



Genocide, War Crimes and The International Criminal Court: A Case Study of Israel-Palestine Conflict

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ABSTRACT

This dissertation examines the International Criminal Court (ICC)'s role and effectiveness in investigating allegations of genocide, war crimes, and crimes against humanity in the long-running Israel-Palestine conflict. The study, primarily focusing on the period following Palestine's accession to the Rome Statute in 2015, examines the legal, political, and institutional challenges that the ICC faces when dealing with violations committed by Israeli military forces and Palestinian armed groups. The study examines the legal definitions and thresholds of core international crimes, as well as the application of these frameworks to events such as Operation Protective Edge and subsequent Gaza conflicts, using international humanitarian law, including the Geneva Conventions and the Rome Statute. The study uses a qualitative legal methodology that includes case study analysis to assess the credibility of domestic investigations, the ICC's principle of complementarity, and geopolitical resistance—particularly from Israel and the United States. The dissertation analyses other ICC cases, including Sudan and Ukraine, to highlight how enforcement gaps, jurisdictional disputes, and political influence limit the Court's reach. Despite these constraints, the ICC serves an important symbolic and deterrent role, providing alternatives for international accountability. The findings highlight the need for institutional reform, increased state cooperation, and inclusive legal strategies to improve justice outcomes in complex conflicts such as Israel-Palestine.

Keywords: War Crimes, Genocide, Crimes Against Humanity, International Criminal Court (ICC), Israel-Palestine Conflict, International Humanitarian Law

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND AND CONTEXT

The Israel-Palestine conflict originated in the late 19th and early 20th centuries, with nationalist movements intensifying among Jews and Arabs. Zionism, advocating for a Jewish homeland, sparked opposition from Arab population in Palestine, who saw Jewish immigrants as a threat to their land and identity. British colonial rule under the Mandate for Palestine (1920-1948) worsened tensions by issuing the Balfour Declaration (1917), which expressed support for a Jewish homeland while simultaneously promising Arab self-determination (Khalid, 2020). As Jewish immigration increased, violent clashes broke out, resulting in the 1947 United Nations Partition Plan, which proposed separate Jewish and Arab states. The plan was rejected by Arab leaders, and the subsequent war in 1948 resulted in the establishment of Israel and the displacement of approximately 750,000 Palestinians, known as the Nakba, or “catastrophe” (Morris B. , 2004). The conflict has persisted through multiple wars, occupation policies, and failed peace negotiations, reinforcing deep-rooted grievances on both sides. Throughout the decades, both Israelis and Palestinians have accused each other of serious human rights violations and acts of violence. Palestinian militant groups, including Hamas, have launched rocket attacks on Israeli civilians’ areas, while Israel has conducted airstrikes and military offensives in Gaza, resulting in significant casualties among non-combatants (B’Tselem., 2020). The Second Intifada (2000-2005) saw widespread violence, including Palestinian suicide bombings and Israeli military operations that caused significant damage in Palestinian territories (Shlaim, 2015). Recently, both parties have faced allegations of war crimes. Israel has been criticized for its disproportionate use of force, home demolitions and settlement expansions in the West Bank, which are all considered violations of international law. Palestinian armed factions, on the other hand, have been accused of killing civilians and using people as human shields (Shakir, 2021). The humanitarian crisis in Gaza, worsened by blockades and military conflicts, has sparked widespread condemnation and demands for immediate action. Despite international scrutiny, accountability is difficult to define, with both Israeli and Palestinian leaderships justifying their actions as self-defence or resistance. The escalation of the conflict has played a significant impact in the evolution of international humanitarian law (IHL), which seeks to regulate armed conflicts while protect civilians. The Geneva Conventions, first established in 1864 and significantly revised after World War II, laid the foundation for modern IHL by emphasizing the protection of non-combatants and the prohibiting collective punishment (International Committee of the Red Cross, 2023). The Israel-Palestine conflict has put this principle to the test, with numerous reports of IHL violations, including attacks on medical facilities and civilian infrastructure (International Court of Justice, 2023). The International Criminal Court (ICC) is investigating alleged war crimes, but political dynamics complicates enforcement. Israel rejects ICC jurisdiction, while Palestine seeks legal remedies through international bodies. The ongoing struggle for accountability demonstrates the limitations of international law in resolving conflicts, contributing to impunity and violence, emphasizing the need for a just and long-term resolution.

1.2 RESEARCH PROBLEM AND JUSTIFICATION

Protracted conflicts often have significant accountability gaps due to geopolitical interests and power imbalances. Mechanisms like the International Criminal Court (ICC) address war crimes but their implementation remains uneven. For example, Ukraine’s robust transnational accountability efforts, which includes the ICC, International Court of Justice (ICJ), and UN Human Rights Council, contrast sharply with muted responses to comparable atrocities in Myanmar, Sudan and Ethiopia. Powerful states prioritize accountability only when it aligns with strategic goals, leaving victims in less geopolitically significant conflicts without alternatives. The Gaza situation exemplifies this disparity, as accountability processes face disproportionate political opposition from powerful states. The ICC’s jurisdictional authority and perceived neutrality are still debated, especially among non-member states. Legal scholars argue that the ICC’s complementarity principle only permits intervention when national systems fail to prosecute crimes, which Israel could achieve through domestic trials. Critics go beyond specific cases, accused the ICC of disproportionately targeting African nations’ leaders while ignoring atrocities in Afghanistan and Syria. The ICC’s complementarity framework encourages national judicial reforms, as demonstrated by Colombia’s transitional justice processes. Despite imperfection, the ICC remains the only permanent institution capable of prosecuting individuals for genocide and crimes against humanity, filling critical gaps in the global protection order and strengthening accountability norms.

1.3 RESEARCH QUESTIONS

The dissertation will be centred around the following research question: What is the International Criminal Court's role and effectiveness in investigating and prosecuting war crimes, genocide, and crimes against humanity in the context of the Israel-Palestine conflict?

The other research questions include the following: How does the ICC define and prosecute war crimes, genocide and crimes against humanity? How has ICC addressed allegations of war crimes and genocide on a global scale? What specific challenges does the ICC face in the context of Israel-Palestine conflict? What are the implications of the ICC's action the Israel-Palestine conflict?

1.4 RESEARCH AIMS AND OBJECTIVES

The International Criminal Court (ICC) , established under the Rome Statute, is a court of last resort that aims to prosecute individuals for genocide, war crimes, and crimes against humanity when national jurisdictions refuse or cannot act. Its role is to end impunity and uphold the rule of law (United Nations, n.d.). However, the ICC faces challenges in enforcing its mandate due to geopolitical constraints and the refusal of certain nations, such as Israel and the United States, to ratify the Rome Statute (Wong, 2019). This limits its jurisdiction and influence over non-member states cases, raising questions about its effectiveness to fulfil its intended purpose. The ICC's involvement in the Israel-Palestine conflict has been contentious, with accusations against Israel include war crimes, collective punishment, and acts potentially amounting to genocide in Gaza. Human rights organizations like Amnesty International and Human Rights Watch have documented extensive violations by Israeli forces, while Hamas has also been accused of war crimes (Murphy, 2024). The ICC is investigating allegations of crimes committed in deeply politicized conflicts, revealing the complexity of prosecuting crimes without cooperation. The ICC's effectiveness is mixed, with limited enforcement capabilities and reliance on member states hindering its ability to deliver justice comprehensively. (United Nations, n.d.).

1.5 METHODOLOGY

This research uses a qualitative legal analysis to examine the role of International Criminal Court (ICC) in addressing allegations of genocide and war crimes in the Israel-Palestine conflict. Qualitative legal analysis is widely used method in international law research, by analysing legal texts, treaties and jurisprudence, this study critically assess the ICC's mandate, jurisdictional authority, and effectiveness in prosecuting war crimes and crimes against humanity. This study also explores legal debates surrounding the Court's legitimacy, state cooperation, and enforcement challenges. A case approach is used to provide a detailed investigation of the ICC's involvement in Israel-Palestine, analysing primary sources such as the Rome Statute, UN reports and official court records, which offers insights into legal proceedings and institutional responses. Secondary sources, including peer-reviewed academic literature and expert commentary, are examined for contextualized legal interpretations and policy implications. By triangulating these resources, the study endures a rigorous and balanced assessment of the ICC's role. This methodological approach strengthens the research's credibility and provides a structured framework for evaluating international legal mechanism in addressing complex geopolitical conflicts.

1.6 STRUCTURE OF THE STUDY

The structure of the study will include the following:

The Chapter 2: The legal framework of the ICC which will provide a detailed analysis of the history and establishment of the ICC, definitions of genocide, war crimes, crimes against humanity, ICC's structure and functioning, jurisdictional challenges and ICC's historical and contemporary case law concerning genocide, war crimes and crimes against humanity.

The Chapter 3: The Israel-Palestine conflict will provide a detailed analysis on the historical overview of the conflict, key legal and humanitarian issues, the relevant international law instruments, the debate on genocide in the conflict.

The **Chapter 4**: The ICC and the Israel Palestine conflict will include Palestine's accession to the Rome Statute, the preliminary investigations by the ICC, legal arguments from both sides, political and diplomatic pressures and evaluation of progress and stagnation.

The **Chapter 5**: Case study analysis which will include war crimes allegations, crimes against humanity, genocide claims and controversies and credibility of evidence and international responses.

The **Chapter 6**: The role and effectiveness of the ICC in the Israel Palestine case which will include strengths of the ICC approach, limitations and failures, comparative insights: other ICC cases and recommendations for ICC reform.

The **Chapter 7**: Conclusion and Future Outlook

References

CHAPTER 2: THE ICC AND ITS JURISDICTION

2.1 HISTORY AND ESTABLISHMENT OF THE ICC

The International Criminal Court (ICC) is a global institution established to address serious crimes that threaten peace, security and human well-being. It was based on the experiences of Nuremberg and Tokyo Tribunals, which prosecuted war crimes and crimes against humanity during and after World War II. The movement to establish a permanent international criminal court accelerated following the atrocities committed in Rwanda and the former Yugoslavia in the 1990s, highlighting the need for a consistent and universal body (Ferragamo & Klobucista, 2025). This need resulted in the adoption of the Rome Statute on July 17, 1998, at a diplomatic conference in Rome, Italy, with the ICC officially established on July 1, 2002, when the statute went into effect (International Criminal Court, 1998). The Rome Statute is the ICC's foundational treaty, outlines its legal framework, jurisdiction and operational principles, marking a pivotal moment in international law, aiming to eradicate impunity for severe international crimes. Crimes within the jurisdiction of the International Criminal Court means, according to the Rome Statute, "the most serious crimes of concern to the international community as a whole". There are four categories of crimes within the Court's Jurisdiction: The crime of genocide (Article 6, 1998); Crimes against Humanity (Article 7, 1998); War Crimes (Article 8, 1998); the Crime of Aggression. The ICC will initially have jurisdiction over three core crimes such as crime of genocide, crimes against humanity and war crimes. These are same crimes that were covered by the 1945 Nuremberg Charter (through which Nazis were prosecuted after WW II) as well as the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda. Article 6 of the Statute which contains the definition of genocide list 5 grounds to be fulfilled to constitute the crime. Article 7 and Article 8 provide for a long list defining crimes against humanity and war crimes, respectively. The Court will deal with the most serious crimes committed by individuals: genocide, crimes against humanity, war crimes, and crimes of aggression. Genocide and crimes against humanity are punishable irrespective of whether they are committed in time "peace" or of war (Chowdhury, 2003).

2.2 THE ICC'S STRUCTURE AND FUNCTIONING

The ICC is a highly specialized judicial institution, designed to address the world's gravest crimes with a structure and functioning that ensures fairness, independence and accountability. It operates through several key organs, each with distinct roles and responsibilities, including the Presidency, the Judicial Divisions, the Office of the Prosecutor (OTP) and the Registry. Together, these organs enable the ICC to carry out its mandate effectively. At the core of the ICC's functioning is the Office of the Prosecutor, an independent organ tasked with investigating and prosecuting individuals responsible for genocide, war crimes, crimes against humanity and the crimes of aggression. The prosecutor's role begins with the preliminary examination of information received from states, international organisations, or individuals. Based on this examination, the Prosecutor decides whether to request authorization from the Pre-Trial Chamber to initiate a full investigation. During investigations, the OTP gathers evidence, conducts interview with victims and witnesses, and collaborates with national authorities, non-governmental organizations and international entities. The prosecutor is obligated to ensure that investigations are impartial and based on sufficient evidence to meet the legal threshold required for prosecution. In addition to investigating alleged perpetrators, the OTP may issue arrest warrants or summonses to appear, subject to judicial approval. The

Judicial Divisions of the ICC consist of Pre-Trial and Appeals Chambers, comprised of judges elected by the Assembly of States Parties. These judges are tasked with ensuring the fair and impartial adjudication of cases. The Pre-Trial Chamber plays a vital role in authorizing investigations, confirming charges, and issuing arrest warrants. The Trial Chamber oversees proceeding, ensuring due process, determining guilt or innocence, and imposing sentences if warranted. The Appeals Chamber reviews decisions to ensure compliance with legal standards. The judges collectively uphold the rights of defendants and victims throughout the judicial process.

2.3 DEFINITIONS: GENOCIDE, WAR CRIMES, CRIMES AGAINST HUMANITY

The ICC will only be able to exercise jurisdiction over core crimes after the Statute comes into effect (Article 11, 1998). The Statute also refers to elements of crimes (Article 9, 1998), which will assist the court in interpreting and applying the definitions of crimes under Articles 6, 7, and 8, and will be adopted by a two-thirds majority of the Assembly of States Parties in accordance with the Rome Statute (Article 9, 1998). The heinous nature of these crimes lends legitimacy to the Court's exercise of jurisdiction. The statutory provision of each crime is as follows: -

i) Crime of Genocide:

The Rome Statute's definition of the 'crime of genocide' is based on the 1948 Genocide Convention and affirms that the crime is punishable not only during armed conflict but also during peacetime. Genocide is a form of violence committed "with intent to destroy in whole or in part, a national, ethnical, racial, or religious group, as such" (Article 6, 1998). The five acts include killing, causing serious harm, deliberating inflicting conditions that lead to physical destruction, imposing measures to prevent births within the group, and forcibly transferring children to another group.

ii) Crime Against Humanity:

The definitions of crimes against humanity in various international legal bodies, including the Nuremberg and Tokyo Charters, the International Crimes Tribunal on the Former Yugoslavia (ICTY), and the International Crimes Tribunal on Rwanda (ICTR), are varied and sometimes contradictory. The final agreed definition is found in Article 7 of the Rome Statute, reflecting developments in customary and conventional international law. Crimes of genocide and crimes against humanity can be committed in peacetime or during armed conflict and can be committed by state or non-state actors. However, the threshold test is a high one, defining "inhumane acts" as acts committed as part of a widespread or systemic attack directed against civilian populations. Examples of "inhumane acts" include murder, extortion, enslavement, deportation, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, sterilization, persecution against identifiable groups, enforced disappearance, apartheid, and other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health (Chowdhury, 2003).

iii) War Crimes

War crimes are serious violations of the laws of war, committed on a large scale both in international and internal armed conflicts. They are divided into two clusters: international armed conflicts and non-international or internal armed conflict. The norms for war crimes are based on the 1907 Hague Regulations, the Geneva Conventions and Additional Protocol II to the 1949 Geneva Conventions. The jurisdictional threshold for war crimes is established in Article 8 of the Rome Statute, which states that the court has jurisdiction in respect of war crimes committed as part of a plan for policy or large-scale commission of such crimes. The Statute also prohibits the use of weapons that cause superfluous injury or unnecessary suffering or are inherently indiscriminate. However, there is a provision contemplating future additions to the list of weapons (Chowdhury, 2003).

2.4 JURISDICTIONAL CHALLENGES

The ICC faces significant jurisdictional challenges, which stem primarily from issues of state sovereignty, the limited scope of its jurisdiction over non-member states, and the principle of complementarity. One of the most significant jurisdictional challenges is the ICC's reliance on individual states to ratify the Rome Statute. The ICC's jurisdiction is limited to crimes committed on the territory of member countries or by

their nationals, unless a non-member state voluntarily accepts its jurisdiction, or the United Nations Security Council (UNSC) refers a situation to the Court. Because powerful countries such as United States, China, Russia and Israel have not ratified the Rome Statute, the Court's jurisdiction over many serious international crimes is limited. Non-member states often fear the ICC jurisdiction will infringe on their domestic judicial system or expose their leaders to international scrutiny. For instance, Israel challenges the ICC's jurisdiction in cases involving alleged crimes in occupied Palestinian territories, claiming Palestine lacks full statehood under international law and cannot delegate jurisdiction to the ICC. These disputes highlight the Court's vulnerability to political and legal challenges that can hinder its operation. The ICC's foundational principle of complementarity complicates its jurisdictional landscape by acting as a court of last resort when national jurisdictions are unable or unwilling to prosecute alleged crimes protecting state sovereignty. However, this principle can become contentious when states claim to be conducting insufficient or politically motivated investigations or prosecutions. In some cases, governments accused of crimes have used national investigations to shield perpetrators from international accountability. Furthermore, in politically charged situations such as the Israel-Palestine conflict, complementarity raises concerns about whether local investigations are truly impartial or capable of addressing alleged crimes. The International Criminal Court's reliance on state cooperation worsens these jurisdictional challenges.

2.5 ICC'S HISTORICAL AND CONTEMPORARY CASE LAW CONCERNING GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY

Since its establishment in 2002, the International Criminal Court (ICC) has dealt with a number of cases involving genocide, war crimes and crimes against humanity. These cases aim to hold individuals accountable for the most serious crimes under international law while also providing victims with justice. The ICC has addressed atrocities in various parts of the world, including high-profile cases in Darfur, the Democratic Republic of Congo, and elsewhere. One of the ICC's most notable cases is related to the Darfur region of Sudan, where widespread violence and atrocities occurred during a brutal conflict that began in 2003. The ICC issued arrest warrants for Sudan's former President Omar al-Bashir, who was charged with genocide, war crimes and crimes against humanity (Al Bashir Case, 2009). The warrants were based on allegations of large-scale killings, forced displacement, and civilian attacks. Despite the warrants, al-Bashir remained free for years, traveling to countries that refused to enforce them, highlighting the ICC's challenge of lack of enforcement power and dependence on state cooperation. In 2020, Sudan's transitional government expressed a willingness to collaborate with the ICC, raising a desire for accountability. The ICC's first conviction occurred in the Democratic Republic of Congo (DRC), in the case of Thomas Lubanga (Lubanga Case, 2006). Lubanga, a rebel leader found guilty of recruiting and using child soldiers in his armed group during the country's violent conflict. This marked the first time a person was held accountable for enlisting children under the age of 15 for combat. Another important case from the DRC involved Germain Katanga, who was convicted of crimes against humanity and war crimes, including murder and sexual slavery, during an attack on a village in 2003. These cases sent a strong message about the protection of vulnerable populations, including children and civilians, during armed conflicts (Katanga Case, 2007). The ICC has investigated and prosecuted other significant situations, including Uganda's Lord's Resistance Army leaders including, Joseph Kony, for crimes such as murder, sexual enslavement, and child abduction (Kony Case, 2005). In Mali, the ICC convicted Ahmad al-Faqi al-Mahdi for destroying historical monuments in Timbuktu, marking the first ICC case focused on cultural heritage as a war crime (Al Mahdi Case, 2015). The ICC has made progress in holding individuals accountable for atrocities, but challenges like state non-cooperation, political interference, slow trials remain significant obstacles, despite its vital role in pursuing justice for victims.

CHAPTER 3: THE ISRAEL-PALESTINE CONFLICT

3.1 HISTORICAL OVERVIEW OF THE CONFLICT

The Israel-Palestine conflict has a complex history dating back to the early 20th century, especially during the British Mandate over Palestine. Following the collapse of the Ottoman Empire after World War I, the League of Nations granted Britain administrative control over Palestine in 1922. This era witnessed increasing tensions between the Arab population and the growing number of the Jewish immigrants, particularly after Balfour Declaration, in which the British government expressed support for the establishment of a “national home for the Jewish people” in Palestine (Alfonseca, 2023). The 1920s and 1930s saw escalating conflicts between both groups over political sovereignty and land. The 1936-1939 Arab Revolt against British rule and Jewish immigration intensified communal divisions (Makan, n.d.). Post- World War II, Holocaust survivors sought refuge in Palestine, increasing Jewish demands for statehood and Arab fears of displacement. The 1947 United Nations Partition Plan proposed a two-state solution (Pappe, 2007). but it was rejected by Arab leaders, leading to civil war and, the declaration of the State of Israel in 1948. The creation of Israel in 1948 was followed by the first Arab-Israeli war, also known as the Nakba (catastrophe) by Palestinians, resulting in the displacement of over 700,000 Palestinians and the territorial expansion of Israel beyond the UN-proposed borders (Morris B. , 2004). The 1964 Six-Day War marked a significant turning point in the conflict, with Israel occupying the West Bank, Gaza Strip, East Jerusalem, Sinai Peninsula, and Golan Heights. This led to occupation of over one million of Palestinians under Israeli military rule (The Editors of Encyclopaedia Britannica, 2025), altering the region's geography and demography. The war also raised political and legal questions about the status of the occupied territories and the rights of the Palestinian population. United Nations Security Council Resolution 242 called for Israel's withdrawal from occupied territories and the recognition of every state's right to live in peace, but it left significant ambiguities that have shaped negotiations ever since (UN Security Council , 1968). The 1973 Yom Kippur War led by Egypt and Syria aimed to reclaim lost territory but ended in a military stalemate, which led to the 1979 Camp David Accords between Egypt and Israel. The subsequent decades saw a cycle of uprisings, negotiations and military operations including the First Intifada (1987-1993) and the Second Intifada (2000-2005) which reflected Palestinian resistance to occupation and Israel's heavy-handed military responses (Brym, 2024). These uprisings led to international efforts to mediate the conflict, resulting in the 1993 Oslo Accords, which established limited Palestinian self-rule under the Palestinian Authority in parts of the West Bank and Gaza (Gordon). However, the failure to reach a final status agreement, continued Israeli settlement expansion, and the blockade of Gaza following Hamas' takeover in 2007 have kept the conflict in a state of protracted stalemate, such as the 2021 and 2023 Gaza conflicts, highlight the persistent volatility and lack of a sustainable political resolutions.

3.2 KEY LEGAL AND HUMANITARIAN ISSUES

The Israeli-Palestinian conflict is a complex and prolonged disputes in modern history, involving significant legal and humanitarian implications. The occupation of the West Bank and Gaza since 1967 has been central to this conflict. International law, including the Fourth Geneva Convention, prohibits the acquisition of territory by force, yet Israel's continued control over these areas has been widely deemed illegal (Daphne Barak-Erez, 2006). The International Court of Justice (ICJ) ruled its advisory opinion that the construction of a separation barrier in the West Bank violated international law and infringed upon Palestinian' right to self-determinations, freedom of movement and access to essential services (Rachvelishvili, 2006). Despite Israel's withdrawal from Gaza in 2005, the territory remains under blockade, classified as an occupation due to Israel's control over its borders, airspace, and maritime access. The United Nations resolutions has called for an end to this occupation, emphasizing its illegality and the need for a political resolution based on international law. The use of force, collective punishment, and settler expansion complicates the humanitarian crises, with Israel's military operations in Gaza and the West bank which have resulted in significant civilian casualties and destruction of infrastructure. For instance, airstrikes targeting densely populated areas have been criticized for violating the principles of proportionality and distinction under international humanitarian law (IHL) (Baldwin, 2023). Collective punishment measures such as home demolitions, movement restrictions and mass arrests are also prevalent (United Nations, 2025). These practices violate Article 33 of the Fourth Geneva Convention, which explicitly prohibits collective

punishment¹. The ICJ and the United Nations Security Council condemned the expansion of Israeli settlements in the West Bank as a breach of international law. The transfer of an occupying power's civilian population into occupied territory constitutes a war crime under Article 49 (6) of the Fourth Geneva Convention (Amnesty International. , 2021). Settlements not only change the demographic composition of these territories, but they also undermine prospects for a two-state solution by dividing Palestinian land into separated territories. Another particularly alarming aspect is the reported use of human shields and intentional targeting of populations. Several credible reports have documented that both Israeli forces and Palestinian armed groups engage in these prohibited practices. The Israeli Defence Forces have been accused of forcing Palestinian civilians to enter dangerous areas ahead of soldiers, a practice condemned by Israel's own Supreme Court in 2005 (Adalah Legal Center for Arab Minority Rights in Israel v. IDF Central Commander , 2014). On the other hand, armed groups like Hamas have been accused of incorporating military operations in civilian areas, increasing the risk to non-combatants and complicating lawful military targeting (NATO Strategic Communications Centre of Excellence). The practices, regardless of the actor, constitute serious breaches under Additional Protocol I of the Geneva Conventions and could lead to war crimes under the Rome Statute of the International Criminal Court. The moral and legal ambiguity surrounding asymmetric warfare, particularly in urban environments like Gaza, necessitates the upholding of civilian protections and demand accountability from all parties involved.

3.3 RELEVANT INTERNATIONAL LAW INSTRUMENTS

The Israel-Palestine conflict utilizes various international legal instruments, with the Geneva Conventions being central to its humanitarian and legal framing. The Fourth Geneva Convention of 1949, which governs the protection of civilians in times of war and occupation, explicitly prohibits the transfer of an occupier's population into the territory it occupies and bans collective punishment. Israel's control over the West Bank and its settlement policies are widely viewed as violations of these provisions by legal scholars and international bodies (Imseis, 2005). The International Committee of the Red Cross has confirmed that the Geneva Convention applies to the Palestinian territories, despite Israel's differing legal interpretation emphasizing the illegality of practices such as home demolitions, arbitrary arrests and restrictions of movement under international humanitarian law (Cantor, 2012). UN resolutions have significantly influenced legal aspect of the conflict, shaping the discourse surrounding Palestinian rights and Israeli responsibilities. United Nations General Assembly Resolution 194 (1948) recognizes Palestinian refugees' right to return to their homes or receive compensation, a provision that remains a central to Palestinian demands for justice. Meanwhile, United Nations Security Council Resolution 242 (1967) calls for the withdrawal of Israeli forces from territories occupied during Six-Day War and emphasizing the illegality of acquiring territory through war (Akram & Lynk, 2006). These resolutions are frequently used in diplomatic and legal forums to highlight the illegitimacy of prolonged occupation and settlement expansion. Though not always legally binding, these instruments reflect widespread international consensus and have been affirmed in numerous legal discussions, including in proceedings at the International Court of Justice. The International Court of Justice (ICJ) has provided critical legal insights into the conflict in its 2004 advisory opinion on the construction of Israel's separation wall in the West Bank declared it illegal under international law. The ICJ concluded that the wall violated Palestinian's rights to self-determination and freedom of movement, contravening provisions of the Fourth Geneva Convention (United Nations, n.d.). The court also called on Israel to dismantle the wall and provide reparations for damage caused. However, this opinion faced non-compliance from Israel and limited enforcement by international bodies (Dubuisson, 2004). The ICJ's findings underscore how international law can clarify legal obligations but often lacks mechanisms to compel adherence in politically charged conflicts.

3.4 THE DEBATE ON GENOCIDE IN THE CONFLICT

The Israel-Palestine conflict's allegations of genocide are based on the 1948 Genocide Convention's criteria, specifically the intent to destroy a protected group. Article II of the Convention defines genocide as acts committed with the intent to destroy a national, ethnic, racial, or religious group, in whole or in part. Critics argue that while Israel's military actions in Gaza have caused civilian casualties, but they lack the requisite genocidal intent. They point to the International Court of Justice (ICJ) dismissal of South Africa's case due

¹ Article 33 of the Fourth Geneva Convention, which explicitly prohibits collective punishment

to insufficient evidence (Anti-Defamation League., n.d.). This argue that Israel's goal is to target Hamas rather than Palestinians as a group, framing civilian harm as collateral damage in a legitimate counterterrorism operation (Cohen & Shany, 2024). Conversely, Amnesty International's 2024 report identified 102 dehumanizing statements by senior Israeli officials, along with systematic military tactics like bombardment and blockade policies, as evidence that "the only reasonable inference" is genocidal intent (Asem, 2025). The report argues that Israel's destruction of civilian infrastructure, including hospitals and universities, alongside restrictions on humanitarian aid, constitutes deliberate imposition of "conditions of life calculated to bring about [Palestinians'] physical destruction" under Article II (c) (Cohen & Shany, 2024). Demographic strategies and cultural erasure are key components of this debate. Since 1948, Israeli policies have prioritized maintaining a Jewish demographic majority, with former Prime Minister Ehud Barak calling demography a "existential" issue. The 1952 Nationality Law denationalized Palestinians, while ongoing settlement expansion in the West Bank and Gaza—deemed illegal under international law—reflects what demographer Phillip Fargues termed "population engineering" to displace Palestinians (Zureik, 2003). Cultural erasure, known as "memoricide" by the Arab Centre for Research and Policy Research, entails the systematic destruction of Palestinian heritage sites, the theft of artifacts, and the appropriation of cultural symbols such as traditional embroidery and cuisine as "Israeli" (Nuqul, 2024). Over 500 Palestinian villages depopulated during the 1948 Nakba were demolished or renamed, and 80% of Palestinian village mosques in Israel have been destroyed since 1948 (Abu-Laban & Bakan, July 2022). Critics argue that Israeli policies, including the ban on commemoration of the Nakba in Israeli schools, violate the Genocide Convention's criteria of "deliberately inflicting conditions of life calculated to bring about [a group's] physical destruction and erasing its cultural identity. Proponents of the genocide argue this combination of demographic control and cultural destruction is a 'slow-moving genocide' aimed at eradicating Palestinian nationalism (El-Affendi, 2024).

CHAPTER 4: THE ICC AND THE ISRAEL-PALESTINE CONFLICT

4.1 PALESTINE'S ACCESSION TO THE ROME STATUTE

In 2012 the recognition of Palestinian statehood marked a pivotal moment in the Israel-Palestine conflict, particularly in the realm of international law and diplomacy. On November 29, 2012, the United Nations General Assembly adopted Resolution 67/19, elevating Palestine's status to a "non-member observer state" (General Assembly., 2012). This decision, voted 138 in favor, 9 against, and 41 abstentions², was seen as de facto recognition of Palestinian sovereignty over territories occupied by Israel since 1967. Palestine's upgraded status allowed it to join various international treaties and organizations, including the International Criminal Court (ICC), signalling an implicit recognition of Palestinian statehood and allowing it to accede to international treaties, including the Rome Statute of the ICC. The resolution it established a crucial legal foundation for Palestine's future application to join the ICC, despite not resolving contentious political issues related to borders or sovereignty. Scholar such as Ronen (2012) and Maguire and Thompson (2017) argue that this recognition transformed Palestine's legal standing, making it a quasi-state actor with capacity under international law (Shany, 2010). Israel and its allies, including the United States, opposed the recognition, arguing that statehood should arise through bilateral negotiations, not unilateral international declarations (Reuters, n.d.). The 2012 recognition became a foundation for Palestinian legal strategy, focusing on international mechanisms against alleged Israeli violations of international law. This transition was solidified on 2 January 2015, when Palestine became a state party to the ICC (Bayefsky, 2021). The ICC accepted jurisdiction over alleged crimes committed in the occupied Palestinian territories from 13 June 2014 onwards, including events during and after the 2014 Gaza conflict. This landmark moment was announced in April 2015 which opened the door to investigate potential war crimes and crimes against humanity involving both Israeli and Palestinian actors. Legal scholars such as Schack³ and Heinsch and Pinzauti⁴ highlight that this moves a non-member state's conduct—namely, Israel's actions in territories claimed by a state party. The ICC's decision to move forward with preliminary examinations and later

² A/67/L.28 of 26 November 2012. (n.d.).

³ Schack, M. (2017). 'Going to The Hague's Coercive Leverage: The Palestinian ICC Policy during the 2014 Operation Protective Edge. *Journal of international criminal justice*, 15(2), 319-342.

⁴ Heinsch, R., & Pinzauti, G. (2020). To Be (a State) or Not to Be? The Relevance of the Law of Belligerent Occupation with regard to Palestine's Statehood before the ICC. *Journal of International Criminal Justice*, 18(4), 927-945.

investigations was met with severe political backlash from Israel, which rejected the Court's jurisdiction, and from the U.S., which condemned the move as politically motivated. Nevertheless, as Browne observes, Palestine's accession has reconfigured the terrain of international justice in the Israeli-Palestinian conflict, offering an institutional mechanism for addressing long-standing grievances (Browne, 2023). The ICC's involvement in the Israel-Palestine conflict remains fraught with political, legal and ethical complexities highlighting the limitations and potential of international law in a deeply politicized conflict. Some scholars, like Clancy and Falk, frame Palestine's ICC strategy as both a diplomatic tool and a legal instrument—one that seeks to internationalize the conflict and shift the narrative from bilateralism to multilateral legal scrutiny (Clancy & Falk, 2021). This strategy has certainly drawn attention to alleged violations such as settlement expansion, disproportionate military responses, and blockade measures, which may fall under Article 8 (war crimes) of the Rome Statute. However, the ICC's effectiveness in delivering justice or accountability in this case is debated, with Imseis warning that legal recognition without enforcement could reinforce a "state of exception," wherein international law applies symbolically but not materially (Imseis, 2020). Yet, as Quigley notes, the symbolic power of legal recognition and action should be underestimated in contested spaces like Palestine, where international forums may be among the few avenues for redress (Quigley, 2023, March).

4.2 PRELIMINARY INVESTIGATIONS BY THE ICC

The International Criminal Court (ICC) initiated a preliminary examination into the situation in Palestine in January 2015, focusing heavily on alleged crimes committed during the 2014 Gaza War, also known as Operation Protective Edge. This war, lasting from July to August 2014, resulted in more than 2,000 Palestinian deaths—most of them civilians—and 73 Israeli casualties, including six civilians. The ICC's interest lies in determining whether war crimes or crimes against humanity were committed, and whether national jurisdictions are unwilling or unable to prosecute those responsible. This inquiry followed Palestine's accession to the Rome Statute in 2015, granting the ICC jurisdiction over crimes committed on Palestinian territory from June 13, 2014, onwards (Mariniello & Meloni, 2020). The ICC also acknowledged a 2018 referral from Palestine, involving alleged crimes in East Jerusalem, the West Bank, and Gaza, and called for an investigation Israel's military conduct, including the destruction of civilian infrastructure and disproportionate use of force. The ICC's preliminary investigations target alleged violations by both Israeli and Palestinian actors. Regarding Israel, the Prosecutor has examined allegations of indiscriminate airstrikes, targeting of civilian infrastructure, and excessive use of force by the Israel Defense Forces (IDF), which may constitute war crimes under Article 8 of the Rome Statute. The Israeli government has challenged the ICC's jurisdiction, arguing that Palestine is not a sovereign state and hence cannot confer jurisdiction upon the Court (Jahan, 2022). Furthermore, Israel claims to conduct its own credible investigations through its Military Advocate General, potentially shielding its nationals from ICC prosecution (Weill, 2018). Nevertheless, reports from Human Rights Watch and Amnesty International have raised serious concerns about the adequacy and impartiality of these domestic probes (Culverwell, 2017). On the other hand, the ICC is investigating actions by Palestinian armed groups, particularly Hamas, for alleged war crimes including the firing of thousands of unguided rockets into Israeli civilian areas and the using civilians as human shields in Gaza, which could be considered war crimes as per international humanitarian law (Elshobake, 2019). The investigation involves a politically sensitive and legally complex case, involving a Palestine and Israel, non-state party and a state that hasn't ratified the Rome Statute. The Court must navigate territorial jurisdictional, admissibility, and the principle of complementarity, while resisting political pressure from powerful actors, particularly the United States and Israel. Although a full investigation, initiated in March 2021, still remains uncertain, due to geopolitical constraints and resource limitations.

4.3 LEGAL ARGUMENTS FROM BOTH SIDES

Israel's position on the International Criminal Court's investigation into alleged war crimes in the occupied Palestinian territories is grounded primarily in its non-party status to the Rome Statute, the treaty that established the ICC. Israel argues that the ICC lacks jurisdiction over its actions since it is not a signatory to the Statute, which is further reinforced by the argument that Palestine does not qualify as a sovereign state under international law and therefore cannot delegate jurisdiction to the Court. Israel's legal advisors emphasize that jurisdiction under Article 12(2)(a) of the Rome Statute is limited to acts committed in the territory of a State Party or by its nationals. Israeli officials argue that the ICC is overstepping its mandate

by initiating a probe into Palestine, due to Israel's non-membership and its view of Palestine as a sovereign state. Former ICC prosecutor Fatou Bensouda's 2021 announcement of an investigation into alleged crimes in Gaza, the West Bank, and East Jerusalem prompted strong objections from Israeli officials, including Prime Minister Netanyahu, who labelled the move as "pure antisemitism" and claimed it politicized international law (Gross, 2021). Israeli legal scholars further support this stance by highlighting concerns over the Court's interpretation of jurisdiction, fearing that it sets a precedent where non-member states could be subjected to ICC oversight without consent (Kontorovich, 2020). Conversely, Palestine has opted to utilize the ICC as a means for accountability and recognition within the international legal order. Palestine, which joined the Rome Statute in 2015, has requested investigations into alleged crimes committed on its territory since June 2014. Palestinian officials argue that, as a State Party, they have the legal right to present cases and request judicial intervention due to ongoing conflict and the lack of accountability. The ICC's Pre-Trial Chamber I ruled in 2021 that the Court has jurisdiction over the situation in Palestine, including East Jerusalem, Gaza, and the West Bank, emphasizing that Palestine is a State Party under the Statute and thus entitled to request investigations (International Criminal Court, 2021). From the Palestinian perspective, this ruling acknowledges international recognition of their statehood claims and provides a legal avenue to address alleged international humanitarian law violations by both Israeli and Palestinians actors. For Palestinians, the ICC investigation is not only about justice but also about asserting legal and political legitimacy in the international system (Akram & Gerson, 2016).

4.4 POLITICAL AND DIPLOMATIC PRESSURES

U.S. and Israeli non-cooperation with the International Criminal Court (ICC) have significantly shaped the international legal discourse surrounding the Israel-Palestine conflict. Both countries have resisted the ICC's jurisdiction, particularly in investigations into alleged war crimes in the occupied Palestinian territories. The United States has consistently maintained its position outside the Rome Statute framework, often citing concerns over sovereignty and political misuse of international law. Israel, while a signatory, never ratified the Rome Statute and thus claims immunity from the Court's actions. When the ICC prosecutor announced the opening of a formal investigation into the situation in Palestine in 2021, it drew public condemnation from both nations. U.S. officials characterized the investigation as illegitimate and biased, while Israeli leadership viewed it as a "political tool" manipulated by anti-Israel forces (Ramsden & Hamilton, 2017). Israel's non-cooperation is evident in its refusal to share access or share documentation with ICC investigators and its strategy of legal and diplomatic isolation of the Court. Sanctions and disincentives have played a critical role in deterring ICC actions. The United States, during the Trump administration, imposed sanctions on key ICC officials, including then-Prosecutor Fatou Bensouda, citing their involvement in investigations into Afghanistan and Palestine (Spitka, 2023). These sanctions included visa restrictions and assert freezes, demonstrating a willingness to use coercive statecraft to protect strategic allies like Israel from judicial scrutiny. The ICC's operations were severely punitive measures, highlighting the vulnerability of international legal institutions when confronted by powerful state actors. The Israeli government has further lobbied against ICC proceedings through diplomatic channels, leveraging its alliances in Europe and North America to frame the Court's inquiries as anti-Semitic or politically driven rather than impartial assessments of international law violations (Bracka & Bracka, 2021). Additionally, Israel has passed domestic law protecting its military officials from international legal exposure, indicating a pre-emptive legal defence mechanism against potential ICC prosecutions. The Palestinian Authority (PA) has adopted a strategic engagement with the ICC as part of its broader internationalization of the Palestinian cause. In 2015, Palestine joined the Rome Statute and submitted files detailing alleged Israeli crimes in Gaza, the West Bank, and East Jerusalem, serving as a legal strategy for accountability and asserting Palestinian statehood on the international stage (Adem, 2019). The PA's approach to the ICC complements its appeals to other international forums such as the UN General Assembly and the International Court of Justice. Legal maneuvering faces internal and external constraints, including Israel's fears of reprisal, reduction of donor aid, and U.S threats to withdraw financial support (Roithmaier, Woodcock, & Dima, 2021). The PA continues to use the ICC to internationalize the conflict and seek legal redress in the absence of meaningful political negotiations.

4.5 EVALUATION OF PROGRESS AND STAGNATION

The International Criminal court (ICC) opened a formal investigation into the situation in Palestine in March 2021, focusing on crimes committed in the occupied Palestinian territories since June 13, 2014. This follows

years of preliminary examination that began in 2015 after Palestine acceded to the Rome Statute. The ICC's current proceedings revolve around allegations of war crimes by both Israeli forces and Palestinian armed groups, including actions during the 2014 Gaza conflict, the use of disproportionate force by Israeli security forces, and indiscriminate rocket fire from Gaza. The investigation is a significant development, marking the first time an international tribunal has officially examined Israel's military conduct. However, progress has been slow, largely due to political pressure, jurisdictional disputes, and logistical challenges in gathering evidence on the ground (Krever, et al., 2024). Furthermore, Israel, which is not a member of the ICC, has refused to cooperate with the investigation, while the United States and other allies have opposed the Court's jurisdiction, further complicating the process (Meloni & Tognoni, 2011). Despite the advancement to a formal investigation, the ICC has yet to issue indictments. One key reason is the complexity surrounding jurisdiction. The ICC has been granted jurisdiction over the territories occupied by Israel since 1967, including the West Bank, East Jerusalem, and Gaza, but this has been challenged by several powerful states. The Court's cautious approach aims to maintain perceived neutrality and legitimacy in an apolitically charged context. Another contributing factor is the doctrine of complementarity under the Rome Statute, which allows the ICC to act only when national jurisdictions cannot prosecute crimes. Israel claims to conduct its own investigations into alleged misconduct, negating ICC jurisdiction, but critics argue these domestic mechanisms lack transparency and independence (Todorova, 2014). Moreover, the prosecution of Israel could threaten the Court's broader strategic relationships and its survival, as it faced threats of sanctions from the U.S. and diplomatic backlash from Israel and others (Herzberg, 2010). This has led to accusations that the ICC is applying a double standard and avoiding politically sensitive prosecutions. The stagnation in international justice proceedings reveals its intricate connection to global power dynamics and the limitations of legal mechanisms in situations lacking political will or cooperation (Kukali, 2016).

CHAPTER 5: CASE STUDY ANALYSIS: LEGAL CLASSIFICATION OF ATROCITIES

5.1 WAR CRIMES ALLEGATIONS

Indiscriminate bombings and the resulting civilian casualties have been central to war crimes allegations in modern armed conflicts. Operation Protective Edge, launched by Israel in 2014 against Hams in Gaza, serves as a significant case study in this regard. Reports indicate that the Israeli Defence Forces (IDF) conducted extensive aerial bombardments, artillery shelling, and drone strikes, leading to the deaths of over 2,200 Palestinians, including more than 1,400 civilians (B'Tselem., 2015). While Israel justified these operations as defensive measures against Hamas rocket fire, human rights organizations argued that many attacks failed to distinguish between military targets and civilian populations. The high casualty rate, the destruction of homes, and targeted strikes in densely populated areas raised concerns about violations of international humanitarian law, particularly the principles of distinction and proportionality (Human Rights Watch, 2009). The UN Human Rights Council's independent commission found evidence suggesting that some attacks were disproportionate, leading to unlawful killings that could amount to war crimes (UN Human Rights Council (UNHRC), 2015). Despite these allegations, Israel has consistently denied wrongdoing, citing Hamas' alleged use of human shields and military operations conducted from civilian areas (Shany, 2015). Another critical aspect of war crimes allegations is the use of prohibited weapons, which has been documented in several conflicts. In the case of Operations Protective Edge, human rights organizations reported the possible use of flechette shells, which release metal darts upon explosion, causing indiscriminate harm (Amnesty International., 2015). These weapons, while not explicitly banned, pose severe risks of civilians, especially in densely populated urban areas. Additionally, there were accusations regarding the deployment of white phosphorous, a chemical agent that can cause severe burns. Although Israel had previously used white phosphorous in its 2008-09 Gaza offensive, leading to international condemnation, it claimed to have discontinued its use in populated areas (Human Rights Watch, 2009). Similar concerns have been raised in other conflict zones, such as the use of cluster munitions in Syria and Yemen, where international law prohibits their use due to their long-term dangers to civilian populations (International Committee of the Red Cross, 2025). The employment of such weapons not only causes immediate harm but also leaves lasting humanitarian consequences, reinforcing calls for stronger enforcement of international conventions regulating their use. Targeting medical and UN facilities further worsens the humanitarian crisis and constitutes a grave violation of international law. During Operation protective Edge, multiple UN-run shelter and hospitals were struck, despite the UN providing the IDF with the precise coordinates of these locations to ensure their protection (OHCHR, n.d.). The shelling of UN

schools in Jabalia, which killed at least 15 civilians, was widely condemned, with UN Secretary-General Ban Ki-moon calling it “outrageous and unjustifiable” (UN News, 2014). Additionally, hospitals such as Al-Wafa were hit, disrupting essential medical services and endangering patients and medical personnel. The Geneva Conventions explicitly prohibit attacks on medical facilities unless they are used for military purposes, and even then, proportionality must be maintained (International Committee of the Red Cross, 2016). However, investigations found no clear evidence that these facilities were being used by militants, raising concerns that these strikes were deliberate or reckless (Goldstone Report, 2009). The destruction of critical infrastructure not only causes immediate civilian suffering but also hampers long-term recovery, underscoring the necessity for accountability in war crimes investigations.

5.2 CRIMES AGAINST HUMANITY

The Israeli-Palestinian conflict, particularly in the context of Gaza and the West Bank, is most pressing contemporary cases of alleged crimes against humanity, with systematic oppression and policies resembling apartheid being key aspects of the issue, particularly in the West Bank. Human rights organizations such as Human Rights Watch and Amnesty International have argued that Israel enforces a system of domination over Palestinians through legal and institutional means that meet the definition of apartheid under the Rome Statute (Human Rights Watch, 2015). This includes severe restrictions on movement, discriminatory legal systems where Palestinians are subjected to military law while Israeli settlers are governed by civil law, and a complex permit system that controls access to land, employment and even family life. Reports have also indicated that Palestinian homes are frequently demolished, while Israeli settlements continue to expand, reinforcing demographic control and displacement (Amnesty International, 2022). Such policies have led to increased calls for international accountability, with many legal experts drawing parallels between the situation in the Occupied Palestinian Territories and South Africa’s historical apartheid regime (Dugard & Reynolds, 2022). The expansion of illegal settlements and the forced transfer of populations in the West Bank constitute a violation of international law, specifically Article 49 of the Fourth Geneva Convention, which prohibits an occupying power from transferring its own population into the territory it occupies. Despite this, Israeli settlement expansion has continued, successive governments supporting and legalizing such activities, often retroactively (B’Tselem, 2021). The construction of settlements is accompanied by the forced displacement of Palestinians through house demolitions, revocation of residency rights, and the seizure of agricultural land, often justified by security concerns or bureaucratic pretexts. In many cases, entire Palestinian communities, such as those in Khan al-Ahmar, have faced demolition orders, sparking international condemnation (United Nations, 2017). The ICC has been investigating these settlements as potential war crimes, particularly considering that settlement expansion is often enforced with violence by both the Israeli military and settler groups, leading to further displacement and human rights abuses (Cherian, 2021). The blockade of Gaza has worsened a severe humanitarian crisis, with significant implications for civilian life. Since 2007, Israel, with the cooperation of Egypt, has imposed a blockade on Gaza, restricting the movement of people and goods, including essential supplies such as food, medicine, and construction materials (United Nations Office for the Coordination of Humanitarian Affairs, 2022). The blockade has contributed to extreme poverty, economic collapse, dire health condition, with the UN repeatedly warning that Gaza is facing an unliveable situation (Hardman, 2025b). Periodic military escalations have worsened the humanitarian situation, with civilian infrastructure, including hospitals and water facilities, frequently targeted in airstrikes. The principle of collective punishment, prohibited under international law, has been cited by legal scholars and human rights organizations in reference to the blockade, which disproportionately affects the civilian population (Al Mezan Centre for Human Rights, n.d.).

5.3 GENOCIDE CLAIMS AND CONTROVERSIES

The Israel-Palestine conflict has been the subject of increasing debates regarding whether acts committed by either party qualify as genocide under international law. Comparatively, UN experts and scholars have drawn parallels between Israel’s actions in Gaza and genocides in Rwanda and Bosnia. Francesca Albanese, the UN Special Rapporteur, likened Israel’s conduct to the Srebrenica massacre (1995) and the Rwandan genocide (1994), arguing that Gaza’s civilian destruction reflects a “process” of genocide enabled by international inaction (Anadolu Agency, 2023). In Rwanda, the genocide against the Tutsi was characterized by systemic dehumanization and state-backed mass killings, while Bosnia’s Srebrenica saw the targeted extermination of Bosniak Muslims. Similarly, Israel’s military campaign in Gaza has resulted in over 30,000 Palestinian deaths (including 13,000 children), 71,000 injuries, and the displacement of 80% of Gaza’s population, alongside the deliberate destruction of civilian infrastructure (Human Rights Council &

Albanese, F., 2024). Legal precedents, such as the International Criminal Tribunal for Rwanda's recognition of rape as a genocidal act, highlight how context-specific interpretations of the Genocide Convention apply (Melendy, n.d.). However, unlike Rwanda and Bosnia, Israel's framing of its actions as self defence against Hamas complicates direct comparisons, as genocidal intent remains disputed. Determining whether Israel's actions meet the "intent to destroy" threshold under the Genocide Convention hinges on evidence of state policy. Amnesty International's 2024 report argues that Israel's rhetoric and conduct demonstrate genocidal intent, citing dehumanizing statements by officials, such as Defense Minister Yoav Gallant's description of Palestinians as "human animals," and systematic attacks on civilians (Asem, 2025). The UN report by Albanese emphasizes Israel's distortion of international humanitarian law to legitimize violence, including blocking humanitarian aid and targeting residential areas (Human Rights Council & Albanese, F., 2024). Legal scholars note that genocidal intent can coexist with military objectives, as seen in the International Court of Justice's (ICJ) provisional measures order for Israel to prevent genocidal acts in Gaza. However, Israel rejects these claims, asserting its actions target Hams, not civilians, and dismissing allegations as politicized (Foulkes, 2024). This mirrors historical controversies, such as the U.S. delaying Rwanda's genocide designation until after the killings ended, underscoring the challenge of proving intent during ongoing conflicts (Melendy, n.d.). The politicization of genocide labelling in the Israel-Palestine context reflects broader tensions between legal responsibility and geopolitical interests. Israel's dismissal of UN finding as biased—citing the Human Rights Council's Agenda Item 7, which uniquely scrutinizes Palestine—highlights how institutional frameworks shape perceptions of legitimacy (Foulkes, 2024). Conversely, pro-Palestinian advocates argue that reluctance to apply the genocide label, despite mounting evidence, reflects double standards favouring Western allies. These dynamics echo the Cold War-era compromises that diluted the Genocide's Convention's enforcement mechanisms, allowing political considerations to override legal obligations (Astor, 2024). For instance, while ICJ's intervention in Gaza marks a rare case of judicial scrutiny, its enforcement relies on state cooperation, which remains inconsistent (Astor, 2024). The debate also intersects with academic critiques of the Genocide Convention's limitations, such as its exclusion of political groups and emphasis on explicit intent, which complicate applications to modern conflicts (Melendy, n.d.). As with Rwanda and Bosnia, the Gaza case reveals how genocide accusations become entangled in power struggle, amplifying disputes over international law's role in asymmetric conflicts.

5.4 CREDIBILITY OF EVIDENCE AND INTERNATIONAL RESPONSES

The credibility of evidence in international responses plays a crucial role in shaping diplomatic, legal and humanitarian interventions. One of the key mechanisms through which evidence is gathered and assessed of human rights violations and war crimes, providing a basis for international action. The Goldstone Report, for instance, which was commissioned by the United Nations Human Rights Council (UNHRC) to investigate the 2008-09 Gaza conflict, exemplifies the role of these missions in assessing the credibility of claims made by conflicting parties. The report concluded that both Israel and Hamas had committed violations of international law, yet its findings were heavily scrutinized and politically contested (The Independent, 2010). Such missions often face accusations of bias or incomplete evidence collection, which can diminish their impact. Nevertheless, their function remains vital in providing an official, internationally recognized framework for discussing and addressing human rights abuses (Alston, 2019). Beyond UN-mandated inquiries, independent human rights organizations such as the Amnesty International and Human Rights Watch play a significant role in documenting and verifying evidence of violations. Their reports, often compiled through firsthand witness testimonies, satellite imagery, and forensic analysis, provide a crucial counterbalance to government narratives. For example, Amnesty International's investigations into the Syrian civil war have provided detailed evidence of attacks on civilians, influencing policy discussions at the United Nations and in individual states' foreign policies (Amnesty International, n.d.). However, the credibility of these organizations is frequently challenged by states accused of abuses, which argue that such reports reflect Western biases or selective reporting (Kennedy, 2018). Despite these critiques, their work remains an indispensable part of global human rights advocacy. Civil society organizations and legal NGOs contribute significantly to the verification of evidence and the push for international accountability. Groups such as the International Commission of Jurists (ICJ) and the Open Society Justice Initiative work to document abuses, prepare legal cases for international tribunals, and provide expertise in transitional justice processes. Their legal analyses often inform decisions by bodies such as the International Criminal Court (ICC), ensuring that evidence meets rigorous judicial standards (Schabas, 2016). These efforts, while

sometimes constrained by political pressures, demonstrate the essential role of civil society in strengthening the credibility of evidence and influencing international responses.

CHAPTER 6: THE ROLE AND EFFECTIVENESS OF THE ICC IN THE ISRAEL-PALESTINE CASE

6.1 STRENGTHS OF THE ICC APPROACH

The International Criminal Court (ICC) involvement in the Israel-Palestine conflict has established a framework for addressing alleged war crimes, emphasizing accountability despite political complexities. One strength is the symbolic value of accountability, which challenges long-held impunity. By asserting jurisdiction over Palestinian territories in 2021, the ICC affirmed Palestine's standing under the Rome Statute, signalling that violations in occupied territories would no longer evade scrutiny (Khattab, 2024). This symbolic stance reinforces the principle that both state and non-state actors are subject to international law, supporting Palestinian claims of systemic injustice (Azarova, 2015). The issuance of arrest warrants against Israeli leaders in 2023 emphasized this commitment, even if implementation remains politically difficult (Naduvath, 2024). Such actions have a global impact, framing the conflict through a legal rather than purely politically lens and empowering victims' stories (Weiss & Weiss, 2021). A second strength is the legal deterrent effect, which is largely symbolic. The ICC's scrutiny forces actors to weigh reputational and legal risks, as demonstrated by Israel's diplomatic efforts to undermine the Court's legitimacy (Ma, 2023). While direct prosecutions face challenges, the threat of accountability may deter openly visible violations. For example, the International Criminal Court's focus on Israel's alleged "starvation strategy" in Gaza raises the stakes for military action, potentially moderating tactics to avoid international condemnation (Naduvath, 2024). Similarly, including Hamas in investigations puts pressure on non-state actors to comply with international norms, even if they do so inconsistently (Ma, 2023). This deterrence works within the larger context of legal precedent, where the ICC rulings shape perceptions of acceptable state behaviour. Third, the ICC contributes to creation of a legal record, which preserves evidence for later accountability. The 2021 jurisdictional ruling established a framework for documenting crimes committed since 2014, including settlement expansions and military operations. This evidentiary foundation is critical for dismantling denialism and guiding third-party intervention. For example, the Court's preliminary examinations provide detailed patterns of displacement and violence that could be used to support cases in other international forums (Azarova, 2015). By systematizing allegations, the ICC ensures that violations are not forgotten, allowing for transitional justice mechanisms even if immediate prosecutions are stalled (Ma, 2023). The legal record also puts pressure on states to align their policies with international law, as evidenced by debates over the EU's and the United States' positions on Israeli actions.

6.2 LIMITATIONS AND FAILURES

The International Criminal Court (ICC) has significant limitations in addressing the Israel-Palestine conflict, owing to a lack of enforcement mechanisms. Israel is not a party to the Rome Statute, so it rejects the court's jurisdiction and refuses to cooperate, making arrest warrants for its leaders largely symbolic (Nuqul, 2024). The ICC relies on member states for enforcement, but geopolitical alliances frequently shield Israeli officials from accountability. For example, the United States opposed the 2024 arrest warrants for Prime Minister Netanyahu and Defence Minister Gallant, with Secretary of State Antony Blinken calling the move "unhelpful" (Maupas, 2024). This demonstrates a systemic weakness: the Court cannot compel compliance from non-member states or their allies, rendering its rulings unenforceable and its deterrent effect diminished (Nuqul, 2024). Allegations of politicization weaken the ICC's legitimacy in this context. Israel and its allies accuse the court of anti-Israel bias, citing its emphasis on Israeli actions while underplaying Hamas' crimes (ngomonitor, 2024). For example, NGOs praised the 2024 warrants against Israeli leaders while providing little scrutiny of Hamas officials, reinforcing perceptions of selective justice (ngomonitor, 2024). The ICC's jurisdictional claim over Palestine, a non-member UN observer state, remains contentious, with Israel claiming that the Oslo Accords limit Palestinian authority to confer jurisdiction (Naduvath, 2024). Critics argue that the court's reliance on the 2012 UN resolution recognizing Palestinian statehood brings politics into legal proceedings, as the resolution itself lacked consensus (Khalaileh, 2021). These tensions erode trust in the ICC's impartiality, especially among states that see it as a tool for pursuing

specific governments. Asymmetric warfare presents challenges to legal accountability. Hamas, a non-state actor, operates outside of the Geneva Conventions' traditional frameworks, blurring the line between combatants and civilians. Israel's military tactics, such as blockades and airstrikes in densely populated Gaza, put international law's proportionality standards to the test, but the ICC struggles to rule on these issues (Revkin, 2024). For example, Israel's "starvation strategy" allegations in 2024 required complex assessments of intent and military necessity, which the court's state-centric statutes were not equipped to handle (Naduvath, 2024). Meanwhile, Hamas' use of civilian infrastructure for military purposes raises evidentiary issues, delaying investigations and blurring lines of accountability. The ICC's reliance on state cooperation becomes even more ineffective in such fragmented conflicts, leaving systemic violations unaddressed (Khalaileh, 2021). These limitations highlight structural flaws in international justice mechanism, particularly in disputes involving non-member states and non-state actors. Without reforms to address to address enforcement gaps, politicization risks, and changing warfare realities, the ICC's role in Israel-Palestine will be limited.

6.3 COMPARATIVE INSIGHTS: OTHER ICC CASES

The ICC's interventions in Sudan, Uganda and Ukraine provide important insights into its role in the Israel-Palestine conflict. In Sudan, the ICC's mandate under UN Security Council Resolution 1593 (2005) was limited to Darfur, leaving other atrocities unaddressed and perpetuating impunity (Shaib., 2023). Despite issuing arrest warrants for figures such as Omar al-Bashir, the court's overreliance on state cooperation and political prioritization of peace over justice enabled accountability to be evaded, undermining its legitimacy (Human Rights Watch., 2025). Similarly, in Uganda, the ICC's investigation into Lord's Resistance Army (LRA) crimes excluded abuses by government forces, creating perceptions of bias and complicating reconciliation (Malu, 2015). While the court emphasized deterrence and victims' rights in theory, its one-sided approach alienated communities that saw state actors as equally responsible (Arnould., 2015). In contrast, the ICC's Ukraine response received widespread international support, with 39 states referring the situation to speed up the investigations into Russian aggression. Prosecutor Karim Khan's prompt evidence collection and public condemnation highlighted crimes, countering Russian disinformation and rallying global support (Canadian Bar Association., n.d.). However, the contrast between swift warrants for Russian officials and delayed scrutiny of other conflicts, such as Palestine, has fuelled allegations of selective justice. Israel and Palestine can draw lessons from these cases. First, the ICC's effectiveness is dependent on jurisdictional clarity and enforcement mechanisms. Sudan's fragmented mandate demonstrates how limiting investigations to specific regions or actor risks perpetuating cycles of violence (Shaib., 2023). Second, impartiality is critical: Uganda's experience has shown that excluding state-aligned perpetrators undermines local trust and long-term conflict resolution transformation (Malu, 2015). Third, international consensus increases the impact, as seen in Ukraine, where collective referrals strengthened the ICC's mandate (Canadian Bar Association., n.d.). However, geopolitical biases, such as Western states supporting Ukraine investigations while opposing Palestine-related cases, risk undermining the court's legitimacy (WJJH, 2024). For Israel-Palestine consistent application of international law, combined with parallel grassroots justice initiatives, could help to mitigate these challenges. Learning from Sudan's accountability gaps, expanding the ICC's mandate to include all alleged crimes across territories, rather than fragmented approaches, may help to prevent impunity. Meanwhile, Uganda's lessons highlight the importance of investigating all parties involved in a conflict to avoid perceptions of politicization, which could hamper reconciliation efforts.

6.4 RECOMMENDATIONS FOR ICC REFORM

The ICC's involvement in the Israel-Palestine case has highlighted the critical need for universal jurisdiction to ensure impartial and comprehensive justice. The ICC's current jurisdictional limitations, caused by influential states such as the United States, Russia, and China failing to ratify the Rome Statute, as well as limited participation from Middle Eastern and Asian countries, significantly undermine the Court's ability to address crimes committed in these regions (ICC-CPI & FIDH., 2012). This jurisdictional gap not only restricts the ICC's reach but also fuels perceptions of partiality, particularly when investigations focus on regions such as Africa while serious crimes in place like the Palestinian Territories remain unaddressed. Expanding the universality of the Court by encouraging more states to ratify the Statute is essential for the ICC to function as a truly global institution capable of addressing international crimes without political or geographic bias (ICC-CPI & FIDH., 2012). Enhanced cooperation mechanisms between the ICC and states

are crucial for the Court's effectiveness, particularly in politically sensitive cases such as Israel-Palestine. The ICC's ability to investigate, prosecute and enforce its decisions is heavily dependent on the support and collaboration of member states. However, political resistance, lack of diplomatic backing, and backing, and insufficient resources often hinder the Court's operations, as seen in the challenges faced during investigations in conflict zones (Sarkin, 2021). Strengthening state cooperation involves not only legal and logistical support but also robust diplomatic engagement to shield the Court from politicized opposition and ensure compliance with its mandates. Recent expert reviews have emphasized the need for member states to provide steadfast diplomatic and practical backing, which would bolster the ICC's resilience and capacity to deliver justice in the face of geopolitical pressures (Human Rights Watch, 2020). Revisiting the balance between state and individual accountability is another critical aspect of ICC reform, especially in the context of Israel-Palestine situation. The ICC's mandate focuses on prosecuting individuals most responsible for atrocity crimes, yet the interplay between states responsibility and individual accountability sufficiently addresses the broader patterns of state conduct that enable or perpetuate international crimes, reforming the ICC to better integrate mechanisms for assessing both state and individual roles could enhance its legitimacy and effectiveness, ensuring that justice is not only served at the individual level but also addresses systemic issues that contribute to ongoing conflicts (Sarkin, 2021).

CHAPTER 7. CONCLUSION

The ICC has achieved partial success in establishing and maintaining a global legal discourse on accountability for the most serious crimes, such as genocide, crimes against humanity, and war crimes. Since its establishment under the Rome Statute, the ICC has prosecuted individuals at the highest levels of power, challenging the culture of impunity that has previously protected state and non-state actors from international scrutiny. The Court's efforts have gone beyond convictions, influencing national legal systems to adopt higher standards of justice and witness protection while also creating a deterrent effect against future atrocities. Its expanding jurisdiction, which now includes crimes of international aggression and new war crimes, reflects a dynamic response to modern challenges and technological advancements. The ICC's role as a court of last resort has also highlighted the value of complementarity, encouraging domestic courts to carry out their own responsibilities in prosecuting international crimes. However, the ICC's ability to provide full justice is severely limited by political realities that undermine its authority and effectiveness. The refusal of major powers such as the United States, China and Russia to ratify the Rome Statute, combined with non-cooperation or outright defiance by some state's parties, has hampered the Court's jurisdiction and enforcement abilities. Political considerations at the United Nations Security Council, which has the authority to refer or block ICC investigations, limit the organization's reach even further, particularly in cases involving powerful or geopolitically sensitive actors. These obstacles are further complicated by threats from certain states to withdraw from the ICC, as well as the ongoing challenge of securing arrests and cooperation in conflict zones. As a result, the ICC's promise of universal justice remains aspirational, with its future success dependent on increased international cooperation and a renewed commitment to the rule of law.

The ICC is currently at a turning point in terms of global legitimacy. Despite its founding goal of delivering justice for the most serious international crimes, the Court has faced growing criticism for perceived selectivity in prosecutions, particularly its emphasis on African cases, and its inability to bring powerful non-member states under its jurisdiction. This has resulted in accusations of bias and double standards, with several African states threatening to withdraw and major powers such as the U.S., Russia and China refusing to join, limiting the ICC's reach and authority. The resulting legitimacy deficit has been made worse by victims' dissatisfaction with the Court's ability to meet their expectations for justice, as well as inconsistent judicial decisions that have undermined faith in the ICC's statutory legitimacy and predictability. The Court's actions, such as investigations into politically sensitive situations such as Israeli-Palestinian conflict, have pushed it further into the geopolitical spotlight, intensifying scrutiny and opposition from powerful states and raising concerns about its future viability as a truly global institution. Addressing these challenges will require meaningful reform and a renewed demonstration of political will among the ICC's stakeholders. The Court's legitimacy is based not only on its legal mandate, but also on states' collective commitment to uphold the principle of equality before the law and support the ICC's mission, regardless of political interest. Calls for more consistency in judicial decision-making, improved management practices, and a reset of expectations are critical steps towards reestablishing trust. Finally, the ICC's ability to fulfil its promise of

international criminal justice is dependent on closing the gap between its aspirations and operational realities, which necessitates both substantive institutional reforms and renewed global consensus on the importance of accountability for atrocity crimes.

Legal interventions, such as rulings by international courts and the application of international humanitarian law, have the potential to lay the groundwork for peace and reconciliation in the Israel-Palestine conflict, but their effectiveness is often constrained by political realities and the lack of enforcement mechanisms. The international court of justice's advisory opinions, for example, have declared aspects of Israel's occupation unlawful, reinforcing the legal basis for Palestinian claims and highlighting the need for accountability for violations of international law. However, the persistent lack of accountability—exemplified by the failure to enforce measures against settlement expansion or to address alleged war crimes—has perpetuated a cycle of impunity, undermining trust in legal processes and fuelling further violence. While legal interventions can provide a framework for justice and signal international norms, they alone are insufficient to resolve deeply entrenched grievances or to foster genuine reconciliation, especially in the absence of credible leadership and political will on both sides. Therefore, complementary non-judicial accountability paths are essential for advancing peace and justice. These include robust civil society engagement, truth-telling initiatives, and mechanisms for inclusive political participation, particularly for Palestinians who have been denied meaningful representation. The exclusion of key stakeholders and the disregard for democratic processes have weakened civil society and contributed to the entrenchment of authoritarian governance, further alienating communities and eroding prospects for reconciliation. Sustainable peace requires addressing not only physical violence but also the structural inequalities and injustices that underpin the conflict, such as restrictions on movement, economic deprivation, and the denial of basic rights. Ultimately, a holistic approach that combines legal accountability with non-judicial mechanisms and genuine international commitment is necessary to break the cycle of violence and create the conditions for a just and lasting peace.

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