa et al., 2024).

ASPECTS THAT HINDER THE JURISDICTIONAL INVESTIGATIONS OF ICC IN ENFORCING LAWS AGAINST ISRAEL

As Israel is not a member of the ICC, the ICC policy will still carry out investigations into the October 7, 2023, conflict which targets Gaza civilians and even step up the pace of investigations (Mardiyanto & Hidayatulloh, 2023). The ICC's policy of continuing to carry out investigations will even speed up investigations, this is due to several factors that influence ICC investigations in law enforcement against Israel: Firstly, Palestine is a state party to the ICC. The State of Palestine accepted the Rome Statute on January 25, 2015, and the Statute came into force for the State of Palestine on April 1, 2015, that means Palestine has to receive justice as a state party to the ICC, and that leads to ICC further taking on the investigation into this very protracted conflict of the last ten years. In 2008-2009, the ICC's policy was not to investigate, simply because it did not have the authority regarding its jurisdiction in Israel and even though the ICC's policy was not to carry out investigations in 2008-2009 it continued investigating Israeli crimes targeting civilians in relation to the October 7, 2023 attack due to one of the meanings of Article 12(2) which is that the ICC will exercise its jurisdiction if citizens of non-parties who commit crimes in the territory of a state party to the ICC (Clancy & Falk, 2021).

In other words, the amount of encouragement and pressure from ICC members as well as from non-member countries, notably Turkey, was the second factor (Darajat, 2016). Israeli attacks on Gaza are war crimes and crimes against humanity and must be prosecuted for such a crime under international law," Turkish President Recep Tayyip Erdogan asserted on October 7, 2023, during the hot war" (Gunawan & Astutik, 2019). Qatari Prime Minister Sheikh Mohammed bin Abdulrahman bin Jassim Al Thani also called for a "comprehensive and impartial international investigation into what he called Israeli crimes in Gaza." While many countries demand an investigation of Israel's war and crimes against humanity targeting civilians, other countries remain silent. Indonesia, Malaysia, Jordan, Maldives, Namibia, Pakistan, Iran, Morocco, South Africa, Bangladesh, Bolivia, Comoros, and Djibouti are some of them who condemned the so-called crimes against humanity with war against people of Gaza and occupied Palestine on October

7th, 2023. The ICC has taken a high position with regard to the Palestinian people as OPIC issues pressure on ICC member states such as South Africa, Bangladesh, Bolivia, Comoros, Djibouti, Jamaica, Maldives and Namibia which, in turn, could lead to investigations by the ICC on Palestine crimes against humanity including those against the people of Palestine 7 October 2023 (Southall, MacDonald, & MacKenzie, 2024).

Referral to Situations by the State Party according to Article 14 of the Rome Statute. Paragraph 1 “The State Party may refer to the Public Prosecutor the situations for which one or more crimes falling under the jurisdiction of the Court seem to have occurred and request the Public Prosecutor to investigate the situation with a view to determining if one or more specific persons should be tried for the commission of the crime.” “If possible, the referral must be informed of the relevant circumstances and accompanied, under the circumstances, by supporting documents available to the Referee which state that the ICC has an ongoing obligation to investigate the events of October 7, 2023, in Gaza” (Paragraph 2) (Kattan, 2020). Though the decade leading up to the conflict had witnessed the failure to prosecute Israeli war crimes and crimes against humanity committed against Palestinian civilians, there were no prosecutions (Baranyanan, Firmandayu, & Danendra, 2024). Within our courts, there is no doubt there are limitations. However, the ICC’s jurisdiction is one that has earned credibility because it possesses the institutional courage to stand against those who are behind Israeli criminality (Clancy & Falk, 2021).

CONCLUSION

Generally, a war must have its rules set by international law. Provisions of the Rome Statute and IHL become the provisions of international law. This was drawn from several reports on data based on the Israeli October 7, 2023, counterattack. Nearly 100 journalists were killed, around 10,000 children killed – including newborn babies, more than 24,000 children were injured, and over 1,000 women killed. The deaths were mostly the result of Israeli airstrikes. Israel also tightened its blockade of Gaza, cutting off food, water, electricity and fuel, and bombing one of Gaza’s hospitals. Based on the analysis presented in the article, Israel’s counterattack striking civilians on October 7, 2023, is a war crime and a crime against humanity. Yet, as of the last update in 2024, Israel is not a party to the Rome Statute which is the treaty by which the ICC was created and at that time Israel was a member country of the ICC. On 1 July 2002 the Rome Statute entered into force. Further, as of 2024, Israel has not ratified or acceded to the Rome Statute. The ICC’s jurisdiction over crimes on the territory of a state or by its nationals is limited for Israel because it is not a member of the ICC. However, the ICC still has jurisdiction over the crimes which occur in the territory of the nonparty state if the state consent to the jurisdiction of the ICC or if the situation is referred to the ICC by the UN Security Council in the terms of Article 13 of Rome Statute, and if a nonparty state commits a crime in the territory of a state party with the article 12(2) (Rome Statute, 2001). It said that the investigation would continue and accelerate in October 7, 2023, attack on civilians in Gaza. One of these factors that affect the ICC’s investigative jurisdiction in applying the law to Israel in enforcing laws against it concerning the October 7, 2023, conflict is that Palestine is a state party to the ICC which should be avenged. Moreover, there is much encouragement and pressure from non-member countries and ICC member countries

to investigate the conflict attacks in October 2023. And it's expected that if member states and non-member states contributed their collective stance in favor of Palestinian civilians against the genocide spread by Israel, ICC will manage to exercise its forceful compulsory jurisdiction over Israel.

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