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UNVEILING THE SHADOWS OF CONFLICT: SERIOUS VIOLATIONS OF IHL IN THE MODERN ISRAEL-HAMAS CONFLICT

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ABSTRACT

Severe violations of International Humanitarian Law (IHL) in the Israel-Hamas conflict have increasingly raised abundant concerns, jeopardizing the security and well-being of the people of Gaza Strip. The contemporary conflict between Israel and Hamas corresponds to non-international armed conflict. This very prolonged strife has witnessed severe violations of IHL detaining ordinary motions and safety of the Gazans, e.g., war crimes, genocide and crimes against humanity, resulting in civilian fatalities and gross humanitarian crises. Moreover, Israeli Defense Forces (IDF) is deliberately infringing the principle of distinction, the first and foremost rule of IHL, requiring parties to an armed conflict to make a contrast between the civilians and the combatants as well as distinct between the civilian and military objectives. Particularly, IHL also prescribes the use of prohibited weapons and blockades to humanitarian access. By applying a qualitative approach, the authors attempted to provide a clear picture of prevailing matters in question in the Gaza Strip from the perspective of IHL in the light of recent incidents encompassing an unprecedented attack on Israeli citizens by Hamas, indiscriminate/disproportionate attacks on civilians living in Gaza and their infrastructures by IDF, use of prohibited weapons by IDF, and humanitarian pernicious catastrophe faced by the innocent Gazans. Moreover, the authors jointly propose recommendations for enhancing compliance with IHL by exploring the legal mechanisms available in this conflict through an in-depth analysis of legal frameworks, precedents, and academic viewpoints. Over and above that, the authors also evaluate the numerous criteria outlined in IHL Treaties and Customary International Law (CIL) while determining the current circumstance in Gaza.

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1. Introduction

On October 7, 2023, Hamas launched an unprecedented attack on Israel that resulted in 1,200 fatalities.[3] In response, questions are raised regarding Israel's adherence to international humanitarian law (IHL) by its actions during its airstrikes in Gaza, and hence, contemporary conflict in Gaza Strip persists between Israel and Hamas. Hamas is a Palestinian nationalist and Islamist organization that is committed to bringing into being an independent Islamic state in historical Palestine.[4] Hamas won the 2006 election and subsequently took control over Gaza, leading to several armed conflicts with Israel.[5] The contemporary Israel-Hamas conflict has been characterized by war crimes, terrorism, genocide and crimes against humanity.[6] However, the proper implementation of IHL in this armed conflict remains a major challenge, resulting in significant civilian fatalities and grave humanitarian crises. Importantly, IHL provides a substantial slew of legally binding rules for the States and non-states armed groups based on Law of Treaties or Customary International Law (CIL).[7] IHL would apply to both Israeli armed forces and Hamas.[8] Although the conflict is non-international,[9] Israel is deliberately targeting civilians and their properties. By implementing the qualitative approach, the study will focus on the comprehensive analysis of IHL violations in the context of the contemporary Israel-Hamas conflict. Although the objective is to explore the legal arrangements available in the mentioned

[3] Awaisu Imurana Braimah, 'Killing to Cling to Power? The Dilemmas of Israeli Prime Minister' [2024] 7(3) International Journal of Social Science Research and Review 205, 209

[4] David A. Jenks and John Randolph Fuller, *Global Crime and Justice* (1st edn, Routledge 2017) 145

[5] Center for Preventive Action, 'Israeli-Palestinian Conflict' (*Global Conflict Tracker*, 13 March 2024) <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict> accessed 14 August 2024

[6] Clare Roth, 'Are war crimes being committed in Israel-Hamas conflict?' *DW* (Bonn, 15 December 2023) <https://www.dw.com/en/are-war-crimes-being-committed-in-israel-hamas-conflict/a-67103187> accessed 14 August 2024

[7] Daragh Murray, 'How International Humanitarian Law Treaties Bind Non-State Armed Groups' [2015] 20(1) Journal of Conflict and Security Law 101, 125

[8] Anthony Deutsch and Stephanie van den Berg, 'What war crimes laws apply to the Israel-Palestinian conflict?' *Reuters* (London, 17 November 2023) <https://www.reuters.com/world/middle-east/what-war-crimes-laws-apply-israel-palestinian-conflict-2023-11-16/> accessed 14 August 2024

[9] Ayesha Malik, 'Classification of the Israel-Palestine Conflict under the Laws of War' (*Opinio Juris*, 24 November 2023) <https://opiniojuris.org/2023/11/24/classification-of-the-israel-palestine-conflict-under-the-laws-of-war/> accessed 14 August 2024

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never-ending strife related to the IHL/laws of warfare and propose recommendations for enhancing compliance with IHL and improving civilian civilian infrastructure protections, the research question is "how does the application of IHL in the ongoing Israel-Hamas conflict navigate the legal entanglements humanitarian aid workers, and implications for accountability and justice?" Despite having established legal frameworks, e.g., IHL treaties and Customary International Humanitarian Law (CIHL), the Israel-Hamas armed conflict possesses substantial barriers in effectively addressing and protecting civilians, civilian infrastructures, medical facilities, and humanitarian aid workers due to interventions of states that are superpower tycoons and due to lack of proper enforcement mechanisms, leading to serious violations of humanitarian principles together with limited accountability for perpetrators.

2. Applicability of IHL

An armed conflict arises whenever there is a harnessing of armed force between States or prolonged armed violence involving governmental authorities and organized armed groups, or between such groups within a State.[10] When an armed conflict sows its seeds between States and non-state armed groups, it is called NIAC.[11] Hamas happens to be a non-state entity of this armed conflict.[12] Being a non-state actor, Hamas cannot formally ratify the IHL treaties, while Israel has ratified several IHL treaties. Provisions that are mentioned in Article 3 Common to the Geneva Convention are considered as customary international law that are also applicable in case of non-international armed conflicts.[13] Thus, regardless of whether IHL treaties have been ratified, all parties, including Israel and Hamas, must adhere to customary and treaty-based rules of IHL.

[10] *Prosecutor v. Dusko Tadic* (Appeal Judgment) IT-94-1-A (15 July 1999) [70]
[11] *Prosecutor v. Thomas Lubanga Dyilo* (Trial Chamber Judgment) ICC-01/04-01/06 (14 March 2012) [506]
[12] Konstantinos Mastorodimos, 'The Character of the Conflict in Gaza: Another Argument towards Abolishing the Distinction between International and Non-international Armed Conflicts' [2010] 12(4) International Community Law Review 437, 438
[13] *Prosecutor v Delalić (Zejnil) and ors* (Appeal Judgment) IT-96-21-A (20th February 2001) [138-139]

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3. Attack on Civilians

Israeli bombardment has left 92,609 Gazans wounded, while the overall death toll has passed 40,000 since October 7.[14] The total death toll of children in Gaza has crossed 13,000 children,[15] while more than 10,000 women have been killed.[16] Distinguishing between civilians and combatants, as well as between civilian objects and military targets is the first and foremost rule of IHL. In fact, the IDF has been deliberately violating this principle since the beginning of the conflict. The parties to the conflict ought to dissect between the combatants and civilians accordingly. Attacks can only be directed against combatants and not against civilians.[17] IDF does not spare civilians while launching their attacks. In particular, the general people of Gaza are neither directly nor indirectly engaged in this conflict. During armed conflict, intentionally launching attacks against civilians who are not actively contributing in hostilities constitutes a war crime.[18] Besides, IHL treaties empower Israeli armed forces to launch attacks only against Hamas, not against innocent people of Gaza. This is because Hamas started the conflict. Therefore, the inherent right to self-defense[19] authorizes the Israeli government to use force against Hamas. Attacks against civilians as a means of reprisal are prohibited,[20] which is also not justified in reaction to a party's violations of humanitarian law.[21] Thus, IHL does not allow the IDF to intentionally launch attacks on the civilians of Gaza just because Israeli citizens were also killed by Hamas.

4. Attack on Civilian Objects

[14] Usaid Siddiqui, 'Israel's war on Gaza updates: Blinken arrives in Tel Aviv' *Al Jazeera* (Dhoa, 18 Aug 2024) <https://www.aljazeera.com/news/liveblog/2024/8/18/israels-war-on-gaza-live-israeli-attack-killed-family-asleep-in-bed#:~:text=At%20least%2040%2C099%20people%20have,in%20Israel's%20war%20on%20Gaza.> accessed 19 August 2024

[15] Kanishka Singh, 'UNICEF says over 13,000 children killed in Gaza in Israel offensive' *Reuters* (19 March 2024) <https://www.reuters.com/world/middle-east/unicef-says-over-13000-children-killed-gaza-israel-offensive-2024-03-17/> accessed 14 August 2024

[16] UN Women, 'Six months into the war on Gaza, over 10,000 women have been killed, among them an estimated 6,000 mothers, leaving 19,000 children orphaned' (*UN WOMEN*, 16 April 2024) <https://www.unwomen.org/en/news-stories/press-release/2024/04/six-months-into-the-war-on-gaza-over-10000-women-have-been-killed> accessed 15 August 2024

[17] AP I, art. 48, 51(2) and 51(2); AP II, art. 13(2); CIHL, rule. 1

[18] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute), art. 8(2)(b)(i)

[19] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter), art. 51

[20] AP I, art. 51(6); CIHL, rule. 145

[21] *Prosecutor v. Kupreskic et al.* (Trial Judgment) IT-95-16-T (14 January 2000) [527-536]

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The civilian objects being a target of attack is prohibited.[22] The widespread depredation of civilian infrastructure raises apprehensions over the welfare and safety of the innocent people of Gaza, causing displacement, homelessness, and vulnerability among Gaza people. Approximately 60% of residences or units of housing in Gaza have been either completely demolished or vandalized, while 90% of schools have seen substantial damage, and public buildings, hospitals, and electrical systems have also been targeted.[23] Approximately 600 instances of attacks have occurred in Gaza and the West Bank,[24] resulting in the destruction, damage, and non-operational status of every hospital.[25] During armed conflict, the strain on medical services is very crucial. As a consequence, the civilians of Gaza are not getting enough proper medical services due to a lack of hospitals. Due to the increased number of casualties and injuries, Gaza's health sector is failing to meet the medical needs, including surgeries, rehabilitation, and emergency care. Due to enormous missile attacks by the IDF, the educational institutions of Gaza are forced to be closed. Around 80% of the schools in Gaza have been completely destroyed.[26] As a result, the students of Gaza now have no access to education, which is a severe humanitarian concern with long-lasting consequences. Experts opined that one of the long-lasting consequences might be depriving future generations of students of access to regular schooling.[27] Furthermore, the widespread destruction of housing is a notable obstacle to long-term reconstruction and rebuilding. Certainly, destruction of homes, displacements, and disruption of daily life are contributing to serious humanitarian disasters for the innocent people of Gaza, leading them to live without indispensable essentials and in precarious living conditions.

5. Humanitarian Crisis in Gaza

[22] AP I, art. 52(3); CIHL, rule. 10

[23] Wyre Davies, 'Gaza destruction risks lost generation of children, says UN official' *BBC* (London, 20 January 2024) <https://www.bbc.com/news/world-middle-east-68023080> accessed 15 August 2024

[24] UN Health Agency, 'Nearly 600 attacks on healthcare in Gaza and West Bank since war began: WHO' *UN News* (New York, 5 January 2024) <https://news.un.org/en/story/2024/01/1145317> accessed 15 August 2024

[25] Annie Sparrow and Kenneth Roth, 'Destroying Gaza's Health Care System Is a War Crime' (*Foreign Policy*, 9 February 2024) <https://foreignpolicy.com/2024/02/09/israel-gaza-health-care-hospitals-genocide-icj/> accessed 15 August 2024

[26] OHCHR, 'UN experts deeply concerned over 'scholasticide' in Gaza' (*United Nations*, 18 April 2024) <https://news.un.org/en/story/2024/04/1148716> accessed 15 August 2024

[27] Peace and Security, 'Gaza: UN experts decry 'systemic obliteration' of education system' *UN News* (New York, 18 April 2024) <https://news.un.org/en/story/2024/04/1148716> accessed 15 August 2024

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It is prohibited to attack, destroy or vandalize, impair or disable objects requisite for the survival of the civilian population.[28] Clean water, crops livestocks, foodstuffs, agricultural land for food production, and irrigation systems, especially when the intention and motive is to cause starvation.[29] As a consequence of the ongoing armed conflict between Hamas and Israel, a humanitarian catastrophe is threatening Gaza as over half of its population is relying on international aid for basic commodities. Around 1.7 million people have been displaced, and many have sought shelter in Rafah at the Egyptian border.[30] 1.1 million Gazans are now experiencing catastrophic hunger.[31] 16-25% of children aged from 6-59 months have acute malnutrition in northern Gaza, while 2-4% of them have severe acute malnutrition.[32] The civilians of Gaza are deprived of the access to pure drinking water, and on top of that sanitization services are entirely inadequate. The Israeli government enforces an entire blockade of Gaza, restricting electricity and water access, while food and medicine supplies are severely remaining scanty. More than 90 percent of Gazans are facing crisis levels of food insecurity.[33] The relentless disruption of electricity has led to the closure of desalination and wastewater treatment plants, hindering access to clean and safe drinking water[34] Being an occupying power, Israel is bound by IHL to ensure Food and medical supplies, Hygiene and public health, respectively, under the purview of Article 55 and respectively 56 of the GC-IV. Also, the deportation of the forcible transfer is forbidden within the light of Article 49 of the GC-IV. However, IDF's criminal activities indicate that Israel wants to have control over Gaza with an intent to destroy the whole population of Gaza. Their activities are forcing Gazans to seek refuge in other parts of the world.

[28] AP I, art. 54(2), AP II, art. 14, CIHL, rule. 54

[29] Jelena Pejic, 'The right to food in situations of armed conflict: The legal framework' [2010] 83(844) Cambridge University Press 1097, 1099

[30] UNRWA, 'Details of the humanitarian crisis in Gaza' *Reuters* (London, 5 May 2024) <https://www.reuters.com/world/middle-east/details-humanitarian-crisis-gaza-2024-05-01/> accessed 15 August 2024

[31] WTF, 'Details of the humanitarian crisis in Gaza' *Reuters* (London, 5 May 2024) <https://www.reuters.com/world/middle-east/details-humanitarian-crisis-gaza-2024-05-01/> accessed 14 August 2024

[32] WHO, 'Children's lives threatened by rising malnutrition in the Gaza Strip' (*World Health Organizations* 19 February 2024) <https://www.who.int/news/item/19-02-2024-children-s-lives-threatened-by-rising-malnutrition-in-the-gaza-strip> accessed 15 August 2024

[33] Security Council, 'Famine Imminent in Gaza, Humanitarian Officials Tell Security Council, Calling for Immediate Ceasefire' (*United Nations*, 27 February 2024) <https://press.un.org/en/2024/sc15604.doc.htm> accessed 17 August 2024

[34] Natasha Hall, Anita Kirschenbaum and David Michel, 'The Siege of Gaza's Water' (*CSIS*, 12 January 2024) <https://www.csis.org/analysis/siege-gazas-water> accessed 16 August 2024

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6. Indiscriminate Attacks

Indiscriminate attacks are forbidden because they cannot be directed at specified military objectives and may inflict injury to both military targets and civilians or civilian infrastructure.[35] Advisory opinion of International Court of Justice (ICJ) on the Legality of the threat or Use of Nuclear Weapons[36] banned the using of chemical and biological weapons, while International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Martic case[37] examined the legality of using cluster bombs during the conflict, and the court also banned using certain types of weapons in warfare. During military operations, it is crucial to exercise constant care and execute all available procedures to avoid and minimize unintentional harm to civilians, such as injuries, destruction of civilian objects, and loss of life.[38] According to the principle of proportionality, any unintended harm to civilians must not be excessive compared to the direct military advantage achieved.[39] In order to protect civilians and their objects at the time of warfare, the proportionality principle must always be observed and shall be governed as of the fundamental duty to the greatest extent possible.[40] Disproportionate attacks causing excessive casualties of non-combatants/civilians and harm to the civilian objects which goes beyond the justification anticipated military gain are prohibited.[41] Attacks by bombardment against military objectives in civilian-protected areas are prohibited.[42] This is because attacks by bombardment in civilian-protected areas can cause excessive civilian casualties and damage to civilian properties compared to the anticipated military gain. Following this, notwithstanding the legitimacy of a target, an attack cannot be launched when the civilian casualties or damage are expected to be too high compared to the military benefit. As the civilian casualties were too excessive compared to the anticipated military advantage, Bombardment by the IDF were violative of IHL no matter whether their targets were legitimate or not. Hence, the massive killings and displacement of the innocent civilians of Gaza indicate that the attacks of Israel were not proportionate and not in

[35] AP I, art. 51(4)(a); CIHL, rule. 12
[36] Legality of the Threat or Use of Nuclear Weapon (Advisory Opinion) 1996 <https://casebook.icrc.org/case-study/icj-nuclear-weapons-advisory-opinion> accessed 13 August 2024 [76]
[37] *Prosecutor v. Milan Marti* (Trial Judgement) IT-95-11-T (12 June 2007) [463]
[38] AP I art. 57(1); CIHL, rule. 15
[39] Thomas Hurka, 'Proportionality and civilians in modern international humanitarian law' [2009] 33 Cambridge University Press 34, 36
[40] *Prosecutor v. Stanislav Galić* (Trial Judgement) IT-98-29-T (5 December 2003) [58]
[41] AP I, art. 51(5)(b); CIHL, rule. 14
[42] AP I, art. 51(5)(a); CIHL, rule. 13

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compliance with IHL; instead, the attacks were indiscriminate. Therefore, the destruction did not serve a military purpose but instead targeted civilian objects; hence, attacks by the IDF were illegal and exempt from attacks.

7. Use of Chemical Weapons

Chemical weapons are universally prohibited under international law as well as by the CIHL.[43] Human Rights Watch has accused Israel, claiming that it used white phosphorus mutations throughout its military operations in Gaza and Lebanon.[44] In addition, moral dishonor is associated with chemical weapons characterized by perfidious and insidiousness. They are defined as indiscriminate agents of unnecessary suffering, and their employment is believed to violate the universal and gracious conduct of war. Again, chemical weapons are in a frequent manner used in deceitful ways, breaking cease-fires and other agreements. This action might be considered perfidious since it violates trust and undermines the integrity and fairness of negotiations or humanitarian efforts. Both Israel and Palestine are state-parties of some noteworthy Conventions that forbids the creation, manufacture, storage, and use of chemical weapons as well as their disposal, which forbids their use in hostilities. For example, both Israel and Palestine are the parties to the Geneva Protocol of 1925. Thus, employing white phosphorus in Gaza amounts to betrayal and a breach of trust, which Israel is violating. Evidently, chemical weapons have deceptive characteristics because of their concealed or delayed impacts, which makes them challenging to identify and manage. This instills a feeling of apprehension and ambiguity among the impacted communities, as they may lack knowledge about the complete magnitude of the risk. Surely, the utilization of white phosphorus is ethically inappropriate due to the widely recognized indiscriminate harm produced by these chemicals. The utilization of chemical weapons, such as white phosphorus, inevitably breaches the core principles of CIHL as the use of chemical weapons are violative of the principles of distinction and proportionality within the rules outlined under IHL, resulting in unnecessary and excessive suffering.[45] Any unintentional harm to civilians, referred to as "collateral civilian damage" which is not

[43] CIHL, rule. 74

[44] Emily Rose and Rami Ayyub, 'Human Rights Watch says Israel used white phosphorus in Gaza, Lebanon' *Reuters* (London, 13 October 2023) <https://www.reuters.com/world/middle-east/human-rights-watch-says-israel-used-white-phosphorous-gaza-lebanon-2023-10-12/> accessed 15 August 2024

[45] Andrea de Guttry, Micaela Frulli, Federico Casolari and Ludovica Poli (eds), *International Law and Chemical, Biological, Radio-Nuclear (CBRN) Events: Towards an All-Hazards Approach* (Brill, 2022) 396

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intrinsically criminal as long as the basic rules of proportionality are followed in war/armed conflicts, even when attacks may be deliberately directed against military objectives.[46] Chemical weapons frequently inflict widespread and momentous harm on both combatants and noncombatants, greatly outweighing any potential military benefits. Indeed, the deployment of chemical weapons, such as white phosphorus, cannot be justified under the principle of proportionality due to their indiscriminate nature and ability to cause widespread fatalities. Weapons that are incapable in distinguishing between civilian population and military objectives can be considered as a direct attack against civilians and their properties. Such an attack by using that kind of method or weapon capable of directing attacks against specified military targets as well as non-military targets are violative of the very distinction principle of the IHL.[47] Above all, chemical weapons, such as white phosphorus, are uncontrollable and incapable of differentiating between the combatants and civilians due to their wide effect and ability to harm anybody inside the contaminated zone, regardless of their engagement in the warfare. Therefore, the deployment of chemical weapons is a direct attack against civilians. Obviously, when these sorts of weapons are used, people can be hurt seriously and for a long time. White phosphorus harms humans through ingestion, dermal/mucosal exposure, and burning. It can cause eye and respiratory damage, delayed systemic effects for up to 24 hours, and severe cases can lead to depressed consciousness, cardiovascular effects, renal and hepatic damage, collapse, and leading to coma. Subsequently, death can be caused by liver or renal failure, shock, cardiac damage or central nervous system injury.[48]

8. Jurisdiction of ICC

The ICC has the authority to exercise its jurisdiction in cases where crimes of genocide, crimes against humanity, and crimes of aggression are committed.[49] As discussed, the crime of genocide that IDF has violated incorporating killings and causing serious bodily injury or mental harm, while the crimes against humanity comprises of deportation or compelling people to transfer in a

[46] *Prosecutor v. Jadranko Prlic* (Trial Judgment) IT-04-74-T (29 May 2013) [189-190]
[47] ibid.
[48] Newsroom, 'White phosphorus' (*World Health Organization*, 15 January 2024) <https://www.who.int/news-room/fact-sheets/detail/white-phosphorus#:~:text=White%20phosphorus%20is%20harmful%20to,burns%2C%20penetrating%20 even%20through%20 bone.> accessed 12 August 2024
[49] ibid. (n.12), art. 5

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different location, the crime of apartheid, etc. Then, the war crimes are as follows: willful killing; intentionally inflicting severe suffering or serious bodily or health injuries; widespread destruction and seizure of property without military necessity and conducted unlawfully; voluntarily targeting attacks on civilian populations; deliberately targeting and attacking civilians and civilian infrastructures. Although in *South Africa v. Israel*[50] case, ICJ ordered Israel from refraining from the acts of genocide, ICJ has no jurisdiction to try its cases against individuals. ICC has the jurisdiction to try its cases against individuals only.[51] Even though Israel is one of the non-ratifying states of the Rome Statute of the International Criminal Court, the nature of this statute is such that the court can exercise its jurisdiction even over individuals who are a citizen of a country which still has not ratified Rome Statute. For the crimes against humanity, war crimes, and the acts of genocide, two arrest warrants was issued by the ICC against Omar Hassan Ahmad Al Bashir, a former Sudanese military officer and politician and one of the significant attributions of this case is that Sudan is a non-ratifying state to the Rome Statute. In the contemporary conflict of Israel-Hamas, the perpetrators of IHL violations must be punished following the Rome Statute. Holding perpetrators of the Israel-Hamas war will serve as a deterrent against future international crimes. Hence, prosecuting perpetrators can help provide a sense of closure and acknowledgment for the victims.

9. Command Responsibility and IDF

The principle of command responsibility, under International Criminal Law (ICL) holds commanders liable for committing internationally recognized crimes committed by their subordinates.[52] Effective control command implies that the commander possesses both the legal authority and the practical capability to exercise control over their troops.[53] Under the principle of command responsibility and effective control command, the Prime Minister (PM) of the State of Israel can be held liable for the crimes committed by the IDF soldiers and officers. Three

[50] Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*) (Press Release) [2024] <https://www.un.org/unispal/document/icj-ps-6mar2024/> accessed 15 August 2024

[51] ibid. (n.12), art. 25(1)

[52] Robert Cryer, Darryl Robinson and Sergey Vasiliev, 'An Introduction to International Criminal Law and Procedure' (4th edn, CUP 2019) 368

[53] Bing Bing Jia, 'The Doctrine of Command Responsibility: Current Problems' [2000] 3 Yearbook of International Humanitarian Law 131, 147

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essential elements must be present to establish command responsibility under Article 28 of the Rome statute as Established in the *Čelebići Case*: (a) there must be a super-subordinate relationship; (b) the superior must have known or had reasonable suspicion that the subordinate would or had already committed a crime; and (c) the superior must have neglected to take the required and pertinent action to stop or punish the crime from being committed. IDF is subordinate to the government of Israel,[54] while the Prime Minister is the head of the government. So, it has been established that there exists a superior-subordinate relationship between the Prime Minister of Israel and the IDF. Moreover, the continuous violations of IHL prove that he was acquainted with the fact that the IDF was going to commit the above-mentioned international offenses. Besides, the IDF has been violating IHL since the beginning of the conflict where the head of the State of Israel did not take the required and appropriate action to stop the crimes from being committed and to punish the IDF soldiers and officers who are accused of violating IHL in line with their national laws. ICC prosecutor Karim Khan applied for an arrest warrant before the International Criminal Court against the Israeli Defense Minister and the Prime Minister in accordance with provisions enlightened under the Rome Statute for the alleged crimes that falls within the purview of the Rome Statute.[55] Furthermore, the material elements i.e., intention and knowledge as per Article 30 of the Rome Statute were present in the perpetrators while committing those alleged offenses. Therefore, there are competent justifications for the ICC in issuing arrest warrants for the perpetrators pertaining to the Israel-Hamas conflict.

10. Challenges and Recommendations

Several challenges persevere in the contemporary Israel-Hamas conflict. Firstly, Israel's non-ratification of the Rome Statute. Although the Rome Statute allows the International Criminal Court (ICC) to exercise its jurisdiction over non-ratifying nations, Israel is not required to abide by its rules and regulations. Undoubtedly, the non-ratification of the Rome Statute will hinder the

[54] Yagil Levy, 'The Embedded Military: Why did the IDF Perform Effectively in Executing the Disengagement Plan?' [2007] 16(3) Security Studies 382, 396

[55] Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri (Deif) and Ismail Haniyeh 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine' (*International Criminal Court*, 20 May 2024) <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> accessed 14 August 2024

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ability of the court to effectively investigate and prosecute those alleged crimes as well as enforce the ICC rulings even if ICC issues arrest warrants against the perpetrators in future. Secondly, the United Nations Security Council (UNSC) has turned a blind eye to the present situation in Gaza. In order to preserve and restore international peace, it is the responsibility of the UNSC to assume the initiative in identifying whether an act of aggression or a threat to the peace exists.[56] The UN Security Council is authorized to use enforcement actions as provided by Chapter VII of the UN Charter in order to preserve or reestablish global peace and security. In addition, these may be anything from international military intervention to economic sanctions. Additionally, Special Political Missions or UN Peacekeeping Operations must be established by the UNSC. Because of the permanent members' behaviors, the UNSC is not operating effectively to eliminate the threat and maintain calm within Gaza's territory. The five permanent members have a dominant role in the Security Council.[57] The USA, France, and the UK directly supporting the criminal activities of the perpetrators. Western countries are earning profits out of supplying arms to Israel. According to the Stockholm International Peace Research Institute, the US is the Israeli military's largest supplier, accounting for 69 percent of all weapons purchases between 2019 and 2023. So, there exists political and economic reasons for western countries not to solve the issue. Thirdly, parties of the Israel-Hamas conflict are less likely to respect the provisions of IHL. Only the four Geneva Conventions had been ratified by Israel, while the Additional Protocols of the Geneva Conventions were not ratified by Israel. Therefore, the non-ratification of Additional Protocols allows Israel to apply certain provisions only and maintain a degree of ambiguity at the time of armed conflicts. They impose restrictions on how wars are waged and improve the protection of victims of both international (Protocol I) and non-international (Protocol II) armed conflicts. Meanwhile, the first-ever international convention dedicated solely to non-international armed conflicts was Protocol II. Fourthly, Palestine is not a full member of the United Nations (UN) that ultimately limits its ability to fully leverage the UN system and international law to address the conflict and its underlying issues effectively. Finally, necessary measures are to be taken on an urgent basis. First, there should be a push for a humanitarian ceasefire. Furthermore, using force to restrain someone incites hostility, which

[56] ibid. (n.22), art. 39

[57] Jeremy Farrall Marie-Eve Loiselle, Christopher Michaelsen, Jochen Prantl and Jeni Whalan, 'Elected member influence in the United Nations Security Council' [2019] 33(1) Leiden Journal of International Law 101, 101

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paves the way for more armed attacks.[58] It must be realized that using force to alter the current quo will ultimately cause more harm than good. Second, the UNSC should urgently establish an international protection force to safeguard the lives of innocent people of Gaza which is an obligation. A total of 26 peacekeeping missions have been established by the UNSC, resulting in the participation of peacekeepers in 57% of the NIACs.[59] Third, there must be an establishment of a humanitarian corridor. Humanitarian corridors refer to those involved in a war declaring that a specific route will not be targeted and is off limits.[60] In Gaza, establishing a humanitarian corridor on ground is impossible as the refugee camps are also not protected from the disproportionate and indiscriminate attacks by the IDF. The international community must provide efforts for the establishment of a maritime humanitarian corridor. Fourth, Palestine has to be given a full membership of the UN. Full UN membership can be a crucial step towards solidifying their aspirations for statehood and gaining greater leverage in negotiations with Israel and the international community. Fifth, in order to facilitate the emergence of a two-state solution, a new multilateral accord between the United States and Arab states like Saudi Arabia, Egypt, and others is required. Lastly, ICC must issue arrest warrants against the perpetrators of the conflict with an immediate effort.

11. Conclusion

In the context of the Israel-Hamas conflict, IHL shall navigate the legal complexities encompassing the protection of civilians, civilian objects, medical facilities, and humanitarian aid workers, and implications for accountability and justice when all the bold defiance of implementing IHL has been tarnished and necessary measures that are mentioned in Chapter 10 have been implemented with due diligence. The atrocious loss of over 40,000 thousand innocent Palestininas over the past 10 months due to the barbaric killing of the Israeli Government in

[58] Koji Sakane 'The Hamas-Israel Conflict: How to Resolve a "Battle without Winners"?' (*International Information Network Analysis*, 13 December 2023) <https://www.spf.org/iina/en/articles/sakane_08.html> accessed 15 August 2024

[59] Gregory H. Fox, Kristen Boon and Isaac Jenkins, 'The Contributions of United Nations Security Council Resolutions to the Law of Non-International Armed Conflict: New Evidence of Customary International Law' [2018] 67 American University Law Review 649, 664

[60] Richard Stanforth and Magnus Corfixen 'Why a "humanitarian pause" or "humanitarian corridors" are simply not the answer in Gaza' (*reliefweb*, 5 November 2023) <https://reliefweb.int/report/occupied-palestinian-territory/why-humanitarian-pause-or-humanitarian-corridors-are-simply-not-answer-gaza> accessed 12 August 2024

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response to Hamas's unwarranted attack is evoking an alarming moral outrage in the international community. The Israeli Government could protect its people instead of stirring up the never-ending brutality and causing enormous sufferings in the Gaza Strip. Several mediators have attempted for a ceasefire, however, in vain as the de facto provocateurs persist. Moreover, the international community must intervene in order to put closure to the ongoing rubbled bloodshed. Besides, the de facto world leaders ought to call for a decisive peaceful discussion whose objectives are to cease the ongoing conflict and undo the harm caused by the perpetrators who planted the seeds of this tragedy in the first place. To maintain peace, a significant infusion of resources shall be spent wisely rebuilding the turmoil Palestine is encaged, rewarded with reparation instead of wasting them to ravage war and ulteriorly focusing on creating a secure, free, and just existence for Israelis and Palestinians. In the long run, everyone's peaceful coexistence shall reap advantages from it, and if the de facto international community concerns morally intervening in the conflict in a civilized manner. Leaders worldwide need to comprehend that every States' advancement inevitably depends on ensuring security of everyone since every human being has an equal right to justice and demand a peaceful life. Liberation is the only gateway of war which is caused by unfair dominance , curtailing human rights. Hence, this is the shot to make a significant contribution to the establishment of a genuine fair order founded on the right to life and self-determination of all humanity regardless of any orders.

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