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THE LAW OF WAR AND THE WAR OF LAW: A LEGAL APPRAISAL OF THE ISRAEL–PALESTINE CRISIS

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ABSTRACT

The ongoing Israel–Palestine conflict, since 2023, has reignited urgent legal debates around the application and enforcement of International Humanitarian Law (IHL). This research paper offers a critical analysis of the actions of the parties involved in the conflict through the framework of International Humanitarian Law (IHL), focusing on core principles such as distinction, proportionality, and the protection of civilians and humanitarian aid. Relying on key legal instruments—including the Geneva Conventions, their Additional Protocols, and the Rome Statute—this paper assesses alleged breaches such as the use of starvation as a method of warfare, disproportionate strikes on civilian infrastructure, and the deliberate targeting of medical personnel, journalists, and humanitarian workers.

This study integrates recent developments from international legal bodies, including the International Criminal Court’s (ICC) issuance of arrest warrants for Israeli officials and the International Court of Justice’s (ICJ) provisional measures in the genocide case brought by South Africa. The analysis also explores the influence of third-party actors—both state and non-state—on promoting compliance and ensuring accountability, while highlighting the growing role of civil society and human rights organizations in documenting violations and shaping international dialogue. These actions represent a pivotal step in international legal accountability and demonstrate the potential for enforcing international humanitarian law norms during ongoing conflicts.

From an analytical perspective, the paper relies on doctrinal legal analysis, reinforced by case law and UN documentation. It aims to bridge the gap between legal theory and on-the-ground realities, emphasizing how entrenched political dynamics often obstruct enforcement.

In essence, this study contends that although international humanitarian law offers a comprehensive framework for governing armed conflict, its effective and consistent

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implementation is obstructed by power imbalances, selective adherence, and institutional inaction. Confronting these challenges is crucial to restoring the credibility of international legal standards and securing accountability for serious violations of humanitarian law.

Keywords: International Humanitarian Law (IHL), Israel–Palestine Conflict, War Crimes, Civilian Protection, International Criminal Court (ICC), Accountability in Armed Conflict.

INTRODUCTION

The Israel–Palestine conflict, among the longest-standing and most contentious geopolitical disputes of the modern era, has once again come under intense global attention following the renewed outbreak of violence in Gaza in 2023. The escalation has led to an unprecedented humanitarian crisis, triggering urgent calls for legal accountability and raising critical questions about the adequacy, applicability, and enforcement of International Humanitarian Law (IHL) in contemporary armed conflicts. With rising civilian casualties and the collapse of essential infrastructure amid sustained military operations, the conflict has emerged as a key test for assessing the effectiveness of International Humanitarian Law (IHL) in protecting vulnerable populations and regulating the conduct of hostilities. IHL, also known as the law of armed conflict, is grounded in key international instruments such as the four Geneva Conventions of 1949², their Additional Protocols³, customary international law⁴, and the Rome Statute of the International Criminal Court⁵. At the heart of its framework lie the principles of distinction, proportionality, necessity, and precaution, all designed to balance military objectives with humanitarian concerns. In asymmetric warfare, where a powerful state confronts non-state armed groups operating within civilian areas, the practical application of these principles becomes highly contested and increasingly complex.

This paper conducts a legal assessment of the actions of both Israeli forces and Palestinian armed groups—chiefly Hamas—through the framework of International Humanitarian Law (IHL). It examines whether measures such as the imposition of a blockade, the use of starvation as a method of warfare, the destruction of civilian infrastructure, and the targeting of protected

² Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 287.

³ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3.

⁴ *Customary International Humanitarian Law*, Int'l Comm. of the Red Cross (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005).

⁵ Rome Statute of the International Criminal Court art. 8, July 17, 1998, 2187 U.N.T.S. 90.

persons including medical personnel and journalists amount to grave breaches under international law. The study also explores the ICC's recent issuance of arrest warrants against Israeli leaders⁶ and the ICJ's provisional measures in the genocide case brought by South Africa⁷, and the ICJ's provisional measures in the genocide case brought by South Africa⁸, assessing their implications for international accountability mechanisms.

Additionally, this research examines the role of third-party actors—such as states, international organizations, and civil society—in shaping legal responses, promoting compliance, and documenting violations. Although International Humanitarian Law provides a comprehensive legal framework, its enforcement is frequently inconsistent, often constrained by political interests, selective prosecutions, and structural limitations within international institutions.

By adopting a doctrinal legal approach, supplemented by case studies and analysis of primary and secondary sources, this paper seeks to evaluate the effectiveness of existing legal mechanisms in addressing violations within the context of a highly politicized and asymmetric conflict.

The paper ultimately argues that the Israel–Palestine conflict exposes a critical gap between the normative goals of International Humanitarian Law and its practical enforcement, calling for reform in both legal interpretation and institutional accountability.

LEGAL FRAMEWORK UNDER INTERNATIONAL HUMANITARIAN LAW (IHL)

International Humanitarian Law (IHL), also referred to as the law of armed conflict or the law of war, governs the conduct of hostilities and seeks to limit their effects, particularly on civilians and non-combatants⁹. International Humanitarian Law applies to both international and non-international armed conflicts and is chiefly codified in the four Geneva Conventions

⁶ International Criminal Court, Situation in the State of Palestine: Request for Arrest Warrants, ICC-01/18 (May 2024).

⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel), Order of 26 Jan. 2024, I.C.J. Reports 2024.

⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel), Order of 26 Jan. 2024, I.C.J. Reports 2024.

⁹ Int'l Comm. of the Red Cross, *What is International Humanitarian Law?*, Advisory Service Fact Sheet (July 2004), https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.

of 1949, along with their two Additional Protocols adopted in 1977¹⁰. It is further supplemented by customary international law and various treaties such as the Rome Statute of the International Criminal Court¹¹. The foundation of International Humanitarian Law rests on four key principles: distinction, proportionality, military necessity, and precaution¹². These principles collectively form the legal bedrock for assessing conduct during hostilities.

In contexts of occupation or blockade, International Humanitarian Law imposes further obligations, such as the responsibility to facilitate humanitarian relief and the prohibition of using starvation as a method of warfare¹³. Article 54 of Additional Protocol I explicitly forbids attacking objects indispensable to the survival of the civilian population¹⁴. Similarly, Article 8(2)(b)(xxv) of the Rome Statute classifies the intentional starvation of civilians as a war crime¹⁵.

Both Israel and Palestinian armed groups are subject to the obligations of International Humanitarian Law. While Israel is a signatory to the four Geneva Conventions, it has not ratified the Additional Protocols. However, many provisions of the Protocols, including those related to targeting and civilian protection, are regarded as customary international law and are therefore binding on all parties to the conflict. Non-state actors, including Hamas, are also bound by Common Article 3 of the Geneva Conventions and customary humanitarian norms¹⁶.

Despite the existence of these legal standards, enforcement continues to pose a major challenge. Institutions like the International Criminal Court (ICC) and international fact-finding missions are mandated to investigate alleged violations; however, their effectiveness is frequently constrained by political will, limited jurisdiction, and the degree of cooperation from states and other relevant actors. This legal framework provides the analytical basis for assessing the actions of the parties involved in the ongoing Israel–Palestine conflict.

¹⁰ Geneva Conventions of 12 August 1949, 75 U.N.T.S. 31; Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions (Protocol II), June 8, 1977, 1125 U.N.T.S. 609.

¹¹ Rome Statute of the International Criminal Court arts. 5–8, July 17, 1998, 2187 U.N.T.S. 90.

¹² ICRC, *Customary International Humanitarian Law*, Rule 1 (Distinction), Rule 14 (Proportionality), Rule 15 (Precautions), <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>.

¹³ Protocol I, supra note 9, art. 70; Fourth Geneva Convention, supra note 9, arts. 55–59.

¹⁴ Protocol I, supra note 9, art. 54.

¹⁵ Rome Statute, supra note 10, art. 8(2)(b)(xxv).

¹⁶ Common Article 3, Geneva Conventions, supra note 9; see also Prosecutor v. Tadić, Case No. IT-94-1-T, Judgment, ¶ 608 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997).

BACKGROUND: THE 2023–2024 ESCALATION IN GAZA

The most recent phase of the Israel–Palestine conflict began on October 7, 2023, when Hamas carried out a large-scale, coordinated attack on southern Israel. The attack resulted in the deaths of approximately 1,200 people, most of whom were civilians, and included the taking of more than 200 hostages¹⁷. In response, Israel initiated a massive military campaign in Gaza, including airstrikes, artillery bombardments, and a ground invasion, which has continued into 2024¹⁸. The conflict has led to an unprecedented humanitarian crisis in Gaza. According to United Nations estimates, by early 2024, over **35,000 Palestinians**—a significant portion of them women and children—had been killed, and more than 75,000 injured¹⁹. Widespread destruction has affected civilian infrastructure, including hospitals, schools, refugee camps, and places of worship. Israel has justified its actions on the grounds of self-defence and the stated objective of eliminating Hamas’s military capacity²⁰.

The Israeli military campaign has imposed a complete blockade on the Gaza Strip, drastically limiting access to food, water, electricity, fuel, and medical supplies. This has raised global alarm over the use of **starvation as a method of warfare**, a practice explicitly prohibited under international law²¹. Humanitarian organizations have reported immense difficulty in delivering aid due to both Israeli restrictions and ongoing hostilities²². International legal institutions have become increasingly involved. In **May 2024**, the **International Criminal Court (ICC)** Prosecutor Karim A.A. Khan KC applied for arrest warrants against Israeli Prime Minister Benjamin Netanyahu, Defence Minister Yoav Gallant, and Hamas leaders Yahya Sinwar, Mohammed Deif, and Ismail Haniyeh, citing crimes including **intentionally directing attacks against civilians, extermination, and starvation**²³. Meanwhile, the **International Court of Justice (ICJ)**, in a case brought by **South Africa**, issued **provisional measures** ordering Israel to prevent genocidal acts and facilitate humanitarian aid access²⁴.

¹⁷ Patrick Kingsley et al., *How Hamas’s Attack on Israel Unfolded*, N.Y. Times (Oct. 8, 2023), <https://www.nytimes.com/2023/10/08/world/middleeast/hamas-israel-attack.html>.

¹⁸ Isabel Kershner, *Israel Escalates Offensive with Ground Operations in Gaza*, N.Y. Times (Oct. 27, 2023), <https://www.nytimes.com/live/2023/10/27/world/israel-hamas-war>.

¹⁹ U.N. Office for the Coordination of Humanitarian Affairs (OCHA), *Hostilities in the Gaza Strip and Israel – Update*, <https://www.unocha.org/en>.

²⁰ Israel Ministry of Foreign Affairs, *Israel’s Right to Self-Defense*, <https://mfa.gov.il>.

²¹ supra note 9; supra note 10

²² Médecins Sans Frontières (Doctors Without Borders), *Gaza: Medical System Facing Collapse*, <https://www.msf.org/gaza>.

²³ Int’l Crim. Ct., *Statement of the Prosecutor: Applications for Arrest Warrants in the Situation in the State of Palestine*, ICC-OTP-20240520, (May 20, 2024), <https://www.icc-cpi.int>.

²⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel), Order of 26 Jan. 2024, I.C.J. Reports 2024, <https://www.icj-cij.org>.

The recent escalation—characterized by intense urban warfare, large-scale civilian displacement, and heightened international legal scrutiny—offers a critical lens for assessing compliance with International Humanitarian Law. The next section analyses specific alleged violations committed by all parties, evaluated against the legal principles previously discussed.

ALLEGED VIOLATIONS OF IHL BY PARTIES TO THE CONFLICT

The 2023–2024 escalation of hostilities between Israel and Palestinian armed groups has led to widespread allegations of serious breaches of International Humanitarian Law (IHL), particularly concerning fundamental principles such as distinction, proportionality, and the protection of civilians and humanitarian personnel.

I. Direct and Indiscriminate Attacks on Civilians

Hamás’s attacks on October 7, 2023, involved the killing of civilians, hostage-taking, and rocket launches into civilian areas in Israel—actions explicitly prohibited under Common Article 3 of the Geneva Conventions and customary international humanitarian law. In response, Israeli air and ground operations in Gaza have faced comparable scrutiny, especially in densely populated areas where residential buildings, hospitals, and refugee camps have been struck. The principle of proportionality prohibits attacks that may cause excessive civilian harm relative to the anticipated military advantage, yet numerous incidents—such as strikes on schools and crowded markets—have raised doubts about lawful targeting practices²⁵.

II. Use of Starvation and Siege Warfare

Israel’s imposition of a full blockade on Gaza, cutting off food, fuel, water, and medical supplies, has been widely criticized as a form of collective punishment and a possible violation of IHL prohibitions on the use of starvation as a method of warfare²⁶. These actions fall under scrutiny from both treaty law—such as Additional Protocol I—and international criminal law, as reflected in the Rome Statute’s prohibition of starvation as a war crime²⁷. Despite increasing international pressure, humanitarian access continues to be heavily restricted.

III. Targeting of Medical, Humanitarian, and Media Personnel

Both UN agencies and non-governmental organizations have reported repeated attacks

²⁵ Human Rights Watch, *Apparent War Crimes in Gaza*, (Dec. 18, 2023), <https://www.hrw.org>.

²⁶ Al Jazeera, *Gaza Blockade Explained: What Israel’s ‘Complete Siege’ Means*, (Oct. 9, 2023), <https://www.aljazeera.com>.

²⁷ *supra* note 9; *supra* note 10

on ambulances, aid convoys, healthcare workers, and journalists. While IHL affords specific protection to these groups unless they engage in hostile acts, many reported incidents suggest possible violations due to the lack of sufficient precautionary measures or warning²⁸. UN facilities and humanitarian corridors have also come under attack, further hindering efforts to deliver essential relief.

IV. Legal Accountability and Institutional Responses

Despite public assurances from both sides about adherence to legal norms, meaningful investigations remain rare. Israel has announced internal inquiries, but their independence and transparency are questioned. Hamas has offered little to no evidence of internal accountability. In May 2024, the International Criminal Court (ICC) Prosecutor sought arrest warrants for both Israeli and Hamas leaders, citing charges including extermination, starvation, and intentional attacks on civilians. Meanwhile, the International Court of Justice (ICJ) has issued provisional measures in a genocide case brought by South Africa, ordering Israel to prevent genocidal acts and allow humanitarian assistance²⁹.

LEGAL RESPONSES BY INTERNATIONAL INSTITUTIONS

Amid the 2023–2024 escalation in Gaza, international institutions—most notably the International Criminal Court (ICC) and the International Court of Justice (ICJ)—have initiated significant legal action and scrutiny. These developments have underscored both the relevance and the pressing need for the application of International Humanitarian Law (IHL) in enduring and asymmetrical conflicts.

I. The International Criminal Court (ICC)

On **May 20, 2024**, ICC Prosecutor **Karim A.A. Khan KC** submitted applications for arrest warrants against both **Israeli and Hamas leaders**. The individuals named included Israeli Prime Minister **Benjamin Netanyahu**, Defence Minister **Yoav Gallant**, and Hamas leaders **Yahya Sinwar**, **Mohammed Deif**, and **Ismail Haniyeh**. The charges include **war crimes** and **crimes against humanity**, such as **extermination, intentional attacks on civilians, use of starvation as a method of**

²⁸ UN OCHA, *Protection of Civilians Report*, <https://www.ochaopt.org>.

²⁹ ICC, *Statement by Prosecutor Karim A.A. Khan KC on Applications for Arrest Warrants*, (May 20, 2024), <https://www.icc-cpi.int>; ICJ, *South Africa v. Israel, Order of 26 Jan. 2024*, <https://www.icj-cij.org>.

warfare, and **taking hostages**³⁰. The ICC's involvement represents a pivotal move toward holding senior officials accountable, irrespective of their state affiliation. Although Israel is not a party to the Rome Statute and has challenged the Court's jurisdiction—asserting that its domestic judicial system is capable of addressing alleged misconduct by its military— Hamas has likewise dismissed the charges as politically driven³¹. Despite these objections, the ICC's actions are widely regarded as a landmark moment for advancing international criminal accountability in the region.

II. The International Court of Justice (ICJ)

Parallel to the ICC's action, the ICJ has been hearing a case filed by **South Africa** under the **Genocide Convention**, alleging that Israel's actions in Gaza amount to genocidal conduct. In **January 2024**, the Court issued **provisional measures** ordering Israel to prevent genocidal acts, ensure the provision of humanitarian aid, and preserve evidence of potential crimes³². Although the ICJ did not rule on whether genocide was taking place, its recognition of the plausibility of South Africa's claims indicated serious concern regarding the way hostilities were being conducted³³.

III. UN Commissions and Special Procedures

The **UN Human Rights Council** and **Independent International Commission of Inquiry on the Occupied Palestinian Territory** have launched investigations into potential IHL violations by both sides. These bodies have documented attacks on civilian infrastructure, obstruction of humanitarian aid, and the targeting of protected persons, such as medical workers and journalists³⁴. Despite obstacles such as limited access and political pressure, these inquiries serve a vital role in uncovering facts and laying the groundwork for future accountability mechanisms.

³⁰ Int'l Crim. Ct., *Statement by Prosecutor Karim A.A. Khan KC on Applications for Arrest Warrants in the Situation in the State of Palestine*, ICC-OTP-20240520, (May 20, 2024), <https://www.icc-cpi.int>.

³¹ Israel Ministry of Foreign Affairs, *Israel's Position on the ICC's Jurisdiction*, <https://www.mfa.gov.il>.

³² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel), Order of 26 Jan. 2024, I.C.J. Reports 2024, <https://www.icj-cij.org>.

³³ ICJ Press Release, *Court Indicates Provisional Measures*, (Jan. 2024), <https://www.icj-cij.org>.

³⁴ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory*, A/HRC/56/CRP.1 (June 2024).

THE ROLE OF THIRD PARTIES AND CIVIL SOCIETY

Beyond legal institutions, third-party actors—both state and non-state—play a pivotal role in shaping the enforcement and visibility of International Humanitarian Law (IHL) in the Israel–Palestine conflict. States have responded variously: some have issued public condemnations, imposed arms embargoes, or called for ceasefires, while others have continued military and diplomatic support to the parties involved³⁵. These varied responses not only mirror broader geopolitical alignments but also influence the practical enforcement of IHL obligations, especially when such support may contribute to ongoing violations.

Non-governmental organizations (NGOs) and **human rights groups** such as Human Rights Watch, Amnesty International, and B'Tselem have been instrumental in documenting violations, conducting independent investigations, and providing evidence to international bodies³⁶. Their field reports, satellite imagery analyses, and victim testimonies make significant contributions to both the public narrative and the legal record, particularly when formal investigative bodies face restricted access.

Moreover, **civil society actors**, including legal scholars, grassroots advocacy groups, and diaspora communities, have mobilized global attention through campaigns, litigation, and protests, advocating for accountability and humanitarian access³⁷.

These efforts have increased pressure on international institutions and states to respond more decisively to alleged war crimes and humanitarian crises. While lacking formal enforcement powers, these actors serve as watchdogs, moral arbiters, and advocates of legal standards—playing a vital role in narrowing the gap between the written provisions of IHL and their practical application in conflict zones.

CHALLENGES OF ENFORCEMENT AND JURISDICTION

Although International Humanitarian Law (IHL) offers a well-defined legal framework, the enforcement of accountability in the Israel–Palestine conflict continues to face significant challenges. One of the foremost challenges lies in the **limitations of jurisdiction**. Israel is not a party to the Rome Statute, which complicates the International Criminal Court's (ICC) ability

³⁵ Al Jazeera, *Global Reactions to Gaza Conflict*, (May 2024), <https://www.aljazeera.com>.

³⁶ Amnesty Int'l, *Israel and Occupied Palestinian Territories: 2024 Reports*, <https://www.amnesty.org>; B'Tselem, *Documenting Violations*, <https://www.btselem.org>.

³⁷ Human Rights Watch, *World Report 2024: Israel/Palestine*, <https://www.hrw.org>.

to exercise jurisdiction over Israeli nationals unless crimes occur on Palestinian territory or are referred by the UN Security Council³⁸. On the other hand, as a non-state actor, Hamas operates beyond traditional jurisdictional frameworks and is not subject to formal legal accountability mechanisms.

Another major obstacle is the **politicization of international justice institutions**. Efforts by the ICC and International Court of Justice (ICJ) have been met with accusations of bias, selective prosecution, or undermining national sovereignty³⁹. Major powers have frequently protected their allies from scrutiny often using vetoes in the UN Security Council which has obstructed referrals and hindered enforcement efforts⁴⁰. Such politicization undermines the perceived impartiality of legal institutions and diminishes their capacity to function as neutral arbiters.

Furthermore, the **enforcement gap** is particularly pronounced. Although international courts may issue arrest warrants or provisional measures, they lack their own enforcement bodies. Implementation relies entirely on state cooperation, which is frequently lacking or influenced by political considerations. As a result, a climate of **de facto impunity** often prevails, especially for senior officials.

Finally, the power imbalance between Israel and Palestinian groups adds complexity to enforcement efforts. Although both sides are legally obligated to comply with IHL, differences in statehood, military capabilities, and international recognition result in uneven levels of scrutiny and accountability. These structural challenges persistently obstruct the pursuit of justice, underscoring the urgent need for broader international consensus and meaningful institutional reform.

CONCLUSION AND RECOMMENDATIONS

The Israel–Palestine conflict, especially in the wake of the 2023 escalation, has brought renewed attention to the limitations and challenges in enforcing International Humanitarian Law (IHL) in contemporary armed conflicts. While the legal principles of IHL such as distinction, proportionality, and the protection of civilians are well-established, their practical

³⁸ supra note 10

³⁹ BBC News, *ICC Accused of Bias After Arrest Warrants*, (May 2024), <https://www.bbc.com>.

⁴⁰ UN News, *Security Council Fails to Reach Consensus on Gaza Referral*, (April 2024), <https://news.un.org>.

application in asymmetrical warfare continues to face profound obstacles. The conduct of both state and non-state actors in this conflict has raised grave concerns regarding potential war crimes and breaches of humanitarian norms. Reported violations include indiscriminate attacks on civilian populations, the use of siege tactics and starvation, and the intentional targeting of medical staff and humanitarian personnel. Although legal mechanisms exist through bodies such as the International Criminal Court and the International Court of Justice, their enforcement is often inconsistent hampered by political opposition, insufficient cooperation, and the limited authority of these institutions.

In response to these realities, the following recommendations are proposed:

- 1. Strengthen Legal Accountability:** International institutions must uphold impartiality and show resolve in initiating legal action against all violators of IHL, irrespective of political alignments or geopolitical ties.
- 2. Promote Universal Compliance:** Both state and non-state actors should be held equally accountable. Governments should condition aid and diplomatic support on respect for humanitarian obligations.
- 3. Support Civil Society and Evidence Gathering:** Strengthening the role of NGOs, journalists, and human rights defenders is vital to documenting violations and sustaining public and legal pressure for accountability.
- 4. Institutional Reform:** Urgent reform of international institutions is needed, especially to overcome political gridlock in enforcement mechanisms such as the frequent misuse of veto power in the UN Security Council.

In conclusion, narrowing the gap between the legal ideals of IHL and the harsh reality on the ground demands a unified global commitment. Legal standards by themselves are inadequate without the political will, institutional reform, and proactive involvement of both state actors and civil society to uphold the core principles of humanity.