

War Crimes Within The Framework of International Humanitarian Law And The Rome Statute: An Analytical Study of Israel-Palestine Conflict

**Iskandar Iskandar¹, Muhammad Irsan², Didin Nurul Rosidin³,
Uu Nurul Huda⁴, Ryan Fachryan Lesmana Putra⁵**

¹Faculty of Education, Social, and Technology, Muhammadiyah University of Kuningan, Kuningan, Indonesia

²Melbourne Law School, University of Melbourne, Melbourne, Australia

³Faculty of Islamic Theology and Humanity, Syekh Nurjati Cyber State Islamic University, Cirebon, Indonesia

⁴Faculty of Islamic Law, Sunan Gunung Djati State Islamic University Bandung, Bandung, Indonesia

⁵Faculty of Education, Social, and Technology, Muhammadiyah University of Kuningan, Kuningan, Indonesia
iskandar@umkuningan.ac.id

Abstract

This study aims to examine how war crimes are conceptualised and enforced within the framework of International Humanitarian Law (IHL) and the Rome Statute by analysing the Israel–Palestine conflict as a prolonged and politically contested armed conflict in which serious violations against civilians persist with limited accountability. Using a normative legal research design, this article applies a statutory and case-based approach through doctrinal analysis of the Geneva Conventions, Additional Protocols, and the Rome Statute, supported by qualitative examination of ICC-related documents, United Nations reports, and verified secondary data to assess the implementation of core IHL principles, particularly distinction and proportionality. The findings demonstrate that recurrent violations committed by both parties are not primarily caused by normative gaps in international law, but rather by structural enforcement barriers, including the ICC’s jurisdictional and admissibility constraints, restricted access to evidence, lack of state cooperation, political interference, and selective enforcement through international institutions, especially the UN Security Council. These obstacles contribute to an enduring enforcement deficit that weakens civilian protection and perpetuates impunity in asymmetric and protracted conflicts. The novelty of this study lies in systematically linking fundamental IHL principles—distinction, proportionality, and the prohibition of excessive force—to their qualification as war crimes under Article 8 of the Rome Statute, while critically demonstrating how political realities and institutional dependence on state cooperation undermine the effectiveness of international criminal accountability mechanisms. This research highlights the urgent need to strengthen coordination among international institutions, enhance investigative access and evidentiary reliability, and promote more consistent and impartial enforcement strategies to ensure that IHL and international criminal law operate as effective deterrents and justice-delivering instruments in contemporary armed conflicts.

Keywords: *International Humanitarian Law; Israel-Palestine Conflict; The Roman Statute; War Crimes.*

1. INTRODUCTION

The long-standing and complex tension between Israel and Palestine constitutes a multifaceted conflict, extending beyond mere territorial disputes.¹ Rather than being confined to questions of sovereignty, the conflict embodies intertwined historical, political, and legal dimensions that continue to generate unresolved issues within the framework of international law and human

¹ Fadhila Inas Pratiwi, M. Aryo Rasil Syarafi, and Demas Nauvarian, “Israeli-Palestinian Conflict beyond Resolution: A Critical Assessment,” *JSP: Jurnal Ilmu Sosial Dan Ilmu Politik* 26, no. 2 (2022): 168–82, <https://doi.org/10.22146/jsp.66935>.

rights. Rooted in a lengthy historical background, the conflict is fuelled by competing claims over territories deemed sacred by both Jews and Muslims. Following the United Nations' partition plan and the establishment of the State of Israel, the conflict has evolved into a protracted armed confrontation characterised by recurring hostilities and the absence of a sustainable legal and diplomatic resolution.²

The Israeli-Palestinian conflict attracted significant international awareness due to the involvement of other nations with strategic and political interests in the Middle East. International engagement in the conflict extends beyond mediation efforts and is marked by political alignment and material support for both parties. Support for both sides comes from various countries, with Israel backed by Western governments, notably the United States, while Palestine receives support from numerous Arab and Muslim states. Such involvement, particularly in the form of military and economic assistance, has contributed to the prolongation and intensification of hostilities rather than facilitating effective conflict resolution.

From the perspective of international law, the Israel-Palestinian conflict has raised many considerable controversies regarding human rights violations, the excessive use of military force, and the status of the occupied territories. Areas such as the Gaza Strip and the West Bank have become focal points where military operations and blockades are frequently implemented, resulting in significant suffering for civilian populations. These practices raise serious concerns regarding compliance with International Humanitarian Law, particularly in relation to civilian protection and the regulation of hostilities. Israel, on the other hand, justifies these actions as necessary for safeguarding its security against the threat posed by militant groups operating in these territories.³ This legal justification continues to be contested within international legal discourse, especially regarding the proportionality and necessity of force used. The conflict has also generated persistent criticism of the United Nations and other international institutions, which are often perceived as facing structural and political limitations in delivering effective protection and accountability mechanisms for victims.

The two sides hold divergent views regarding the most appropriate solution to end the conflict. While a segment of the international community supports a two-state solution, envisioning peaceful coexistence between Israel and Palestine as two independent states, major obstacles remain. Unresolved disputes over borders, the legal status of Jerusalem, and the right of return of Palestinian refugees continue to hinder diplomatic progress. For many observers, the Israeli-Palestinian conflict illustrates the limitations of international diplomacy in addressing deeply

² Krzysztof Izak, "The Jewish-Palestinian Conflict . History and the Present," *Terrorism – Studies, Analyses, Prevention*, no. 6 (2024): 289–404, <https://doi.org/https://doi.org/10.4467/27204383TER.24.027.20247>.

³ Hendrianto, "Strategi Keamanan Siber Israel Dalam Menghadapi Ancaman Siber Untuk Menjaga Stabilitas Keamanan Nasional," *LINO: Jurnal Ilmu Hubungan Internasional* 1, no. 2 (2021): 137–46, <https://doi.org/https://doi.org/10.31605/lino.v1i2>.

rooted conflicts while simultaneously testing the credibility of international legal norms related to justice, peace, and humanity.

In general, the concept of warfare within the framework of International Humanitarian Law (IHL) and the Rome Statute plays a crucial role in regulating conduct during armed conflict, with the primary objective of mitigating human suffering.⁴ IHL establishes strict standards for the protection of civilians, prisoners of war, and other non-combatants, requiring all parties to adhere to fundamental humanitarian principles. These principles include distinction, proportionality, and precaution, which collectively seek to balance military necessity with humanitarian considerations. Furthermore, the Rome Statute of the International Criminal Court (ICC) provides the legal basis for prosecuting war crimes, crimes against humanity, and genocide, introducing individual criminal responsibility as a central mechanism for accountability in armed conflicts.⁵

In the context of the Israel-Palestine conflict, the application of IHL principles and the Rome Statute presents complex legal challenges related to military operations, territorial occupation, and the proportional use of force. One of the most frequently debated issues concerns the impact of military actions on civilian populations. Israeli military operations in the Gaza Strip and the West Bank have repeatedly been criticised for allegedly exceeding the limits of proportionality under IHL, resulting in extensive civilian casualties and infrastructure damage. Conversely, rocket attacks and acts of violence carried out by Palestinian militant groups also raise serious concerns regarding violations of the principle of distinction and the protection of Israeli civilians.⁶ This reciprocal pattern of hostilities demonstrates the difficulty of enforcing IHL norms in asymmetrical and prolonged conflicts.

The ongoing conflict has resulted in substantial casualties. Recent reports indicate continued fatalities among Israeli military personnel during ground operations in Gaza, reflecting the intensity of hostilities since October 2023. At the same time, civilian casualties in Gaza have increased significantly. Reports from humanitarian agencies document civilian deaths, including women and children, following airstrikes on densely populated areas and civilian shelters. These developments further underscore the urgent need for effective legal mechanisms to protect civilians during armed conflict.

The Israeli occupation of Palestinian territories further complicates the legal context under international law. IHL imposes specific obligations on occupying powers, requiring the

⁴ Medyline Agnes Elias and Agustinus Supriyanto, "Tanggung Jawab Non-State Armed Groups Dalam Non-International Armed Conflict Berdasarkan Hukum Humaniter Internasional," *Tumou Tou Law Review* 3, no. 1 (2024): 23–30, <https://doi.org/https://doi.org/10.35801/tourev.v3i1.48776>.

⁵ Saqiba Saleem et al., "The Role of the International Criminal Court Against War Crimes," *IJHS: Jurnal Internasional of Human and Society* 4, no. 02 (2024): 940–49, <https://doi.org/10.4108/eai.27-7-2022.2342432>.

⁶ Pnina Sharvit Baruch, "The Report of the Human Right'S Council Commission of Inquiry on the 2014 Operation in the Gaza Strip - a Critical Analysis," *BRILL: Israel Yearbook on Human Rights* 46 (2016): 29–102, https://doi.org/10.1163/9789004331181_003.

protection and welfare of the occupied population.⁷ Israel's continued occupation of the West Bank and the expansion of settlements have been widely regarded as inconsistent with the Fourth Geneva Convention, particularly the prohibition on transferring civilian populations into occupied territory. Additionally, restrictions imposed on the Gaza Strip through blockades and access limitations are often characterised as forms of collective punishment, a practice explicitly prohibited under IHL.

The application of IHL in the Israel-Palestine conflict highlights the immediate and long-term impacts of the conflict on civilian populations. In the affected areas, people face daily challenges in meeting basic needs such as access to clean water, electricity, and healthcare services, which are often disrupted by military actions and blockades⁸ The destruction of civilian infrastructure and prolonged restrictions on humanitarian access contribute to systemic humanitarian degradation. These conditions not only affect present populations but also generate long-term social and psychological consequences for future generations.

In addition to the territorial impacts, the war between Israel and Hamas has resulted in a significant loss of life. A study published on January 9, 2025, suggests that the death toll in the conflict is likely to be about 40% higher than the official reported figures. Researchers estimate that around 64,260 deaths from traumatic injuries occurred between October 2023 and June 2024, with 59.1% of these casualties being women, children, and individuals over the age of 65. The study also highlights that the destruction of healthcare infrastructure in Gaza contributed to the underreporting of casualties.⁹

Ultimately, this situation reveals that although the principles of International Humanitarian Law and the Rome Statute are theoretically intended to protect humanity, their implementation in conflicts such as Israel-Palestine still faces many obstacles that must be addressed in order to achieve sustainable peace. In recent years, academic research in Indonesia on the Israel–Palestine conflict and International Humanitarian Law (IHL) has explored diverse aspects of international law, the implementation of humanitarian principles, and diplomatic efforts. One of the earliest and most relevant studies was conducted by Ho (2019), who examined the application of IHL in the armed conflict between Palestine and Israel. The strength of Ho's research lies in its detailed description of the implementation of IHL and the identification of various humanitarian law violations committed by both parties during the conflict. This study also provides an important foundation for understanding how humanitarian norms are applied in modern warfare. However, its main weakness is that it remains largely descriptive and does not offer a comprehensive analysis of accountability mechanisms under international criminal law, particularly within the framework of the Rome Statute and the jurisdiction of the International Criminal Court (ICC).

⁷ AFP, "Militer Israel Sebut 4 Tentara Terbunuh Di Gaza Utara," *voa indonesia*, n.d.

⁸ Christie, Suha Ma'rifa, and Priliska, "Analisis Konflik Israel Dan Palestina Terhadap Pelanggaran Hak Asasi Manusia Dalam Perspektif Hukum Internasional."

⁹ Reuters, "Studi: Korban Tewas Perang Gaza Bisa Tembus 40% Lebih Banyak," *voa indonesia*, 2025.

Another significant study was conducted by Muslimma (2023), together with Widyastuti and Husna, who investigated the role of humanitarian law in the Israel–Palestine conflict by highlighting how international conventions regulate the protection of war victims and the consequences of violations against civilians in conflict zones.¹⁰ The strength of this research lies in its interdisciplinary perspective that links IHL and human rights protection, providing a broader humanitarian understanding of the conflict’s impact on civilians.

Unlike previous studies, the present research seeks to address these limitations by offering an integrative legal analysis of warfare within the framework of IHL and the Rome Statute, with specific emphasis on accountability and enforcement challenges in the Israel-Palestine conflict. The novelty of this study lies in its systematic linkage between core IHL principles, proportionality, distinction, and the prohibition of excessive force, and their qualification as war crimes under the Rome Statute. Furthermore, this study critically examines the role of the ICC in investigating alleged war crimes, highlighting the political and jurisdictional constraints that limit the Court’s effectiveness. By analysing compliance by both parties and assessing long-term humanitarian impacts, this research bridges normative legal analysis and practical enforcement challenges.

Accordingly, this research aims to examine the degree to which the parties to the Israel–Palestine conflict adhere to or breach the principles of International Humanitarian Law, to evaluate the effectiveness of international accountability mechanisms exercised by the ICC, and to formulate strategies for enhancing the enforcement of humanitarian law in contemporary armed conflicts.

2. METHOD

This study adopts a doctrinal legal research method by applying both a statutory approach and a case-based approach to analyse the notion of warfare as regulated under International Humanitarian Law (IHL) and the Rome Statute, with particular attention to the Israel–Palestine conflict. The statutory approach is conducted through a structured examination of primary legal sources, namely the Geneva Conventions, their Additional Protocols, and the Rome Statute of the International Criminal Court, to evaluate the legal norms governing armed conflicts and individual criminal liability. Meanwhile, the case-based approach focuses on the Israel–Palestine conflict as a contemporary armed conflict to assess the implementation of fundamental IHL principles, especially the principles of distinction and proportionality, in military actions carried out by both parties. Comprehensive content analysis is conducted on authoritative legal documents, United Nations and ICC-related reports, and verified digital materials such as satellite imagery and video documentation, which are utilised strictly as supporting legal sources to contextualise alleged violations of IHL and international criminal law. Secondary data concerning social and humanitarian impacts are incorporated solely as contextual analysis to

¹⁰ Liska Muslimma, Maya Widyastuti, and Lenny Husna, “Pelanggaran Dalam Hukum Humaniter Internasional Pada Perang Isael Terhadap Palestina,” *Prosiding Seminar Ilmu Sosial & Teknologi (SNISTEK)*, 2024, 200–206.

illustrate the broader consequences of legal violations, without constituting independent empirical or psychological research. The methodological contribution of this study lies in its structured integration of doctrinal legal analysis, case-based examination, and conceptual interpretation of IHL principles and war crimes under the Rome Statute, thereby ensuring methodological clarity, analytical consistency, and alignment with international legal research standards.

3. RESULTS AND DISCUSSION

3.1 The Concept of War in International Humanitarian Law (IHL) and the Rome Statute

International Humanitarian Law (IHL), also known as *jus in bello*, is a body of international law that aims to protect individuals and regulate conduct during armed conflicts, whether international or non-international in nature. Beyond its protective function, IHL operates as an interpretative legal framework that determines the classification of armed conflict and the applicable legal thresholds for responsibility. The definition of "war" in the context of IHL is broader than merely conflicts between states; it also encompasses situations where armed violence occurs within a state's territory involving non-state armed groups. This broader understanding has been consistently affirmed in international jurisprudence, particularly in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY), which recognises that the existence of armed conflict depends on the intensity of hostilities and the organisation of parties, rather than formal declarations of war.¹¹ IHL classifies armed conflicts into two categories: international and non-international armed conflicts, which are extensively regulated under the 1949 Geneva Conventions and their Additional Protocols, particularly Additional Protocols I and II of 1977.¹²

Under the provisions of the Geneva Conventions, an international armed conflict is understood as any form of armed hostilities occurring between two or more sovereign states. In contrast, a non-international armed conflict arises within the territory of a single state and involves confrontations either between state armed forces and organized non-state armed groups, or among such groups themselves. This distinction is not merely classificatory in nature but entails important legal implications, as demonstrated in the jurisprudence of the ICTY, including the *Prosecutor v. Tadić* case, which affirmed that distinct legal regimes apply depending on the character of the conflict. The Geneva Conventions and their Additional Protocols constitute the principal legal instruments of International Humanitarian Law governing the conduct of hostilities. Adopted in 1949, these conventions establish essential protections for victims of armed conflict, including wounded and sick combatants, prisoners of war, and civilians who do

¹¹ Kushartoyo Budisantosa, "Studi Komparatif Konflik Bersenjata Non-Internasional Dalam Hukum Humaniter Internasional (Comparative Study on Non-International Armed Conflict in International Humanitarian Law)," *TerAs Law Review : Jurnal Hukum Humaniter Dan HAM* 2, no. 1 (2020): 1–30, <https://doi.org/10.25105/teras-lrev.v2i1.9051>.

¹² Enny Narwati and Lina Hastuti, "Perlindungan Hukum Terhadap Anak Dalam Konflik Bersenjata Di Suriah," *Jpenelit* 7, no. 1 (2008): 1–9, <https://doi.org/10.14421/sh.v7i2.2035>.

not directly participate in hostilities.¹³ Nevertheless, contemporary legal discourse places greater emphasis not on the existence of such protections, but on their interpretation and enforcement in increasingly complex and asymmetric conflicts.

On the other hand, the Rome Statute, which established the International Criminal Court (ICC), defines and sets parameters regarding war crimes and crimes against humanity.¹⁴ Unlike the Geneva Conventions, which primarily regulate state conduct, the Rome Statute introduces individual criminal responsibility as a core legal mechanism. Article 8 of the Rome Statute states that war crimes include acts such as murder, torture, attacks on civilians and civilian objects, and other serious violations committed in the context of an armed conflict. The interpretation of Article 8 has been shaped through ICC jurisprudence, which requires the existence of a nexus between the alleged acts and the armed conflict, thereby establishing a legal threshold for criminal accountability. The Rome Statute not only regulates legal consequences for individuals responsible for war crimes but also explicitly identifies military actions that violate IHL principles, such as attacking protected objects, using prohibited weapons, or obstructing humanitarian assistance.

In general, the central role of IHL and the Rome Statute in regulating military action reflects the international community's attempt to balance military necessity with humanitarian protection.¹⁵ Rather than functioning solely as normative instruments, both regimes serve as evaluative tools for assessing the legality of military conduct. The core principles underlying IHL, including distinction, proportionality, and military necessity, operate as analytical benchmarks in determining whether specific acts constitute lawful military operations or prosecutable war crimes. International jurisprudence, including decisions of the ICC and advisory opinions of the International Court of Justice (ICJ), demonstrates that these principles are subject to contextual interpretation and are often contested in practice. However, implementing these principles in the field remains challenging due to interpretative divergence, operational complexity, and political constraints.

IHL and the Rome Statute provide a clear legal framework to limit military action and ensure accountability for violations during armed conflict.¹⁶ The concept of war within these instruments is not treated merely as factual armed violence but as a legally regulated situation

¹³ Indah Sari, "Tinjauan Yuridis Hubungan Kejahatan Perang Dan Hukum Humaniter Internasional," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 2 (2021): 23–43, <https://doi.org/https://doi.org/10.35968/jihd.v1i2.766>.

¹⁴ Ilyas Anshori et al., "Mekanisme Penegakan Hukum Humaniter Internasional Terhadap Konflik Bersenjata Antara Hamas Dengan Israel," *Jurnal Ilmu Sosial Dan Humaniora* 2, no. 2 (2024): 16–24, <https://doi.org/https://doi.org/10.572349/kultura.v2i2.952>.

¹⁵ Achmad Sya'roni, Arinto Nugroho, and Elisabeth Septin Puspoayu, "Analisis Yuridis Penyelesaian Sengketa Cyberattack Pada Konflik Rusia Dan Ukraina Dalam Hukum Humaniter Internasional," *Novum: Jurnal Hukum* 6, no. 1 (2019): 1–10.

¹⁶ Mohamad Dzikie Aulia Al Farauqi and Mariana Mariana, "Pelanggaran Hukum Humaniter Internasional Dalam Agresi Militer Israel Ke Gaza Pasca-Serangan Hamas 7 Oktober 2023," *Jurnal ICMES* 8, no. 1 (2024): 1–21, <https://doi.org/10.35748/jurnalicmes.v8i1.189>.

that triggers specific obligations and criminal liabilities. This approach reinforces the normative objective of international law to maintain international peace and security while minimising human suffering.

The second is the Principle of Proportionality, which aims to balance military necessity and the protection of civilians. According to Additional Protocol I Article 51(5)(b), launching attacks that could cause disproportionate harm to civilians or civilian objects that exceed the military advantage obtained from the attack is prohibited.¹⁷ International jurisprudence, including ICTY and ICC decisions, has emphasised that proportionality assessments must be conducted *ex ante*, based on information reasonably available to commanders at the time of the attack. This principle functions as a legal threshold for determining whether an attack may constitute a war crime. Consequently, proportionality does not merely regulate military tactics but serves as a decisive analytical criterion in international criminal proceedings.

The third is the Principle of Prohibiting Excessive Use of Weapons, which forbids the use of weapons or methods of warfare that cause unnecessary suffering or fail to distinguish between military and non-military targets. This principle is codified in Articles 35 and 51 of Additional Protocol I. The prohibition has been reinforced through international legal instruments and judicial interpretation, recognising that indiscriminate weapons inherently violate the principle of distinction. The Rome Statute incorporates this prohibition by criminalising the use of weapons that cause superfluous injury or unnecessary suffering. This linkage transforms humanitarian prohibitions into enforceable criminal norms.¹⁸

The concept of war crimes in the Rome Statute emphasises comprehensive protection for civilians, prisoners of war, and civilian objects. Article 8 identifies acts such as attacks against civilians and civilian objects as prosecutable offences. This provision functions as a legal bridge between humanitarian norms and international criminal enforcement. Protecting prisoners of war remains a priority under the Rome Statute and the Geneva Conventions. Article 8 prohibits torture, inhuman treatment, and summary execution of prisoners of war. These prohibitions reflect the absolute nature of certain humanitarian norms, which cannot be derogated from under any circumstances.

In addition, protecting civilian objects, such as residential buildings, hospitals, schools, and other critical infrastructure, is an important focus of the Rome Statute.¹⁹ Article 8 prohibits deliberate

¹⁷ Zakka Pranggapati Janges, “Penggunaan Cluster Bomb Pada Konflik Bersenjata Di Suriah Ditinjau Dari Hukum Humaniter Internasional,” *Belli Ac Pacis (Jurnal Hukum Internasional)* 8, no. 1 (2022): 63–70, <https://doi.org/10.20961/belli.v8i1.68776>.

¹⁸ Agung Tri Wicaksono, Achmad Arbi Nur Badrotin Jabbar, and AH. Fajruddin Fatwa, “Problematika ICC Dalam Menjatuhkan Sanksi Kepada Israel Dalam Perspektif Hukum Internasional,” *Jurnal Hukum, Politik Dan Ilmu Sosial* 3, no. 1 (2023): 207–24, <https://doi.org/10.55606/jhpis.v3i1.3210>.

¹⁹ Ade Rizky Dzuhria and Aji Wibowo, “Penyerangan Terhadap Pasien Di Rumah Sakit Ibn Sina Tepi Barat Palestina Oleh Tentara Israel Dengan Penyamaran Sebagai Dokter,” *TerAs Law Review: Jurnal Hukum Humaniter Dan HAM* 5, no. 1 (2023): 48–58, <https://doi.org/https://doi.org/10.25105/terasrev.v5i1.12403>.

attacks on civilian objects unless used for military purposes. This provision aims to protect assets and facilities essential to the well-being of the civilian population, such as water sources, power installations, and healthcare facilities, which directly impact their survival during a conflict. Violations against civilian objects, such as the bombing of schools or hospitals, can constitute war crimes because of their detrimental impact, harming not only individuals but entire communities. The Rome Statute recognizes that attacking civilian objects without a clear military justification is an act that violates the balance between military needs and the humanitarian principle upheld in IHL.

This aligns with classical and contemporary legal understandings of war, including Oppenheim's conception of war as organised armed contention. However, modern international law departs from purely state-centric definitions by recognising conflicts involving non-state actors and asymmetrical warfare. In summary, the Rome Statute transforms IHL principles into enforceable criminal norms by establishing individual accountability through the ICC. This framework reinforces the principle that serious violations of humanitarian law are not merely breaches of conduct but international crimes subject to prosecution, thereby strengthening the normative authority of IHL in contemporary armed conflicts.

3.2 Implementation of International Humanitarian Law in the Israel-Palestine Conflict

The conflict between Israel and Palestine, which has persisted for several decades, presents significant challenges to the application of international humanitarian law (IHL) by both parties.²⁰ From a legal perspective, these principles function not merely as ethical guidelines but as normative benchmarks for assessing whether specific conduct may amount to war crimes under international criminal law. In the context of this conflict, both Israel and Palestinian armed groups, particularly Hamas, have faced international criticism for alleged violations of these principles.

Israel, in its military operations, often uses advanced military technology such as airstrikes and drones to target Hamas military positions in Gaza. However, although these operations are frequently justified as defensive measures aimed at legitimate military objectives, international legal assessment requires further evaluation of intent, anticipated military advantage, and foreseeable civilian harm. The scale of the destruction of civilian infrastructure and high civilian casualties raises serious questions regarding compliance with the principles of proportionality and precaution. Attacks on densely populated areas, where Hamas sometimes operates, must be assessed against the legal threshold of whether incidental civilian harm was excessive in relation to the concrete and direct military advantage anticipated. For example, in several major military operations such as Operation Protective Edge (2014) and Operation Guardian of the Walls

²⁰ Nur Isma Jabir, Mohamad Dziqie Aulia Al Faruqi, and DevyIndah Paramitha, "Kegagalan Implementasi Responsibility To Protect (R2P) Dalam Konflik Israel – Palestina," *Innovative: Journal Of Social Science Research* 4, no. 5 (2024): 9545–60, <https://doi.org/https://doi.org/10.31004/innovative.v4i5.15518>.

(2021), Israeli attacks have been alleged to exceed proportionality limits under IHL, despite targeting what are considered strategic objectives. Reports from international organisations indicate that these operations have resulted in long-term physical, psychological, and socio-economic harm to the civilian population of Gaza, raising questions as to whether the resulting harm can be legally justified under IHL standards.

Israel's alleged violations of international humanitarian law can be observed in airstrikes and the use of armed force in the Gaza Strip and the West Bank, which illustrate the significant impact on civilian populations. From a normative standpoint, military operations conducted in densely populated areas heighten the obligation to adopt precautionary measures to protect civilians. These attacks not only cause loss of life and injuries but also disrupt access to health services, education, and other necessities, potentially constituting unlawful attacks on civilian objects when such effects are not justified by military necessity.

Based on data from Amnesty International, Israel's ongoing bombing operations in Gaza have resulted in the deaths of over 26,000 Palestinians, the majority of whom are civilians. Approximately 10,000 individuals are reported missing, presumed trapped beneath debris, and at least 1.8 million Palestinians have been displaced. While these figures are factual in nature, their legal relevance lies in assessing whether civilian harm was foreseeable and whether adequate precautions were taken, which are key elements in determining potential war crimes under Article 8 of the Rome Statute.

In Gaza, the long-standing blockade has limited access to humanitarian aid and obstructed civilians' ability to meet basic needs. Under IHL, blockades must comply with the prohibition of collective punishment and must not disproportionately affect civilian populations. The destruction of essential infrastructure, such as healthcare facilities, schools, and water networks, raises legal concerns regarding the protection of indispensable civilian objects. Similarly, in the West Bank, security operations affecting civilian mobility and socio-economic stability require evaluation under the principles of necessity and proportionality.

In addition, the psychological impact of the conflict constitutes a significant humanitarian consequence. Although not an independent legal violation per se, prolonged trauma may serve as an indicator of sustained civilian exposure to hostilities, reinforcing concerns regarding inadequate civilian protection under IHL.²¹

However, Hamas and other Palestinian armed groups also face serious legal scrutiny for frequently launching rockets indiscriminately into Israeli territory. Such conduct, when directed at civilian areas, satisfies the objective elements of violations of the principle of distinction and

²¹ George A. Bonanno et al., "Weighing the Costs of Disaster: Consequences, Risks, and Resilience in Individuals, Families, and Communities," *Psychological Science in the Public Interest, Supplement* 11, no. 1 (2010): 1–49, <https://doi.org/10.1177/1529100610387086>.

may constitute war crimes under the Rome Statute.²² The use of densely populated areas to launch attacks or store weapons has been widely criticised as exposing civilians to danger and may amount to the unlawful use of human shields, a grave breach under IHL. These practices undermine civilian protection and engage individual criminal responsibility for non-state actors.

Through the United Nations (UN) and humanitarian organisations, the international community has sought to monitor compliance with IHL by both parties. However, effective enforcement remains limited, as political considerations often impede accountability mechanisms. Reports by Amnesty International and Human Rights Watch document violations by both Israel and Hamas consistently, demonstrating the need for impartial and legally grounded assessments rather than selective condemnation.

One of the main functions of international organizations is to conduct direct observations in conflict areas. The documentation of victim testimonies, witness accounts, and visual evidence contributes to establishing the material elements of alleged war crimes, including patterns of conduct and contextual elements of armed conflict. In some cases, such findings serve as a basis for recommendations for further investigation by international judicial bodies, including the ICC.²³

Through monitoring and investigative activities, international organisations also exert diplomatic and legal pressure on parties suspected of violations. This pressure seeks to reinforce compliance with the Geneva Conventions and to reaffirm the obligation to protect civilians and civilian objects.²⁴ The ICRC, in particular, emphasises access to humanitarian assistance as a non-derogable obligation under IHL.

International organisations further strengthen monitoring mechanisms through cooperation with local actors and NGOs. Such collaboration enhances evidentiary reliability and supports transparency, which are essential for accountability processes in international criminal law.²⁵ By empowering local communities to document violations, these organisations contribute to broader efforts to ensure that violations of IHL.

3.3 The Role of the Rome Statute and the International Criminal Court (ICC)

The International Criminal Court is vested with a specific mandate to prosecute four categories of the most serious international crimes, namely war crimes, crimes against humanity, genocide,

²² Gabriel et al., “ Hamas-Israel Conflicts In Gaza And Its Implications For Middle East Stability,” *Global Journal of Social Sciences* 23, no. 1 (2024): 157–78, <https://doi.org/10.4314/gjss.v23i1.13>.

²³ Annysa Bellal, “Building Respect for the Rule of Law in Violent Contexts: The Office of the High Commissioner for Human Rights’ Experience and Approach,” *Cambridge University Press* 96, no. 1 (2015): 896, <https://doi.org/https://doi.org/10.1017/S1816383115000685>.

²⁴ Claudia Mcgoldrick, “The Future of Humanitarian Action: An ICRC Perspective,” *Cambridge University Press* 93, no. 884 (2012), <https://doi.org/https://doi.org/10.1017/S1816383112000306>.

²⁵ Andhika Nugraha Utama et al., “Implementasi Prinsip-Prinsip Hukum Humaniter Dalam Penanganan Tindak Pidana Terorisme,” *CAUSA: Jurnal Hukum Dan Kewarganegaraan* 5, no. 11 (2024), <https://doi.org/https://doi.org/10.3783/causa.v5i11.5150>.

and the crime of aggression, as stipulated in Article 5 of the Rome Statute.²⁶ This task positions the ICC as the international judicial institution responsible for seeking justice for victims of serious violence and conflict in various regions of the world, including Palestine, an area that has long been affected by protracted conflict.²⁷ War crimes include actions that violate international law in situations of conflict, such as murder, torture, and attacks on civilians or non-military facilities. Meanwhile, crimes against humanity include systematic violence directed against a specific group, and genocide is an attempt to destroy a particular ethnic, racial, or religious group. All three types of crimes are major threats to human rights and international peace, and the ICC seeks to prevent, punish, and prosecute perpetrators of these crimes to deter their recurrence, subject to strict jurisdictional, admissibility, and complementarity requirements under the Rome Statute.

In the context of the conflict between Palestine and Israel, the ICC has demonstrated its commitment to investigating alleged crimes committed by various parties. This conflict has been going on for decades and involves serious violations that have a direct impact on civilians, public infrastructure, and socio-economic life in the region.²⁸ From a legal perspective, the ICC's engagement is not solely an expression of moral responsibility but is contingent upon the Court's assessment of jurisdiction and admissibility, including whether alleged crimes fall within the temporal, territorial, and subject-matter jurisdiction of the Court. The ICC's interest in investigating these alleged crimes is not merely a legal formality; it is also a step towards delivering justice to the victims who have been living in unsafe conditions due to the ongoing conflict. At the same time, the Court must evaluate whether domestic proceedings are absent or ineffective, in accordance with the principle of complementarity.

The ICC's commitment to this investigation includes alleged violations that occurred in Gaza and the West Bank, areas that have long been the focus of various forms of violence, displacement, and human rights violations.²⁹ This conflict involves not only military forces, but also various other actors who have a major influence on the political and security dynamics in the region. Therefore, the ICC aims to investigate alleged crimes committed by parties from both sides, including the Israeli authorities and organizations or groups operating within the Palestinian territories.³⁰ This approach reflects an effort to maintain legal balance and impartiality by

²⁶ Bah Jatun Nadrati et al., "Yurisdiksi Icc Terhadap Perintah Penahanan Putin Mengenai Kebijakan Politik Rusia Ke Ukraina," *Iuris Notitia Jurnal Ilmu Hukum* 1, no. 1 (2023): 28–33, <https://doi.org/https://doi.org/10.69916/iuris.v1i1.43>.

²⁷ Kwalar Raymond Gwaya, "The Authority of the ICC to Institute Criminal Proceedings against Israeli and Hamas Leaders: The Gaza Conflict," *Beijing Law Review* 15, no. 4 (2024): 2202–17, <https://doi.org/10.4236/blr.2024.154123>.

²⁸ Ramisa Jahan, "Can Israel Prevent The ICC From Conducting An Investigation In The Situation In Palestine?," *Jurnal Undang-Undang Dan Masyarakat* 31 (2022): 57–69, <https://doi.org/10.17576/juum-2022-31-05>.

²⁹ Jeremi Bracka, "A False Messiah? The Icc in Israel/Palestina and the Limits of Internationalcriminal Justice," *Vanderbilt Joournal of Transnational* 54, no. 2 (2021): 283, <https://doi.org/https://scholarship.law.vanderbilt.edu/vjtl/vol54/iss2/1>.

³⁰ Gwaya, "The Authority of the ICC to Institute Criminal Proceedings against Israeli and Hamas Leaders: The Gaza Conflict."

assessing potential criminal responsibility of both state and non-state actors within the same jurisdictional framework, rather than attributing liability selectively.

The ICC's procedures for assessing and investigating alleged war crimes in the Israel-Palestine conflict are structured around legally defined stages. The Prosecutor initiates investigations into alleged war crimes based on information concerning crimes within the Court's jurisdiction.³¹ At this stage, the Prosecutor's assessment focuses on jurisdiction, admissibility, and the gravity threshold, rather than procedural formalities alone. This provision is outlined in Article 15 of the Rome Statute.

In this context, the initial step undertaken by the ICC is the preliminary examination stage.³² At this stage, the ICC Prosecutor evaluates whether there are adequate grounds to initiate a formal investigation into alleged war crimes, crimes against humanity, or genocide committed by the parties involved in the conflict. This assessment determines whether the alleged conduct falls within the jurisdiction of the ICC and whether domestic authorities are genuinely unwilling or unable to conduct investigations or prosecutions, in accordance with the principle of complementarity. To support this assessment, the ICC Prosecutor collects information from various sources, including reports issued by international organizations such as the United Nations, human rights institutions, and relevant submissions from states, to establish legal admissibility rather than simply recording factual allegations.

After the preliminary examination stage, a formal investigation will be opened if the ICC finds sufficient evidence.³³ In the Israel-Palestine conflict, these investigations include a comprehensive investigation into alleged crimes involving attacks on civilians, illegal arrest and detention, and the use of disproportionate force in densely populated areas. However, the effectiveness of these investigations is constrained by structural limitations, including restricted territorial access, lack of state cooperation, and challenges in evidence collection, which reflect broader weaknesses in the enforcement of international criminal law. These obstacles highlight the gap between the ICC's normative mandate and its practical capacity to enforce accountability.

The importance of verifying evidence is particularly clear in the case of Israel-Palestine, where the differing narratives of each side can affect the legal process at the international level. The ICC must ensure that the evidence presented is credible and accurate, as errors in evidence could result in the dismissal of the case or even diminish international confidence in the institution. Furthermore, Israel's non-membership in the ICC raises significant jurisdictional challenges, as the Court's authority relies on territorial jurisdiction through Palestine's accession to the Rome

³¹ Jahan, "Can Israel Prevent The ICC From Conducting An Investigation In The Situation In Palestine?"

³² Rosemary Grey, "Lifting the Curtain: Opening a Preliminary Examination at the International Criminal Court," *Journal of International Criminal Justice* 16, no. 3 (2018): 593–621, <https://doi.org/https://doi.org/10.1093/jicj/mqy055>.

³³ Grey.

Statute, a position that remains politically contested. This situation underscores the fragility of international criminal justice mechanisms when faced with non-cooperation by powerful actors.

However, the legal process that the ICC wants to carry out in these two regions has encountered many challenges, especially due to the various parties' different views and political interests. The first challenge is related to jurisdiction. While Palestine has been recognized as a state by more than 130 countries and holds non-member observer state status at the United Nations, debates persist regarding the ICC's jurisdiction over the territory.³⁴ Israel, which is not a State Party to the Rome Statute, contests the Court's jurisdiction, arguing that Palestine lacks full statehood within the meaning of the Statute. This jurisdictional dispute directly affects the admissibility of cases and limits the ICC's ability to compel cooperation, thereby weakening enforcement capacity.

In addition, political instability in the region further complicates ICC proceedings. Continuous armed conflict undermines security conditions necessary for effective investigations and illustrates how structural dependence on state cooperation constrains international criminal adjudication. The Israel-Palestine conflict also involves broader geopolitical interests, with influential states exerting political pressure on the ICC.³⁵ Such pressures expose structural vulnerabilities in the international criminal justice system, where legal accountability may be constrained by power dynamics rather than legal merit alone. Ultimately, the ICC's role in the Israel-Palestine conflict lies at the intersection of justice and politics.³⁶ The Court's effectiveness depends not only on legal competence but also on its capacity to operate within a fragmented international enforcement framework.

This situation is illustrated by proceedings before the International Criminal Court concerning alleged crimes attributed to Israel. The matter originated from a legal action initiated by South Africa in 2023. On 29 December 2023, South Africa submitted an application against Israel to the International Court of Justice based on the Convention on the Prevention and Punishment of the Crime of Genocide. The application alleged that Israel had committed acts of genocide against the Palestinian population in response to the attacks carried out on 7 October 2023 by Hamas and other armed groups, which resulted in approximately 1,200 deaths, the majority of whom were civilians in Israel, as well as the abduction of around 240 hostages.³⁷ Hearings on South Africa's request for provisional measures were held in The Hague on 11 and 12 January

³⁴ Jahan, "Can Israel Prevent The ICC From Conducting An Investigation In The Situation In Palestine?"

³⁵ Bracka, "A False Messiah? The Icc in Israel/Palestina and the Limits of Internationalcriminal Justice."

³⁶ Mark Kersten, "No Justice Without Peace, But What Peace Is on Offer? Palestine, Israel and the International Criminal Court," *Journal of International Criminal Justice* 18, no. 4 (2020): 1001–15, <https://doi.org/10.1093/jicj/mqaa050>.

³⁷ M. Fabian Akbar and Manuel Beltrán Genovés, "South Africa Sues International Court Over Israel 's Palestinian Genocide under International Law," *Lajil* 6, no. 2 (2024): 83–94, <https://doi.org/10.25041/lajil.v6i2.3427>.

2024. In its eighty-four-page submission, South Africa asserted that Israel had engaged in acts and omissions constituting genocide, as these actions were undertaken.³⁸

"This decision serves as a powerful reminder of the critical role of international law in preventing genocide and protecting all victims of atrocity. It sends a clear message that the world will not stand by Israel conducting a brutal military campaign to destroy the population of the Gaza Strip and inflict death, horror, and suffering on Palestinians on an unprecedented scale," said Agnès Callamard, Secretary-General of Amnesty International.

Although ICJ rulings are binding under the UN Charter, their enforcement relies on political mechanisms through the UN Security Council. This distinction underscores that limitations in enforcing ICJ decisions differ doctrinally from the ICC's jurisdictional and admissibility constraints, yet both reveal structural weaknesses in international law enforcement in highly politicized conflicts.

3.4 Evaluation of Obstacles in the Enforcement of Humanitarian Law

In implementing decisions related to the Israel-Palestine conflict, the United Nations (UN) and the International Criminal Court (ICC) face various complex challenges, both from a political and legal perspective.³⁹ These challenges can be understood within international legal theory as manifestations of an enforcement gap, where normative legal rules exist but lack effective implementation mechanisms. One of the main political challenges in resolving international conflicts is the reliance on the UN Security Council, which plays a crucial role in following up on international legal decisions, including those issued by the International Court of Justice (ICJ). The Security Council has significant authority, including imposing sanctions, issuing resolutions, or taking other measures against countries that do not comply with the ICJ's legal decisions. However, this authority is often constrained by the organizational structure and veto power of the five permanent members of the Security Council, namely the United States, Russia, China, France, and the United Kingdom.

This veto power enables these permanent members to block or overturn decisions that do not align with their national interests. In this context, the powerlessness of the Security Council in taking decisive action against countries that violate international law becomes increasingly apparent, especially when the political or strategic interests of permanent members contradict the need to enforce justice and the rule of law. From a theoretical perspective, this reflects selectivity in international law enforcement, where political considerations override legal accountability. For example, in conflict situations such as in the Middle East, where the foreign policy of the United States consistently supports Israel, any resolution or sanctions aimed at addressing Israel's violations are often blocked by the US's use of its veto power.

³⁸ Amnesty International, "Israel Must Comply with Key ICJ Ruling Ordering It Do All in Its Power to Prevent Genocide against Palestinians in Gaza."

³⁹ Bracka, "A False Messiah? The Icc in Israel/Palestina and the Limits of International criminal Justice."

This situation creates an imbalance in international law enforcement, where certain countries appear immune to legal consequences, while others, who may not have the same political support, face harsh sanctions. Such asymmetry reinforces critiques of international law as structurally unequal in its application, particularly in politically sensitive conflicts. In addition, the reliance on the Security Council also creates frustration among UN member states, who feel neglected in their pursuit of justice. When the Security Council fails to take action, it can undermine the overall credibility of the UN and weaken member states' trust in its ability to resolve conflicts justly.

The composition of the Security Council, which includes five permanent members holding veto power, creates a complex political dynamic where every decision taken must consider each country's political interests. In the case of the Israel-Palestine conflict, this dynamic becomes even more intricate because the United States, as one of its permanent members, has historically and consistently supported Israel in various aspects, including in the international arena. This support extends beyond political attitudes, manifesting in the use of the veto power to reject or block resolutions that are considered detrimental to Israel's interests. As a result, political obstacles within the Security Council function as a structural limitation on the enforcement of international legal decisions. Consequently, any decision that has the potential to urge Israel to take certain steps in resolving the conflict or that aims to hold Israel accountable for its actions in the Palestinian territories is often difficult for the UN Security Council to pass.

On the legal side, the ICC faces significant challenges in jurisdiction and evidence collection. These challenges constitute legal obstacles that directly affect the Court's ability to exercise its mandate effectively. Israel is not a member of the ICC and has explicitly rejected the ICC's jurisdiction over its actions in the Palestinian territories. This means that without Israeli cooperation, the investigation process is complicated because the ICC cannot access crucial evidence or relevant witnesses directly within Israeli-controlled territory. Moreover, the ICC is required to uphold a high standard of proof in war crimes cases, demanding strong evidence to support any charges. In protracted and volatile conflict settings, limitations in access and evidentiary reliability exacerbate the enforcement gap between international criminal norms and actual accountability.

Another challenge is the varying international pressures from the global community on the conflict. Countries that support Palestine push the UN and the ICC to act more decisively, while countries that support Israel call for a more lenient or diplomatic approach. These divergent pressures illustrate institutional obstacles faced by international legal bodies, which lack independent enforcement mechanisms and remain dependent on state cooperation. This dynamic creates tension and makes mediating or taking strong legal action difficult. As a result, many decisions or rulings are either not fully implemented or take years to yield concrete outcomes. Taken together, these legal, political, and institutional obstacles demonstrate that the difficulty in

implementing international legal decisions in the Israel-Palestine conflict is not merely situational but reflects broader structural weaknesses in the international legal order.

4. CONCLUSION

This study concludes that International Humanitarian Law (IHL) and the Rome Statute provide a comprehensive normative framework to regulate the conduct of hostilities and protect civilians through core principles such as distinction, proportionality, and the prohibition of excessive force; however, the Israel–Palestine conflict demonstrates that the primary challenge lies not in normative insufficiency but in persistent enforcement failures. The analysis shows recurring breaches by both parties, reflected in disproportionate attacks affecting civilian populations and the use of civilian environments for military purposes, which collectively aggravate humanitarian suffering and undermine the credibility of international legal protections. More critically, this research identifies structural constraints that weaken accountability mechanisms, including the ICC’s jurisdictional and admissibility limitations, restricted access to evidence, political interference, and the selective nature of enforcement through international institutions, particularly the UN Security Council. The novelty of this study lies in its analytical contribution that systematically links IHL principles to their qualification as war crimes under the Rome Statute while demonstrating how political realities and institutional dependence on state cooperation produce an enduring enforcement gap in protracted and highly politicized conflicts. Accordingly, this study recommends strengthening international institutional coordination and cooperation to improve investigative access and evidentiary reliability, enhancing the independence and operational capacity of international accountability mechanisms, and pursuing normative and procedural reforms aimed at reducing selectivity in enforcement. Such measures are essential to reinforce civilian protection, restore legal certainty, and ensure that international humanitarian and criminal law function effectively as deterrent and justice-delivering instruments in contemporary armed conflicts.

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