

## ICC Jurisdiction: Against Israeli War and Humanitarian Crimes Targeting Palestinian Civilians 2023

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### ABSTRACT

The article explains the jurisdictional policy of the International Criminal Court (ICC) regarding Israeli war crimes targeting Palestinian civilians, during the attack on Gaza on October 7, 2023. The article shows that based on articles of the Rome Statute, Israel committed war crimes and crimes against humanity that occurred on October 7, 2023. therefore, the ICC has authority in this matter. ICC policy towards conflict 7 October 2023, ICC jurisdiction took action to continue the investigative process and will accelerate investigations related to the conflict, while Israel in 2024 and the latest update is not part of the non-member states of the ICC. However, given the jurisdiction of the ICC, it has jurisdiction regarding its investigations in countries that are not parties to the ICC. This is influenced by several factors in upholding the ICC's jurisdictional investigation law against Israeli criminals even though Israel is not an ICC member state: First, Palestine is a state party to the ICC which is supposed to provide justice for civil society. Second, there is pressure and encouragement from member countries and non-member countries of the ICC to carry out investigations regarding the conflict attack in October 2023.

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## 1. Introduction

The purpose of this writing is to understand the ICC's policy as an international institution in prosecuting Israeli criminals who target Palestinian civil society. Recently there was a devastating and unprecedented Hamas's attack on Israeli communities around Gaza on October 7, 2023. So, the counterattack was Israel attacking most of Gaza City and changing the entire neighbourhood of Gaza and the Strip. Gaza is reduced to rubble, and worse things will happen, to achieve the goal of eliminating Hamas. Israel's military campaigns are now acknowledged to have resulted in civilian deaths at a higher rate than any other war in the 21st century. These attacks have become ongoing aggression and persecution against Israel

targeting Palestinian civilians.<sup>1</sup> Israel has committed crimes under international law, human rights violations, and cruel acts against Palestinian civilians to enforce its oppressive domination. This systematic attack on the Palestinian people upholds the status quo, resulting in numerous civilian casualties and a broad and systematic attack on the Palestinian population.<sup>2</sup>

These attacks result in the deprivation of internationally enforced rights and harm civilians. In this case, Israel has fulfilled the categories of war crimes and crimes against humanity. These violations fulfil the legal mechanism related to the articles on crimes against humanity and war crimes which consist of three stages. Firstly, according to the 1949 Geneva Convention and the 1977 Additional Protocol based on Article 49 paragraph 1 of the 1949 Geneva Convention, countries that have ratified the Geneva Convention are obliged to issue national laws that can impose effective criminal sanctions against anyone who commits an act, the. or orders to commit serious violations of the Convention. Second, these violations could be brought before the existing Ad hoc War Crimes Tribunal. For example, two Tribunals tried World War II criminals, namely the Tokyo Tribunal to try Japanese war criminals and the Nuremberg Tribunal to try Nazi war criminals in Germany. After World War II, the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (International) were created. Finally, the ICC was established based on the Rome Statute of 1998. This court is permanent to try the most serious crimes. The ICC is authorized to prosecute four crimes: genocide, crimes against humanity, war crimes and crimes of aggression.<sup>3</sup>

International law has international humanitarian law (IHL). It is a set of rules that seek to limit the impact of armed conflict on society, including civilians, people who do not or no longer participate in conflict, and even those who still participate, such as combatants. To achieve this goal, IHL covers two areas: human protection and restrictions on means and methods of warfare. IHL derives from international treaties and law. The rules of IHL are outlined in a series of conventions and protocols.<sup>4</sup> The IHL has several instruments, such as the Geneva Convention (IV) that focuses on the protection of civilians and the convention focusing on the prohibition of the development, production, stockpiling, and use of chemical weapons and their destruction. Since the conflict between Israel and Palestine carries many humanitarian casualties against Palestinian civilians, there is a need for laws and rights for civilians in Palestine.<sup>5</sup>

Apart from crimes against humanity, in the conflict attack on October 7, 2023, several Israeli perpetrators also committed war crimes such as murder, bombings, and destruction of public

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<sup>1</sup> Aneta Brockhill and Karl Cordell, 'The Violence of Culture: The Legitimation of the Israeli Occupation of Palestine', *Third World Quarterly*, 40.5 (2019), 981-98. <https://doi.org/10.1080/01436597.2019.1581057>.

<sup>2</sup> Marta Bo, 'Autonomous Weapons and the Responsibility Gap in Light of the Mens Rea of the War Crime of Attacking Civilians in the ICC Statute', *Journal of International Criminal Justice*, 19.2 (2021), 275-99. <https://doi.org/10.1093/jicj/mqab005>.

<sup>3</sup> Socorro Flores-Liera, 'Comments on the Crime of Aggression Taking into Account the 4th Edition of the Commentary of the Rome Statute of the International Criminal Court', *Criminal Law Forum*, 34.4 (2023), 443-47. <https://doi.org/10.1007/s10609-023-09469-5>.

<sup>4</sup> Abdalfatah Mohammed Asqool, Shahrul Mizan Ismail, and Rohaida Nordin, 'The Protection of Children during Armed Conflicts: Israeli Violations of International Humanitarian Law in Three Wars in Gaza', *UUM Journal of Legal Studies*, 14.2 (2023), 535-56. <https://doi.org/10.32890/uumjls2023.14.2.5>.

<sup>5</sup> Taylor Kate Woodcock, 'Human/Machine(-Learning) Interactions, Human Agency and the International Humanitarian Law Proportionality Standard', *Global Society*, 38.1 (2024), 100-121. <https://doi.org/10.1080/13600826.2023.2267592>.

facilities such as hospitals against civilians who had nothing to do with this conflict. Since then, Israel's massive attacks on Palestinian Gaza have claimed many Palestinian civilian lives in Gaza, reaching 12,000, including more than 5,500 children and 3,500 women. With decades of war crimes, Israel has used disproportionate force and carried out countless massacres and shootings against Palestinian civilians as a form of revenge, punishment, and deterrence. Israel denied this by claiming that it was Palestinian rockets that allegedly hit public facilities and hospitals in Gaza, including Al-Ahli Hospital.<sup>6</sup> However, analysts revealed that the bombing of the hospital in Gaza came from Israeli fire. Israel certainly shows war crimes because according to IHL, war is prohibited from destroying public facilities such as places of worship, hospitals, and schools. Not only were hospitals raided, but even schools were destroyed, and facilities such as water and the internet were also blocked. Thus, these Israeli behaviours are categorized as war crimes or crimes of aggression.<sup>7</sup>

Based on the mechanism of crimes tried by the ICC, namely genocide, crimes against humanity, crimes of war, and crimes of aggression, Israel's behaviours towards Palestinian civilians from decades until October 7, 2023, attacks show the existence of genocide, crimes against humanity, war crimes, or aggression. These behaviours strengthen the accusation that Israel is committing an international criminal act. What Israel has done is the ICC type of crime, meaning that Israel violates international law. However, from 1948 until now, the UN or the ICC Judiciary has never been clear about Israel, which has violated international law and IHL against Palestinian civilians. That provides an opportunity for Israel to continue attacking the Palestinians until today. This stance also results in Israel becoming immune to international law.<sup>8</sup>

To date, many studies have discussed the Israeli-Palestinian conflict on various topics ranging from diplomatic relations, the role of Non-Governmental Organizations (NGOs), and international law. Although previous research provides important input for our understanding, there are still gaps that can be exploited for the article. The article is the result of previous research that discussed international law issues, focusing on how the ICC jurisdiction handled Israeli crimes against Palestinian civilians during the 7 October 2023 counterattack, and what made Israel reject its jurisdictional investigation regarding its conflict with Palestine, as well as explaining the factors which influence the ICC investigations in enforcing laws against Israeli perpetrators related to the October 7, 2023 conflict.<sup>9</sup>

For instance, in his research, John Quigley (2023) discussed Israeli crimes against humanity against Palestinians. This conflict forces seven million Palestinians to flee as refugees in Palestine, Syria, Jordan, and Lebanon. Palestinian civilians are prohibited from entering their home territory in Israel.<sup>10</sup> Furthermore, Qandeel (2023) explained about Israeli aggression. In its discussion, the article puts forward three claims. First, settler attacks on Palestinians are

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<sup>6</sup> Lena Obermaier, 'Disabling Palestine: The Case of Gaza's Great March of Return', *Race & Class*, 65.3 (2024), 27-46. <https://doi.org/10.1177/03063968231203485>.

<sup>7</sup> Lara Hakki, Eric Stover, and Rohini J. Haar, 'Breaking the Silence: Advocacy and Accountability for Attacks on Hospitals in Armed Conflict', *International Review of the Red Cross*, 102.915 (2020), 1201-26. <https://doi.org/10.1017/S1816383121000382>.

<sup>8</sup> Bohdan Nedilko, 'Models of Evaluation of Evidences in the Case-Law of the International Criminal Court', *Evropsky Politicky a Pravni Diskurz*, 8.1 (2021), 78-85. <https://doi.org/10.46340/eppd.2021.8.1.12>.

<sup>9</sup> Iman Prihandono and Dewi S. Yuniarti, 'Expanding the Jurisdiction of the International Criminal Court', *Brawijaya Law Journal*, 9.2 (2022), 182-95. <https://doi.org/10.21776/ub.blj.2022.009.02.05>.

<sup>10</sup> John Quigley, 'Prohibition of Palestine Arab Return to Israel As a Crime Against Humanity', *Criminal Law Forum*, 34.1 (2023), 1-41. <https://doi.org/10.1007/s10609-022-09450-8>.

acts of violence encouraged or enabled by Israeli security personnel. Second, an analysis of violent crimes committed by settlers shows that they are classified as state-sponsored crimes. Third, this agreement illustrates the existence of a consensus regarding the definition of state responsibility for violations committed, as stated in international law.<sup>11</sup>

Aroosa Kanwal (2022) in her research focuses on discussing Israel's attacks on Palestine which formed an invisible "drone-sphere" to silence voices of resistance and protest in Gaza.<sup>12</sup> Pearce Clancy and Richard Falk wrote their essay, explaining that a recent ICC decision affirming territorial jurisdiction over the West Bank, including East Jerusalem, and the Gaza Strip may initially seem to be just a procedural decision outlining the court's authority to investigate Israeli criminality in 2021.<sup>13</sup> Morani Kornberg (2019) wrote her article on the crimes of Israeli sexual aggression analysed from Israeli poet-activist Dahlia Rabinovitch's canonical poem, "Hovering at Low Altitude". Such aggression is exemplified by committing rape in times of war against Palestinian Arab women.

The issue of the ICC's jurisdiction over war crimes, Crimes against Humanity in Gaza, Palestine's accession to the Rome Statute in 2015, and the factors that prompted law enforcement in the ICC's investigations are complex and controversial. Because this conflict is prolonged and ongoing, many researchers have written about this conflict, as previous research has been published over several years. Ronen (2010) and Quigley (2011) both discuss the Palestinian declaration accepting ICC jurisdiction, with Ronen arguing that the ICC Prosecutor cannot assume the existence of a Palestinian state and Quigley focusing on the issue of statehood. Malekian (2012) explores the historical and cultural context of the conflict, emphasizing the need for legitimate coexistence and respect for criminal law and international human rights. Azarov (2012) highlights Israel's lack of investigation into the Gaza conflict and suggests broader policies to protect perpetrators and maintain impunity. These studies collectively underscore the challenges and complexities of 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 who discussed a recent ICC decision affirming territorial jurisdiction over the West Bank, including East Jerusalem, and the Gaza Strip in the 2021 conflict. Therefore, several previous studies provide gaps in the article. Namely discussing Jurisdiction ICC regarding Israeli war crimes and crimes against humanity in Gaza in 2023. Because this conflict has just occurred and it is still rare for people to discuss the 7 October 2023 attack conflict. So, a discussion of the ICC's policy towards war crimes and humanity on 7 October 2023, Israeli war crimes and humanity targeting Palestinian civilians on 7 October 2023, as well as factors influencing the ICC investigation in enforcing law in the conflict on 7 October 2023. They are novelty in the discussion of the article.

## 2. Research Method

The article employed qualitative methods and a normative legal approach, which is carried out by examining cases that violate existing laws and regulations. Legal sources obtained from the article approach are primary, secondary, and tertiary legal materials from literature

<sup>11</sup> Mais Qandeel, 'Violence and State Attribution : The Case of Occupied Palestine Violence and State Attribution: The Case of Occupied', *Journal of Palestine Studies*, 52.2 (2023), 43–63. <https://doi.org/10.1080/0377919X.2023.2218588>.

<sup>12</sup> Aroosa Kanwal, 'Dreaming with Drones: Palestine under the Shadow of Unseen War', *Journal of Commonwealth Literature*, 57.1 (2022), 240–58. <https://doi.org/10.1177/0021989420951839>.

<sup>13</sup> Pearce Clancy and Richard Falk, 'The ICC and Palestine: Breakthrough and End of the Road?', *Journal of Palestine Studies*, 50.3 (2021), 56–68. <https://doi.org/10.1080/0377919X.2021.1947108>.

sources.<sup>14</sup> In the article, data processing was carried out in a deductive way by drawing the essence of a conflict from the general to the specific problem. Furthermore, data from legal materials that have been obtained will be further identified in terms of international legal provisions and also examine the use of the legal framework using a statutory and context approach. In this way, the analysis can help provide a reference for the material of this study.

### 3. Result and Discussion

#### 3.1. ICC Jurisdiction

The ICC is an independent international judicial institution founded in The Hague, Netherlands through the Rome Statute in 1998. It is different from other international judicial institutions, such as the International Court of Justice (ICJ). The International Court of Justice (ICJ) is part of the United Nations (UN) and has provisions attached to the UN Charter. The ICC's organizational structure and operational budget are based on the contributions of state parties to the 1998 Rome Statute. As a subject of international law with international personality, the ICC can exercise its functions and authority in the territories of member states and through special agreements in other countries.<sup>15</sup>

The ICC judiciary is limited in its jurisdiction and the power of its judges because the ICC has limited legal subjects only to certain areas and its scope is narrow, namely limited both in terms of time and geography. This means that the ICC cannot try crimes before the ICC, so the ICC can only try individuals based on legal subjects that can be charged or personal jurisdiction (*ratione personae*). Individual accountability is required for those who commit crimes under the jurisdiction of the ICC. This includes civil servants and military and civilian commanders. The ICC has jurisdiction which according to the Rome Statute is complementary to national jurisdiction. The ICC has created a new system linking national and international courts to deal with the most serious crimes, including war crimes, crimes against humanity and genocide. These crimes are categorized as the most serious in the eyes of the world community and are defined in Articles 5-8 of the 1998 Rome Statute. Genocide includes acts that cause harm to national, ethnic, racial or religious groups, including murder, abuse, prevention of birth, and forced removal of children.

Meanwhile, according to Article 7 of the Statute, any act of direct, widespread, and organized attack against the civilian population is considered a crime against humanity. These crimes against humanity include murder, extermination, enslavement, deportation or forced transfer of populations, imprisonment or cruel deprivation of physical liberty, torture, rape, sex slavery, forced prostitution, forced pregnancy, and forced sterilization or any other form of sexual violence against groups identified as political, racial, national, ethnic, cultural, religious, and gender collectivises, as well as enforced disappearances and apartheid. Following that, Article 9 of the Statute defines war crimes as serious violations of the 1949 Geneva Conventions. Such acts involve forcing prisoners of war or other protected persons to assist enemy forces, depriving them of their right to a fair trial, routinely deporting and imprisoning them, and torturing or treating them inhumanely, including using biological experiments. Other violations include intentionally causing great suffering or serious body

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<sup>14</sup> Suherman S.H and Heru Sugiyono, 'Government Policy in Indonesian Contract Law That Still Uses Contract Law Inherited from Dutch Product', *International Journal of Law and Management*, 66.1 (2024), 1-10. <https://doi.org/10.1108/IJLMA-09-2022-0203>.

<sup>15</sup> Céline Braumann, 'The Settlement of Tax Disputes by the International Court of Justice', *Leiden Journal of International Law*, 36.4 (2023), 907-23. <https://doi.org/10.1017/S0922156523000158>.

injury, widespread destruction and unlawful taking of property, and taking hostages. This law does not explain criminal acts of aggressiveness, in contrast to the three previous types of criminal acts which are explained at length in certain articles. The law simply explains that the violations mentioned in the UN charter are related to this violation. In this regard, the Charter also does not explain what is meant by the crime of aggression, except that it states that in the event of acts endangering international peace and aggression, the Security Council, based on Chapter VII of the Charter, can take unlawful measures appropriate actions up to the deployment of multinational forces.<sup>16</sup>

### **3.2. Israeli War Crimes Violations Related to Retaliatory Attacks Targeting Palestinian Civilians 2023.**

The term "war crimes" refers to serious violations of IHL committed against civilians or enemy fighters during armed conflicts. These crimes are derived from the Geneva Conventions, Hague Conventions, and the Rome Statute for the ICC. The most recent codification is found in Article 8 of the 1998 Rome Statute. Most incidents involve prohibited acts like murder, rape, assault on civilians, looting, and unlawful destruction of civilian property, which are essential for civil society's survival. The Geneva Conventions define protected persons as those who do not take part in hostilities, including civilians and those excluded from combat. This includes people living in refugee camps, that is, civilians who do not participate in shelters despite the presence of the military. Most violent incidents recorded since 1996 occurred within the scope of armed conflict, both internal and international.<sup>17</sup>

Serious violations of the rules of war, whether intentional or not, are known as war crimes. This is what Israel does by carrying out planned hostage-taking attacks against civilians, and this is an example of a war crime. Similarly, Israeli airstrikes and rockets targeting Palestinian civilians or acting indiscriminately are considered war crimes. Criminal penalties may apply to those who commit war crimes and those who direct, support, or enable such acts. According to this principle, responsibility rests with the command, and civilian leaders who know of crimes committed by other countries but do nothing to stop them or do not bring the guilty party to justice can be held criminally responsible. Over the past 20 days, war crimes have been and continue to be committed by Israel because attacks from Hamas will raise great fears among the Israeli forces. The forces will carry out indiscriminate attacks that violate the law and harm civilians. Since October 7, 2023, nearly 1,400 Palestinians have lost their lives. In addition, Israel continues to bombard the Gaza Strip, which has a population of 2.3 million. According to the Gaza Health Ministry, since October 7, nearly 7,000 Palestinians have died, including about 3,000 children.<sup>18</sup>

Bombs sometimes destroy entire blocks or even entire communities. In this latest conflict, even in densely populated areas, Israeli forces used white phosphorus, a chemical compound that burns when it encounters oxygen, causing horrific and severe burns. Burns that affect 10% of the human body are often fatal, and white phosphorus can burn to the bone. Israel also blocked

<sup>16</sup> Fareed Mohd Hassan and Mohd Hazmi Bin Mohd Rusli, 'Malaysia and the Rome Statute of the International Criminal Court', *Brawijaya Law Journal*, 9.1 (2022), 76–89. <https://doi.org/10.21776/ub.blj.2022.009.01.06>.

<sup>17</sup> Christopher W. Mullins, 'Variations in War Crimes During the Sierra Leone Civil War', *International Criminal Justice Review*, 33.2 (2023), 197–217. <https://doi.org/10.1177/1057567720981621>.

<sup>18</sup> Michal Al-Yagon, Lior Garbi, and Yisrael Rich, 'Children's Resilience to Ongoing Border Attacks: The Role of Father, Mother, and Child Resources', *Child Psychiatry & Human Development*, 54.4 (2023), 1015–26. <https://doi.org/10.1007/s10578-021-01303-6>.

electricity, food, and water for Gazans as a form of collective punishment. In addition, Israel deliberately obstructed humanitarian aid from reaching people in need, which is also a war crime. During the October 7, 2023, attack the violations were followed by the Israeli orders and directives to evacuate most of Gaza's civilian population for their purposes and military purposes instead of partly protecting Palestinian civil society. In this case, the evacuation is illegal, which must have the condition that civilians must be allowed to return as soon as possible to their place of origin.<sup>19</sup>

According to research by one of the International Organizations (Amnesty), Israel's attacks are very intense and indiscriminate, destroying all buildings, facilities, and especially Palestinian civilian residents living in Gaza. Aerial bombardment carried out by Israeli forces between October 7 and 12, caused terrible destruction and, in some cases, killed entire families. Israel's conduct has violated the law in every case committed by Israel, including violating IHL, failing to take precautions to save civilians, carrying out indiscriminate attacks that do not distinguish between civilian and military targets, or carrying out attacks that may be targeted against civilian objects. Despite Israel's intention to destroy Hamas, the retaliatory targets show disregard for civilian lives. They demolished street after street of residential buildings. They killed civilians on a massive scale and destroyed critical infrastructure. New restrictions caused Gaza to quickly run out of water, medicine, fuel, and electricity. Testimonies from eyewitnesses and survivors highlighted repeatedly how Israeli attacks destroyed Palestinian families, causing such destruction that surviving.<sup>20</sup>

Of the cases, the Amnesty International organization researched Israeli violations against Palestinian civil society. However, if we look back from the beginning of Israel's conflict with Palestine, there were many cases of Israeli violations against the Palestinian people. Over the past 16 years, Israel's illegal blockade has made Gaza the world's largest open-air prison. The international community must act now to prevent it from becoming a giant graveyard. On top of that, with this condition, Palestinian civilians find it difficult to get all access, such as access to aid and access to citizenship. Meanwhile, in the occupied West Bank, including East Jerusalem, at least 79 Palestinians, including 20 children, have been killed by Israeli forces or settlers amid the increasing use of excessive force by the Israeli army. In this sense, Israel is a customer not only to the residents of Gaza but to the Palestinian population of the West Bank from Israel's actions during the war with Palestine which were declared war crimes under 8 (2) (b) (i) Statute Rome, as for the contents of the Article "war crime of attacking civilians".<sup>21</sup>

### 3.3. Violations of Israeli Humanitarian Law against Palestinian Civilians 2023

IHL is a set of rules designed to minimize the impact of armed conflict, limit the involvement of parties to a conflict, and regulate methods of warfare. These laws protect individuals who

<sup>19</sup> Sefriani Sefriani and Vania Lutfi Safira Erlangga, 'The Legality of Israel's Self-Defense Claim of the Strikes on Hamas', *Yustisia Jurnal Hukum*, 11.3 (2022), 197. <https://doi.org/10.20961/yustisia.v11i3.61262>.

<sup>20</sup> Muath Mohammed Alashqar, Asmar Abdul Rahim, and Ahmad Shamsul Abd Aziz, 'War Crimes in Gaza Strip from the Year 2008 2021: Individual Criminal Responsibility Under the Legal Framework of Rome Statute of the International Criminal Court,' *Journal of International Studies* 19.1 (2023), 61–93. <https://doi.org/10.32890/jis2023.19.1.3>.

<sup>21</sup> Matthew Gillett, 'Criminalizing Reprisals against the Natural Environment', *International Review of the Red Cross*, 105.924 (2023), 1463–96. <https://doi.org/10.1017/S1816383123000255>.

are no longer involved in hostilities, also known as the laws of war.<sup>22</sup> IHL is a part of international law that protects victims of armed conflict and limits war tactics and weapons. Violations of the rule of law are considered war crimes against humanity, and perpetrators are held accountable and their prosecution is left to sovereign governments. If a country is unable to prosecute the perpetrator, the crime may be tried by the ICC, which was established by a treaty or decision of the UN Security Council.<sup>23</sup> IHL is derived from international treaties and law. The rules of IHL are outlined in a series of conventions and protocols. It is governed by Articles 27 to 34 of the Fourth Geneva Convention and Articles 72 to 79 of Additional Protocol I. IHL has two instruments: the Geneva Convention (IV) on civilian protection and the Convention on the prohibition of chemical weapons and their destruction. Israel violates these instruments by attacking Palestinian civilians with chemical bombs, using white postal material, and performing prolonged blockades and airstrikes, resulting in increased casualties, particularly among children.

Israel has violated IHL law by fully controlling Gaza, including its waters, airspace, and movement of people and goods. They also bombarded hospitals in Gaza. Under humanitarian law, the rules of war must guarantee civilian treatment and medical care. However, international human rights law states that every state must defend the rights of individuals living in their control. Legal norms are non-reciprocal, meaning they apply regardless of other parties' actions.<sup>24</sup> Defending crimes like intentional assault or collective punishment by claiming the victim is the opposite, unjust power gaps, or other forms of injustice is unacceptable.<sup>25</sup> IHL instruments provide special protection for certain categories of persons, the first women, who often face risks due to their sex, age, profession, or status. Women are particularly vulnerable during wartime, as they often have to care for children and other dependents alone, and are also at risk of sexual violence and harassment from gun carriers or organized criminal groups. These individuals are protected by fundamental guarantees given to all individuals in belligerent power.<sup>26</sup>

Therefore, IHL stresses that women must be especially protected from any attack on their honor, in particular against rape, forced prostitution, or any form of indecent assault. Moreover, cases of pregnant women and mothers with dependent children being arrested, detained, or exiled should be reviewed with top priority.<sup>27</sup> To the maximum extent possible, the death penalty shall not be imposed and shall not be carried out on the woman. Children are the second category. They are perhaps the most vulnerable group among any population affected by armed conflict. Being orphaned or dependent on their resources, they often have

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<sup>22</sup> George Dvaladze, 'Unveiling Claims of Discrimination Based on Nationality in the Context of Occupation under International Humanitarian and Human Rights Law', *International Review of the Red Cross*, 105.923 (2023), 947-64. <https://doi.org/10.1017/S1816383123000085>.

<sup>23</sup> Clancy and Falk, 'The ICC and Palestine'.

<sup>24</sup> Yordan Gunawan and others, 'Journalist Protection on the Battlefield Under the International Humanitarian Law: Russia-Ukraine War', *Jurnal Hukum Unissula*, 39.1 (2023), 1-11. <https://doi.org/10.26532/jh.v39i1.24685>.

<sup>25</sup> Viktoriia Rufanova and others, 'Strengthening International Law against Sexual Violence in Armed Conflicts: Insights from the Russian-Ukrainian War', *Pakistan Journal of Criminology*, 16.1 (2024), 111-25. <https://doi.org/10.62271/pjc.16.1.111.125>.

<sup>26</sup> Krzysztof Orzeszyna, 'Convergence of International Humanitarian Law and International Human Rights Law in Armed Conflicts', *Studia Iuridica Lublinensia*, 32.3 (2023), 237-52. <https://doi.org/10.17951/sil.2023.32.3.237-252>.

<sup>27</sup> Yordan Gunawan and others, 'Command Responsibility of Autonomous Weapons under International Humanitarian Law', *Cogent Social Sciences*, 8.1 (2022). <https://doi.org/10.1080/23311886.2022.2139906>.



no choice but to seek safety, food, and shelter in organized armed groups or criminal gangs, where they are victims of forced recruitment, slavery, and sexual violence.<sup>28</sup>

Third, journalists and war correspondents working in areas of armed conflict will inevitably be exposed to the danger of accidental warfare. The greatest risk they face because of their role is being detained for alleged espionage or deliberately attacked by forces, groups, or individuals who oppose independent media reports from the region. In recent years, there have been demands that journalists reporting from conflict zones be given separate status or protective insignia to enhance their protection during armed conflict.<sup>29</sup> On October 31, Reporters Without Borders (RSF) filed a complaint with the agency alleging that Israel had committed war crimes against journalists in Gaza. Israeli attacks have exposed at least 39 journalists since October 7, according to figures from the press freedom group Committee to Protect Journalists (CPJ), of whom 34 are Palestinian, four are Israeli and one is Lebanese.

Fourth, Refugees, stateless and internally displaced persons, and stateless persons caught in armed conflict face significant challenges as they are not citizens of a territorial state and cannot rely on protection from their home state or last residence. It is crucial not to exclude them from IHL law or disadvantage them based on citizenship formalities that do not align with their reality.<sup>30</sup> Based on several reports, around 100 journalists were killed because of the Israeli counterattack on October 7, 2023. Additionally, 10,000 children were killed, including new born babies, 24,000 children were injured, and more than 1000 women were killed.<sup>31</sup> Therefore, IHL instruments have targeted many children, women, and journalists in protecting civil society. Israel's behaviour is under Article 7 "Crimes against humanity" Article 7 confirms that international criminal law, and its provisions, following Article 22, must be interpreted strictly, taking into account that crimes against humanity as defined in Article 7 are among the most serious crimes of concern to the international community as a whole, warranting and requiring responsibility individual criminal liability, and entails actions that are impermissible under generally applicable international law, as recognized by the world's major legal systems.

### 3.4. International Criminal Court Jurisdiction Conduct on Israeli Violations

In the counterattack that occurred in Gaza in October 2023, there was an air attack which resulted in many casualties of civilians and public facilities, based on Article 7 of the Rome Statute "Crimes against humanity" and Article 8 "War Crimes" which means that each of the following acts was committed as part of a widespread attack or systematic action directed against the civilian population, and article 8 paragraph 2 of the Rome Statute "(a) Serious violations of the Geneva Conventions of 12 August 1949, namely any of the following acts against persons or property protected under provisions of the Geneva Conventions. So the Israeli military counterattack in October 2023 is considered a war crime and crimes against

<sup>28</sup> Yücel Acer, 'The International Criminal Court and Israel's Acts in the Occupied Territories: Progress and Prospects', *Insight Turkey*, 23.3 (2021), 69-92. <https://doi.org/10.25253/99.2021233.5>.

<sup>29</sup> Yordan Gunawan, Fawaz Muhammad Ihsan, and Paulo Andres Anderson, 'The Murder of Shireen Abu Akeh: How Does Law Protect the Journalist in a War?', *Lex Scientia Law Review*, 7.2 (2023), 373-412. <https://doi.org/10.15294/lesrev.v7i2.59534>.

<sup>30</sup> Eytan Gilboa, 'The Palestinian Campaign against Israel at the United Nations Human Rights Council', *Israel Affairs*, 27.1 (2021), 68-88. <https://doi.org/10.1080/13537121.2021.1864849>.

<sup>31</sup> Asqool, Ismail, and Nordin.

humanity.<sup>32</sup> This means that ICC jurisdiction has full power to prosecute and prosecute Israel's violations of war crimes and crimes against humanity. According to the Rome Statute, the ICC is a complement to national jurisdiction, which in the ICC agreement has been ratified by 139 countries. This agreement establishes a new system linking national and international court systems to deal with the most horrific crimes: war crimes, crimes against humanity, and genocide. Based on the crime categories of the Rome Statute in Article 5.

The ICC is a permanent and independent international organization with a long history of enforcing international criminal law. This is inseparable from international politics which led to the formation of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The permanent nature of the ICC helps the international community recognize victims of international crimes, as national legal mechanisms and institutions may not always be sufficient. National courts are expected to investigate or deal with violations if they fail to fulfill their expected role.<sup>33</sup>

When law enforcement in the National Court Forum faces such situations, there are considerations (especially political considerations) that lead to the incompetence and reluctance of national courts. The ICC thus has secondary jurisdiction after national courts, and can only act in certain situations if the state concerned is unwilling or unable to prosecute crimes within its jurisdiction. Therefore, there is a need for cooperation and complementarity between national courts and international courts in the application of criminal law.<sup>34</sup> This is based on the principle of complementarity implemented by the ICC through Articles 17 and 53 of the Rome Statute, which stipulates that a case cannot be admitted to the ICC if it is being investigated by a country that has jurisdiction over it. The concept of complementarity, however, allows the ICC jurisdiction in situations when a state is unable or unwilling to continue an investigation or when a state investigation is conducted in bad faith such as when it is used to protect the person from criminal liability. This means that states have primary competence and authority to investigate and prosecute international crimes, and the ICC has secondary jurisdiction. Given that complementarity is assessed on a case-by-case basis, the ICC and states must jointly ensure that all atrocities in each situation are addressed.<sup>35</sup>

Regarding the attack on October 7, 2023, which killed many civilians and reduced their houses and facilities to rubble. So many groups or organizations as well as several countries have filed lawsuits with the ICC, one of which is the Palestinian human rights group urging the ICC jurisdiction to conduct an investigation into war crimes in Gaza. So, the ICC's current policy is to investigate cases under Palestinian jurisdiction for alleged atrocities committed in Gaza, the court immediately stated that the ICC is investigating methods to try Israeli leaders for alleged war crimes in Gaza. The court may be examining cases of Palestinian jurisdiction over

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<sup>32</sup> Uin Maulana Malik Ibrahim Malang, "Abd Al-Majid Al-Najjar's Perspective on Maqāsid Al-Sharī'ah Faishal Agil Al M Unawar', *JURIS: Jurnal Ilmiah Syari'ah*, 20.2 (2021), 209–23. <https://doi.org/10.31958/juris.v20i2.4281>.

<sup>33</sup> Caterina Benini, 'Limiti Della Giurisdizione Italiana Rispetto Ad Azioni Relative Ad Un Disegno Internazionale', *Cuadernos De Derecho Transnacional*, 16.1 (2024), 671–83. <https://doi.org/10.20318/cdt.2024.8441>.

<sup>34</sup> Muhammad Ikhsan Lubis, 'The Relationship of International Human Rights Law with International Humanitarian Law in Situations of International Armed Conflicts', *Journal of Indonesian Legal Studies*, 1.1 (2016), 13–34. <https://doi.org/10.15294/jils.v1i01.16565>.

<sup>35</sup> Yidou Yang, 'The Gap between the International Criminal Court and Victims: Criminal Trial Reparations as a Case Study', *Laws*, 12.4 (2023), 72. <https://doi.org/10.3390/laws12040072>.

alleged crimes committed in Gaza.<sup>36</sup> ICC prosecutor Kharim Khan confirmed that there were additional crimes in the investigation, as he visited Egypt's Rafah border crossing on October 29, and said that preventing humanitarian aid from reaching civilians could be prosecuted under the Rome Statute. So, in the conflict of the October 7 attack where there was no denial of court jurisdiction for Israel. The ICC's founding Rome Statute provides legal authority to investigate alleged crimes in its member territories.<sup>37</sup>

Israel's actions against Palestinian civilians on October 7, 2023. There is an ICC jurisdiction policy which confirms that currently the ICC jurisdiction is investigating the situation in Palestinian Gaza and is trying to speed up the investigation. Even though in 2024 and the current update, Israel is still not part of the ICC member states, the ICC will strive for justice to achieve accountability. The ICC also stressed that it has jurisdiction over "crimes committed on the territory of a party and concerning nationals of a party, with the primary aim of achieving justice for victims and upholding the Rome Statute's declaration of an independent state."<sup>38</sup>

**Table 1.** ICC Jurisdiction Policy Regarding Investigations into the Israeli-Palestinian Conflict

NO	Investigation Date	Application and Investigation Process
1.	January 1, 2015	The Palestinian Authority ("Palestine") submitted a declaration under article 12(3) of the Rome Statute of the ICC ("Rome Statute" and "Court" or "ICC") accepting Palestinian jurisdiction.  Palestine acceded to the Rome Statute by submitting its instrument of accession to the UN Secretary-General. The Rome Statute entered into force for Palestine on 1 April 2015.
2.	January 2, 2015	Palestine acceded to the Rome Statute by submitting its instrument of accession to the UN Secretary-General. The Rome Statute entered into force for Palestine on 1 April 2015.
3.	May 22, 2018	Under Rome Statute articles 13(a) and 14, Palestine requested the Prosecutor's Office to investigate the situation in Palestine, including past, ongoing, and future crimes committed in all parts of the State of Palestine. The State of Palestine includes the Palestinian Territories occupied by Israel in 1967, including the West Bank, East Jerusalem, and the Gaza Strip, as defined by the Armistice Line 1949.
4.	December 20, 2019	The Prosecutor has concluded that all statutory criteria under the Rome Statute for opening an investigation have been met after conducting a thorough, independent, and objective assessment of the situation. The jurisdiction believes war crimes are being committed in the West Bank, including East Jerusalem and the Gaza Strip.
5.	January 22, 2020	The Prosecutor submitted a request to the Pre-Trial Chamber I requesting a decision clarifying the scope of the Court's jurisdiction in this situation, taking into account the complex legal and factual issues inherent in this Situation

<sup>36</sup> Saidah Fasiah Binti Che Yusoff and Rohaida Nordin, 'Freedom of Expression in Malaysia: Compatibility with the International Human Rights Standard', *Bestuur*, 9.1 (2021), 34–42. <https://doi.org/10.20961/bestuur.v9i1.51637>.

<sup>37</sup> Inna Zavorotko, 'Ukrainian Women Are Raped, Men Are Killed: The Russian Federation Violates International Law', *International and Comparative Law Review*, 23.1 (2023), 229–55. <https://doi.org/10.2478/iclr-2023-0010>.

<sup>38</sup> Pearce Clancy and Richard Falk, 'The ICC and Palestine: Breakthrough and End of the Road?', *Journal of Palestine Studies*, 50.3 (2021), 56–68. <https://doi.org/10.1080/0377919X.2021.1947108>.

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| 6. | February 5, 2021  | Pre-Trial I, after considering the Prosecutor's Application, as well as submissions from legal representatives on behalf of victims, States, organizations, and scholars, decided, by majority, that the territorial jurisdiction of the Court in the Situation in Palestine extends to the territory occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.<br><br>The ICC prosecutor at the time, Fatou Bensouda, confirmed the start of an investigation into the Situation in Palestine |
| 7. | October 29, 2023  | ICC Prosecutor Karim Khan stated the situation of the State of Palestine and Israel.   |
| 8. | November 17, 2023 | The ICC Prosecutor stated on receipt of the Situation in the State of Palestine referrals from the following five States Parties: South Africa, Bangladesh, Bolivia (Plurinational State), Comoros, and Djibouti ("17 November 2023 Statement").   |

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Source: International Criminal Court, 2023

In the previous decade, applications related to Israeli criminals were still in the process of investigating the crimes they had committed, namely war crimes and humanity against the Palestinian civilian population. This is due to the constraints of the ICC's investigation into its jurisdiction, one factor being that the legal process has potentially important implications for broader accountability efforts, which could become significant over time. This also becomes an obstacle to investigations because Israel is not part of the member states that ratify the ICC, making it difficult for the ICC to issue arrest warrants for the Israeli military involved in war and crimes against humanity against Palestinian civilians.<sup>39</sup>

### 3.5. Israel does not Ratify ICC Law

Judging from Israel's attitude that there is no accountability for Israel's violations against Palestinian civil society and the ICC's jurisdiction has also never succeeded in dealing with Israel's violations related to Israel's war and humanitarian crimes against the Palestinian civilian population, the biggest factor is because Israel is not a state that ratified the ICC treaty. Initially an active and consistent supporter of the concept of the ICC, and its realization in the form of the Rome Statute, the Government of the State of Israel proudly proclaims its recognition of the importance, and certainly indispensable, of an effective tribunal court for the enforcement of the rule of law and the prevention of impunity. As one of the originators of the concept of the ICC, Israel, through its leading lawyers and statesmen, since the early 1950s, has actively participated in all stages of establishing such courts. Its representatives, who in their hearts and minds carry collective, and sometimes personal, memories of the Holocaust, the greatest and most heinous crimes ever committed in the history of mankind enthusiastically, with an acute sense of sincerity and seriousness, contribute to all things stages of drafting the Statute.<sup>40</sup>

At the Rome Conference of 1998, Israel expressed deep disappointment and regret over the inclusion of formulations in the Statute tailored to meet the political agendas of certain countries. Israel warns that this unfortunate practice may reflect an intention to abuse the

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<sup>39</sup> Enis Omerović and Andrea Grande, 'Judging More by Judging Less: Issues and Limits of the International Criminal Court', *Pravni Vjesnik*, 39.1 (2023), 7–34. <https://doi.org/10.25234/pv/21105>.

<sup>40</sup> Gabrielè Chlevickaitė, Barbora Holá, and Catrien Bijleveld, 'Suspicious Minds? Empirical Analysis of Insider Witness Assessments at the ICTY, ICTR and ICC', *European Journal of Criminology*, 20.1 (2023), 185–207. <https://doi.org/10.1177/1477370821997343>.

Statute as a political tool.<sup>41</sup> Today, in the same spirit, the Government of the State of Israel signs the Statute while rejecting any attempt to interpret its provisions in a politically motivated manner against Israel and its citizens. The Israeli government hopes that Israel's statement of concern over such efforts will go down in history as a warning against the risk of politicization, which might undermine the purpose of what is intended to be an impartial central body and benefit humanity. Nevertheless, as a democratic society, Israel continues to conduct political and academic debates regarding the ICC and its significance in the context of international law and the international community. The essence of the Court is an important means of ensuring that criminals who commit truly heinous crimes will be brought to justice. Meanwhile, those who potentially violate basic principles of humanity and the public conscience will be properly punished yet have never been made guidelines. Therefore, the signing of the Rome Statute by Israel will allow Israel to morally identify this basic idea, which underlies the establishment of the Court. The State of Israel withdrew its signing in 2002 by Article 127 of the Statute which explains "Allowing a state to withdraw from the ICC, withdrawal takes effect one year after notification of deposit, and does not affect prosecutions that have already been initiated".<sup>42</sup>

Israel took advantage of the withdrawal from ICC members regarding its conflict with Palestine. Who committed war and humanitarian crimes targeting Palestinian civilians. Under ICC treaty law, a country is only bound to a treaty if that country has signed and ratified the treaty. Because Israel is not a member state of the ICC, it is difficult for the ICC to issue arrest warrants for the Israeli military involved in war and crimes against humanity against Palestinian civilians. This also becomes an obstacle to the ICC's jurisdiction in carrying out investigations. Because it always uses its role as a non-party state in the ICC, namely making the principle of state sovereignty a limiting factor in the ICC's jurisdiction.<sup>43</sup> And this is an obstacle for the ICC to exercise its jurisdiction.<sup>44</sup> The ICC initially stated that it couldn't handle a case involving Israel, as Israel withdrew from the Rome Statute agreement. However, the ICC may still have jurisdiction over crimes committed in a non-party state's territory if the state accepts its jurisdiction or if the UN Security Council refers the situation to the ICC by Article 13. Israel's current status as a non-ICC member country means it is not bound to a treaty. So, during the 7 October conflict, the ICC's policy was to investigate cases related to the 7 October case in Gaza, Palestine, for alleged atrocities committed by Israeli perpetrators. The court immediately stated that the ICC was examining cases of alleged war crimes and humanity in Gaza and investigated using these methods to try Israeli leaders for alleged war crimes in Gaza.<sup>45</sup>

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<sup>41</sup> Abdelrahman Alasttal and others, 'The Role of the United Nations in Protecting the Right to Development in Occupied Palestine', *Legality: Jurnal Ilmiah Hukum*, 31.1 (2023), 138–56. <https://doi.org/10.22219/ljih.v31i1.25836>.

<sup>42</sup> Serhii Ablamskyi and others, 'Assessing the Responsibilities of the International Criminal Court in the Investigation of War Crimes in Ukraine', *Novum Jus*, 17.2 (2023), 353–74. <https://doi.org/10.14718/NovumJus.2023.17.2.14>.

<sup>43</sup> Joni Aasi, 'Israeli Territorial Annexation in Occupied Palestinian Territory: The Ambivalence of International Law', *Yuridika*, 37.3 (2022), 539–62. <https://doi.org/10.20473/ydk.v37i3.38691>.

<sup>44</sup> Janis Grzybowski and Filipe dos Reis, 'After States, before Humanity? The Meta-Politics of Legality and the International Criminal Court in Iraq, Afghanistan, and Palestine', *Review of International Studies*, 50.2 (2024), 354–72. <https://doi.org/10.1017/S026021052300030X>.

<sup>45</sup> Hafara Khoirunnisa and others, 'Judaization in Palestine: Is It Genocide According to the 1998 Rome Statute?', *Sriwijaya Law Review*, 8.1 (2024), 79–98. <https://doi.org/10.28946/slrev.Vol8.Iss1.3144.pp79-98>.

### 3.6. Factors that Affect ICC Jurisdictional Investigations in Enforcing Laws Against Israeli on October 7, 2023

In the October 7 2023 conflict which targets Gaza civilians, the ICC policy will continue to carry out investigations and even speed up investigations. even though Israel is not a member of the ICC.<sup>46</sup> 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: First, Palestine is a state party to the ICC. On January 1, 2015, the Government of the State of Palestine submitted a declaration to the Rome Statute accepting the jurisdiction of the ICC over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 2014". On 2 January 2015, the State of Palestine acceded to the Rome Statute by submitting its instrument of accession to the UN Secretary-General. The Rome Statute came into force for the State of Palestine on April 1, 2015. Palestine is a party state, and Palestine must now receive justice as a state party to the ICC, the ICC must further investigate the conflict which has been very prolonged in the last decade. Even though in 2008-2009, the ICC's policy was not to carry out investigations because it did not have authority regarding its jurisdiction in Israel, however, based on Article 12(2), one of the meanings of that article 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" and this is one of the factors influencing the ICC in enforcing the law, so that the ICC continues to investigate Israeli crimes committed targeting civilians related to the October 7 2023 attack.<sup>47</sup>

The second factor is the amount of encouragement and pressure from ICC members and non-member countries, including Turkey.<sup>48</sup> In 2023, during the heated conflict, the October 7 attack, Turkish President Recep Tayyip Erdogan stated that "Israel's attack on Gaza is a war crime and a crime against humanity and must be prosecuted under international law."<sup>49</sup> Likewise, Qatari Prime Minister Sheikh Mohammed bin Abdulrahman bin Jassim Al Thani called for a "comprehensive and impartial international investigation into what he called Israeli crimes in Gaza." Meanwhile, many countries are still pressing for an investigation into Israel's war and crimes against humanity that target civilians. Among them are Indonesia, Malaysia, Jordan, Maldives, Namibia, Pakistan, Iran, Morocco, South Africa, Bangladesh, Bolivia, Comoros, Djibouti, and many other countries that support justice for war and crimes against humanity against the people of Gaza and Palestine in the 7th conflict October 2023. This pressure comes from ICC member countries including South Africa, Bangladesh, Bolivia, Comoros, Djibouti, Jordan, Maldives, and Namibia which may facilitate and strengthen ICC investigations to carry out investigations related to war crimes and humanity against Palestinian civilians 7 October 2023.<sup>50</sup> According to Article 14 of the Rome Statute, "Referral to Situations by the State Party"

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<sup>46</sup> Ibnu Mardiyanto and Hidayatulloh Hidayatulloh, 'The Responsibility to Protect (R2P) Concept as an Attempt for Protection of Human Rights in International Humanitarian Law Context', *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6.1 (2023), 103–18. <https://doi.org/10.24090/volkgeist.v6i1.7229>.

<sup>47</sup> Clancy and Falk, 'The ICC and Palestine'.

<sup>48</sup> Zakiya Darajat, 'Jihad Dinamis: Menelusuri Konsep Dan Praktik Jihad Dalam Sejarah Islam', *IJTIHAD Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 16.1 (2016), 1. <https://doi.org/10.18326/ijtihad.v16i1.1-25>.

<sup>49</sup> Y Gunawan and Z A Astutik, 'The Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution', *Jurnal Hukum Novelty*, 10.2 (2019), 85–100. <https://doi.org/10.26555/novelty.v10i2.a13530>.

<sup>50</sup> David Southall, Rhona MacDonald, and Siobhan MacKenzie, 'Abuse of Women and Children in Armed Conflict and Domestically: More Effective Safeguarding Systems Urgently Needed to Prevent

Paragraph 1 "The State Party may refer to the Public Prosecutor Situations in which one or more crimes within the jurisdiction of the Court appear to have occurred committed and request the Public Prosecutor to investigate the situation to determine whether one or more specific persons should be tried for committing the crime." Paragraph 2 "If possible, the referral must be aware of the relevant circumstances and be accompanied by supporting documents available to the Referee, state under the circumstances" The ICC jurisdiction is obliged to continue its investigation into the events of October 7, 2023 in Gaza.<sup>51</sup>

Despite the previous decade of the conflict, there was a failure to prosecute Israeli perpetrators of war crimes and crimes against humanity targeting Palestinian civilians.<sup>52</sup> This is certainly the limitation of the courts and the legal and geopolitical challenges faced in cases where the alleged perpetrators have significant influence in the international political arena. This legal process has important potential implications for broader accountability efforts, which can become significant over time. However, the ICC's jurisdiction is currently one that has gained credibility because it has the institutional courage to stand up to the architects of Israeli criminality.<sup>53</sup>

#### 4. Conclusion

In general, a war certainly has rules made by international law. The provisions of the Rome Statute and IHL are part of international law. Based on data generated from several reports, as a result of the Israeli counterattack on October 7, 2023. Around 100 journalists were killed, 10,000 children were killed, including new born babies, 24,000 children were injured, and more than 1000 women were killed. Most of the deaths were caused by Israeli airstrikes. Israel also stepped up its blockade of Gaza, cutting off food, water, electricity, and fuel supplies and bombing one of Gaza's hospitals. Following the analysis discussed in the article, Israel's counterattack targeting civilians on October 7 2023 is considered a war crime and a crime against humanity. However, because Israel is a member country of the ICC, as of my last update in 2024, Israel is not a party to the Rome Statute which is the treaty that established the ICC. The Rome Statute entered into force on July 1, 2002, and as of 2024, Israel has not ratified or acceded to the Rome Statute. Because Israel is not a member of the ICC, the ICC's jurisdiction over crimes committed on its territory or by its citizens is limited. However, it is important to note that the ICC can still have jurisdiction over crimes committed in the territory of a non-party state if that state accepts the ICC's jurisdiction or if the UN Security Council refers the situation to the ICC under Article 13 of Rome Statute and if a non-party state commits a crime on the territory of a state party to the ICC under article 12(2) of the Rome Statute. In the October 7 2023 attack which targeted civilians in Gaza, the ICC Jurisdiction Policy stated that it would continue and accelerate the investigation. Then this is definitely influenced by several factors that influence the ICC's investigative jurisdiction in enforcing the law against Israel regarding the October 7 2023 conflict, including Palestine as a state party to the ICC which should receive justice. Then, there was a lot of encouragement and pressure

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These Crimes and Ensure Protection', *Medical Research Archives*, 12.2 (2024). <https://doi.org/10.18103/mra.v12i2.5048>.

<sup>51</sup> Victor Kattan, 'Israeli Settlements, U.S. Foreign Policy, and International Law', *Insight Turkey*, 22.1 (2020), 47-57. <https://doi.org/10.25253/99.2020221.04>.

<sup>52</sup> Soeleman Djaiz Baranyanan, Nilam Firmandayu, and Ravi Danendra, 'The Compliance of Regional Autonomy with State Administrative Court Decisions', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.1 (2024), 35-52. <https://doi.org/10.53955/jsderi.v2i1.25>.

<sup>53</sup> Clancy and Falk, 'The ICC and Palestine'.

from non-member countries and ICC member countries to carry out investigations regarding the conflict attacks in October 2023.

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## References

- Aasi, Joni, 'Israeli Territorial Annexation in Occupied Palestinian Territory: The Ambivalence of International Law', *Yuridika*, 37.3 (2022), 539–62. <https://doi.org/10.20473/ydk.v37i3.38691>.
- Ablamskyi, Serhii, Denakpon L.R. Tchobo, Vitalii Romaniuk, Goran Šimić, and Nadiya Ilchyshyn, 'Assessing the Responsibilities of the International Criminal Court in the Investigation of War Crimes in Ukraine', *Novum Jus*, 17.2 (2023), 353–74. <https://doi.org/10.14718/NovumJus.2023.17.2.14>.
- Acer, Yücel, 'The International Criminal Court and Israel's Acts in the Occupied Territories: Progress and Prospects', *Insight Turkey*, 23.3 (2021), 69–92. <https://doi.org/10.25253/99.2021233.5>.
- Alashqar, Muath Mohammed, Asmar Abdul Rahim, and Ahmad Shamsul Abd Aziz, 'War Crimes in Gaza Strip from Year 2008 2021: Individual Criminal Responsibility Under the Legal Framework of Rome Statute of the International Criminal Court', *Journal of International Studies*, 19.1 (2023), 61–93. <https://doi.org/10.32890/jis2023.19.1.3>.
- Alasttal, Abdelrahman, Abdul Maasba Magassing, Maskun Maskun, and Iin Karita Sakharina, 'The Role of the United Nations in Protecting the Right to Development in Occupied Palestine', *Legality: Jurnal Ilmiah Hukum*, 31.1 (2023), 138–56. <https://doi.org/10.22219/ljih.v31i1.25836>.
- Al-Yagon, Michal, Lior Garbi, and Yisrael Rich, 'Children's Resilience to Ongoing Border Attacks: The Role of Father, Mother, and Child Resources', *Child Psychiatry & Human Development*, 54.4 (2023), 1015–26. <https://doi.org/10.1007/s10578-021-01303-6>.
- Asqool, Abdalfatah Mohammed, Shahrul Mizan Ismail, and Rohaida Nordin, 'The Protection of Children during Armed Conflicts: Israeli Violations of International Humanitarian Law in Three Wars in Gaza', *UUM Journal of Legal Studies*, 14.2 (2023), 535–56. <https://doi.org/10.32890/uumjls2023.14.2.5>.
- Baranyanan, Soeleman Djaiz, Nilam Firmandayu, and Ravi Danendra, 'The Compliance of Regional Autonomy with State Administrative Court Decisions', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.1 (2024), 35–52. <https://doi.org/10.53955/jsderi.v2i1.25>.
- Benini, Caterina, 'Limiti Della Giurisdizione Italiana Rispetto Ad Azioni Relative Ad Un Disegno Internazionale', *Cuadernos De Derecho Transnacional*, 16.1 (2024), 671–83. <https://doi.org/10.20318/cdt.2024.8441>.



- Bo, Marta, 'Autonomous Weapons and the Responsibility Gap in Light of the Mens Rea of the War Crime of Attacking Civilians in the ICC Statute', *Journal of International Criminal Justice*, 19.2 (2021), 275–99. <https://doi.org/10.1093/jicj/mqab005>.
- Braumann, Céline, 'The Settlement of Tax Disputes by the International Court of Justice', *Leiden Journal of International Law*, 36.4 (2023), 907–23. <https://doi.org/10.1017/S0922156523000158>.
- Brockhill, Aneta, and Karl Cordell, 'The Violence of Culture: The Legitimation of the Israeli Occupation of Palestine', *Third World Quarterly*, 40.5 (2019), 981–98. <https://doi.org/10.1080/01436597.2019.1581057>.
- Chlevickaitė, Gabrielė, Barbora Holá, and Catrien Bijleveld, 'Suspicious Minds? Empirical Analysis of Insider Witness Assessments at the ICTY, ICTR and ICC', *European Journal of Criminology*, 20.1 (2023), 185–207. <https://doi.org/10.1177/1477370821997343>.
- Clancy, Pearce and Richard Falk,, 'The ICC and Palestine: Breakthrough and End of the Road?', *Journal of Palestine Studies*, 50.3 (2021), 56–68. <https://doi.org/10.1080/0377919X.2021.1947108>.
- Darajat, Zakiya, 'Jihad Dinamis: Menelusuri Konsep Dan Praktik Jihad Dalam Sejarah Islam', *IJTIHAD Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 16.1 (2016), 1. <https://doi.org/10.18326/ijthad.v16i1.1-25>.
- Dvaladze, George, 'Unveiling Claims of Discrimination Based on Nationality in the Context of Occupation under International Humanitarian and Human Rights Law', *International Review of the Red Cross*, 105.923 (2023), 947–64. <https://doi.org/10.1017/S1816383123000085>.
- Flores-Liera, Socorro, 'Comments on the Crime of Aggression Taking into Account the 4th Edition of the Commentary of the Rome Statute of the International Criminal Court', *Criminal Law Forum*, 34.4 (2023), 443–47. <https://doi.org/10.1007/s10609-023-09469-5>.
- Gilboa, Eytan, 'The Palestinian Campaign against Israel at the United Nations Human Rights Council', *Israel Affairs*, 27.1 (2021), 68–88. <https://doi.org/10.1080/13537121.2021.1864849>.
- Gillett, Matthew, 'Criminalizing Reprisals against the Natural Environment', *International Review of the Red Cross*, 105.924 (2023), 1463–96. <https://doi.org/10.1017/S1816383123000255>.
- Grzybowski, Janis, and Filipe dos Reis, 'After States, before Humanity? The Meta-Politics of Legality and the International Criminal Court in Iraq, Afghanistan, and Palestine', *Review of International Studies*, 50.2 (2024), 354–72. <https://doi.org/10.1017/S026021052300030X>.
- Gunawan, Yordan, Arif Budiman, Nafiza Fauziah, and Wa Ode Fithrah Az-zalia Syamsudin, 'Journalist Protection on the Battlefield Under the International Humanitarian Law: Russia-Ukraine War', *Jurnal Hukum Unissula*, 39.1 (2023), 1–11. <https://doi.org/10.26532/jh.v39i1.24685>.
- Gunawan, Yordan, Aulawi, Muhamad Haris, Anggriawan, Rizaldy, Putro, Tri Anggoro, 'Command Responsibility of Autonomous Weapons under International Humanitarian Law', *Cogent Social Sciences*, 8.1 (2022). <https://doi.org/10.1080/23311886.2022.2139906>.

- Gunawan, Yordan, Fawaz Muhammad Ihsan, and Paulo Andres Anderson, 'The Murder of Shireen Abu Akleh: How Does Law Protect the Journalist in a War?', *Lex Scientia Law Review*, 7.2 (2023), 373–412. <https://doi.org/10.15294/lesrev.v7i2.59534>.
- Gunawan, Y, and Z A Astutik, 'The Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution', *Jurnal Hukum Novelty*, 10.2 (2019), 85–100. <https://doi.org/10.26555/novelty.v10i2.a13530>.
- Hakki, Lara, Eric Stover, and Rohini J. Haar, 'Breaking the Silence: Advocacy and Accountability for Attacks on Hospitals in Armed Conflict', *International Review of the Red Cross*, 102.915 (2020), 1201–26. <https://doi.org/10.1017/S1816383121000382>.
- Kanwal, Aroosa, 'Dreaming with Drones: Palestine under the Shadow of Unseen War', *Journal of Commonwealth Literature*, 57.1 (2022), 240–58. <https://doi.org/10.1177/0021989420951839>.
- Kattan, Victor, 'Israeli Settlements, U.S. Foreign Policy, and International Law', *Insight Turkey*, 22.1 (2020), 47–57. <https://doi.org/10.25253/99.2020221.04>.
- Khoirunnisa, Hafara, Sefriani, Jawahir Thontowi, Jaya Indra Santosa, Yasyfa Febriani, and Ahmed Zeiad M. Masoud, 'Judaization in Palestine: Is It Genocide According to the 1998 Rome Statute?', *Sriwijaya Law Review*, 8.1 (2024), 79–98. <https://doi.org/10.28946/slrev.Vol8.Iss1.3144.pp79-98>.
- Lubis, Muhammad Ikhsan, 'The Relationship of International Human Rights Law with International Humanitarian Law in Situations of International Armed Conflicts', *Journal of Indonesian Legal Studies*, 1.1 (2016), 13–34. <https://doi.org/10.15294/jils.v1i01.16565>.
- Mardiyanto, Ibnu, and Hidayatulloh Hidayatulloh, 'The Responsibility to Protect (R2P) Concept as an Attempt for Protection of Human Rights in International Humanitarian Law Context', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6.1 (2023), 103–18. <https://doi.org/10.24090/volksgeist.v6i1.7229>.
- Maulana Malik Ibrahim Malang, Uin, "Abd Al-Majīd Al-Najjār's Perspective on Maqāṣid Al-Sharī'ah Faishal Agil Al M Unawar', *JURIS: Jurnal Ilmiah Syari'ah*, 20.2 (2021), 209–23. <https://doi.org/10.31958/juris.v20i2.4281>.
- Mohd Hassan, Fareed, and Mohd Hazmi Bin Mohd Rusli, 'Malaysia and the Rome Statute of the International Criminal Court', *Brawijaya Law Journal*, 9.1 (2022), 76–89. <https://doi.org/10.21776/ub.blj.2022.009.01.06>.
- Mullins, Christopher W., 'Variations in War Crimes During the Sierra Leone Civil War', *International Criminal Justice Review*, 33.2 (2023), 197–217. <https://doi.org/10.1177/1057567720981621>.
- Nedilko, Bohdan, 'Models of Evaluation of Evidences in the Case-Law of the International Criminal Court', *Evropsky Politicky a Pravni Diskurz*, 8.1 (2021), 78–85. <https://doi.org/10.46340/eppd.2021.8.1.12>.
- Obermaier, Lena, 'Disabling Palestine: The Case of Gaza's Great March of Return', *Race & Class*, 65.3 (2024), 27–46. <https://doi.org/10.1177/03063968231203485>.
- Omerović, Enis, and Andrea Grande, 'Judging More by Judging Less : Issues and Limits of the International Criminal Court', *Pravni Vjesnik*, 39.1 (2023), 7–34. <https://doi.org/10.25234/pv/21105>.

- Orzeszyna, Krzysztof, 'Convergence of International Humanitarian Law and International Human Rights Law in Armed Conflicts', *Studia Iuridica Lublinensia*, 32.3 (2023), 237-52. <https://doi.org/10.17951/sil.2023.32.3.237-252>.
- Prihandono, Iman, and Dewi S. Yuniarti, 'Expanding the Jurisdiction of the International Criminal Court', *Brawijaya Law Journal*, 9.2 (2022), 182-95. <https://doi.org/10.21776/ub.blj.2022.009.02.05>.
- Qandeel, Mais, 'Violence and State Attribution : The Case of Occupied Palestine Violence and State Attribution : The Case of Occupied', *Journal of Palestine Studies*, 52.2 (2023), 43-63. <https://doi.org/10.1080/0377919X.2023.2218588>.
- Quigley, John, 'Prohibition of Palestine Arab Return to Israel As a Crime Against Humanity', *Criminal Law Forum*, 34.1 (2023), 1-41. <https://doi.org/10.1007/s10609-022-09450-8>.
- Rufanova, Viktoriia, Serhii Babanin, Viktor Bohuslavskiy, Viktoria Savenko, and Inna Melnychenko, 'Strengthening International Law against Sexual Violence in Armed Conflicts: Insights from the Russian-Ukrainian War', *Pakistan Journal of Criminology*, 16.1 (2024), 111-25. <https://doi.org/10.62271/pjc.16.1.111.125>.
- Sefriani, Sefriani, and Vania Lutfi Safira Erlangga, 'The Legality of Israel's Self-Defense Claim of the Strikes on Hamas', *Yustisia Jurnal Hukum*, 11.3 (2022), 197. <https://doi.org/10.20961/yustisia.v11i3.61262>.
- S.H, Suherman, and Heru Sugiyono, 'Government Policy in Indonesian Contract Law That Still Uses Contract Law Inherited from Dutch Product', *International Journal of Law and Management*, 66.1 (2024), 1-10. <https://doi.org/10.1108/IJLMA-09-2022-0203>.
- Southall, David, Rhona MacDonald, and Siobhan MacKenzie, 'Abuse of Women and Children in Armed Conflict and Domestically: More Effective Safeguarding Systems Urgently Needed to Prevent These Crimes and Ensure Protection', *Medical Research Archives*, 12.2 (2024). <https://doi.org/10.18103/mra.v12i2.5048>.
- Woodcock, Taylor Kate, 'Human/Machine(-Learning) Interactions, Human Agency and the International Humanitarian Law Proportionality Standard', *Global Society*, 38.1 (2024), 100-121. <https://doi.org/10.1080/13600826.2023.2267592>.
- Yang, Yidou, 'The Gap between the International Criminal Court and Victims: Criminal Trial Reparations as a Case Study', *Laws*, 12.4 (2023), 72. <https://doi.org/10.3390/laws12040072>.
- Yussoff, Saidah Fasihah Binti Che, and Rohaida Nordin, 'Freedom of Expression in Malaysia: Compatibility with the International Human Rights Standard', *Bestuur*, 9.1 (2021), 34-42. <https://doi.org/10.20961/bestuur.v9i1.51637>.
- Zavorotko, Inna, 'Ukrainian Women Are Raped, Men Are Killed: The Russian Federation Violates International Law', *International and Comparative Law Review*, 23.1 (2023), 229-55. <https://doi.org/10.2478/iclr-2023-0010>.