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The Effectiveness of International Criminal Law in Context of Resolving Gaza-Israel Conflict

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Abstract

The Gaza-Israel conflict is the most enduring, and apparently intractable, in all of the modern international politics. In the face of nearly hundred years of bitter controversy both before and after the creation of Israel, many observers have come to despair that a resolution can be found. This will discuss the history of this long standing dispute and the recent events that has arose and has significantly changed the atmosphere and not only the people of Palestine but also hugely impacted the Gulf and middle eastern region. This paper will also evaluate the devastation and gruesomeness caused by Israel forces over the Gaza. Gaza also known as one of the largest open air prison in the world, where the poor residents have been kept under siege and has also denied them of their basic human rights. The wars launched over the people of Gaza not only forcefully compelled them to flee their homes and lands but also the illegal settlement left them nothing but to live in of the most densely populated place. The main aim of this paper is to evaluate the effectiveness of the international laws in this conflict. Has the international law been impactful to provide protection and basic human rights to Palestinians? Has international law ever sanctioned the Israel or held them accountable for the murders of kids, women and men and for the barbaric, inhumane satanic wars? These all factors will be discussed in this paper briefly.

Key words: Effectiveness, International law, Gaza-Israel conflict, international politics

Introduction

Commencing on October 7, 2023, Hamas initiated a lethal assault on Israel, which led to the Israel Defense Forces (IDF) executing airstrikes and ground maneuvers in the Gaza Strip. It has been a duration of seven months since that time. Since October 2023, almost 85 percent of Gaza's population, which is roughly two million people, have been compelled to evacuate their homes. According to the Gazan Health Ministry, the dead toll in Gaza is projected to exceed 34,000. Nevertheless, humanitarian agencies caution that the actual numbers could be significantly higher.



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The Israeli-Palestinian conflict originated in the latter half of the 19th century. The Partition Plan, also known as Resolution 181, was implemented by the United Nations in 1947. This resolution aimed to divide the British Mandate of Palestine into separate Arab and Jewish states. The inception of the State of Israel on May 14, 1948, ignited the initial Arab-Israeli war. In 1949, Israel emerged victorious as the ultimate winner of the fight. However, as a result of this triumph, 750,000 Palestinians were forced to leave, and the territory was eventually partitioned into three regions: the State of Israel, the West Bank (located next to the Jordan River), and the Gaza Strip. (Global Conflict Tracker 13 March 2024). Subsequently, there was a notable surge in hostilities in the area, particularly involving Israel, Egypt, Jordan, and Syria. As a reaction to the 1956 Suez Crisis and Israel's invasion of the Sinai Peninsula, Egypt, Jordan, and Syria established mutual defense agreements in order to be ready for a potential deployment of Israeli troops. The Six-Day War began in June 1967 when Israel launched a preemptive attack on the Egyptian and Syrian air forces in response to a series of maneuvers organized by Egyptian President Abdel Gamal Nasser. Following the conflict, Israel acquired dominion over the Sinai Peninsula and Gaza Strip from Egypt, the West Bank and East Jerusalem from Jordan, and the Golan Heights from Syria. (Handel, M. I. 1977). The Yom Kippur War, also known as the October War, entailed Egypt and Syria launching an unexpected attack on Israel from two different directions with the aim of reclaiming their previously held land. However, none of the groups involved in this fight were able to make substantial territorial gains. Nevertheless, Egyptian President Anwar al-Sadat declared the fighting to be a triumph for Egypt, as it provided an opportunity for Egypt and Syria to engage in negotiations regarding territory that had been previously relinquished¹. In 1979, after a sequence of cease-fires and peace discussions, delegates from Egypt and Israel formally achieved a consensus on the Camp David Accords, a peace accord that effectively ended the thirty-year-long struggle between the two countries. While the Camp David Accords did enhance the relationship between Israel and its neighboring countries, the issue of Palestinian self-determination and self-governance remained unresolved. The first intifada, which took place in 1987, witnessed a significant uprising of Palestinians residing in the West Bank and Gaza Strip against the Israeli authorities. The 1993 Oslo I Accords facilitated the resolution of the conflict by establishing a structure for Palestinian self-governance in the West Bank and Gaza. Moreover, it fostered the development of reciprocal recognition between the newly formed Palestinian Authority and the Israeli government. The Oslo II Accords, which were officially approved in 1995, extended the initial accord by incorporating conditions that required Israel to fully retreat from six cities and 450 communities located in the West Bank. The division among the Palestinians escalated with Hamas' triumph in the 2006 parliamentary elections of the Palestinian Authority, resulting in the displacement of the ruling party, Fatah. As a result, Hamas, a political and militant organization that is influenced by the Palestinian Muslim Brotherhood, took control of the Gaza Strip. Gaza is a narrow strip of land located adjacent to the Mediterranean Sea. The territory is contiguous to Egypt in the southern direction and has been under the



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jurisdiction of the semi-autonomous Palestinian Authority since 1993. The electoral win of Hamas was not recognized by the United States, European Union, and other nations due to their classification of the party as a terrorist group since the late 1990s. After Hamas took control, a conflict erupted between Hamas and Fatah. From 2006 to 2011, a sequence of abortive peace initiatives and violent conflicts concluded with a final agreement that sought to achieve reconciliation. In 2014, Fatah and Hamas established a coalition government, so creating a cohesive partnership between the two factions. (Ayalon A, 2021). In the summer of 2014, there was a conflict in the Palestinian territories that led to a military confrontation between the Israeli forces and Hamas. In the midst of this conflict, Hamas instigated the launch of over three thousand missiles towards Israel, causing Israel to carry out a significant military operation in Gaza. The conflict concluded in late August 2014 after a cease-fire deal facilitated by Egypt. Throughout the conflict, a combined total of 73 Israelis and 2,251 Palestinians tragically perished. In 2015, after a number of intense confrontations between Israelis and Palestinians, Palestinian President Mahmoud Abbas, who belongs to the Fatah political party, declared that Palestinians would no longer adhere to the territorial boundaries established by the Oslo Accords. (Dimitris Bouris, 2015). In March 2018, Israeli forces fatally shot 183 Palestinians and injured 6,000 others in response to a group of Palestinians breaching the border barrier between the Gaza Strip and Israel, and engaging in rock-throwing during an otherwise nonviolent demonstration. During a period of several months, Hamas terrorists launched over one hundred rockets towards Israel, prompting Israel to retaliate by targeting more than fifty locations in Gaza during a twenty-four hour period. The heightened political climate led to a resurgence of conflict between Fatah and Hamas. Fatah, under the leadership of Mahmoud Abbas, achieved supremacy over the Palestinian Authority in the West Bank, but Hamas maintained de facto control over the Gaza Strip. After Hamas gained power in 2018, the situation became further destabilized. In 2021, a crisis arose as protests broke out following a court decision that supported the eviction of Palestinian residents from their homes in East Jerusalem. The Israeli police are employing physical force to suppress the protests. Hamas and other Palestinian militant factions initiated an onslaught of many rockets into Israeli territory following a series of days marked by intense conflict. Israel retaliated using a combination of artillery fire and airstrikes, resulting in the fatalities of over 20 Palestinians and inflicting substantial harm on both civilian and military structures. This encompassed residential structures, media establishments, as well as facilities dedicated to refugees and healthcare. Israel and Hamas declared a ceasefire following an eleven-day period, each claiming victory. The battle led to the demise of around 250 Palestinians and 13 Israelis, with almost 2,000 people suffering injuries and 72,000 individuals being displaced from their residences. Amnesty International has recorded illegal Israeli airstrikes in the Gaza Strip, which involved indiscriminate attacks resulting in significant harm to people. It is crucial to initiate an inquiry into these attacks as they could qualify as acts of war crimes. The organization conducted interviews with survivors and eyewitnesses, analyzed satellite images, and authenticated photos and videos to investigate the aircraft bombardments conducted by Israeli troops from the 7th to the 12th of October. These attacks resulted in substantial destruction and, in several instances, the complete



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annihilation of entire families. In this document, the organization provides a comprehensive examination of their findings regarding five of these illegal attacks. The Israeli attacks in all of these instances contravened international humanitarian law by neglecting to implement adequate measures to protect civilians, or by conducting indiscriminate assaults that did not differentiate between civilians and military targets, or by initiating attacks that potentially targeted civilian infrastructure. According to the Palestinian Ministry of Health in Gaza, Israeli forces have carried out many airstrikes in the Gaza Strip since 7 October, resulting in the fatalities of at least 3,793 Palestinians, predominantly civilians, with over 1,500 of them being children. An estimated 12,500 individuals have sustained injuries, and around 1,000 corpses remain trapped beneath the debris. (*Amnesty International* 20 October 2023). Israeli troops initiated a comprehensive aerial assault on Gaza immediately after the bombings commenced. Furthermore, it is important to scrutinize the actions of Hamas and other terrorist factions who have routinely launched indiscriminate missiles into residential areas in Israel, as these actions can be considered acts of war crimes. A total of 79 Palestinians, including 20 children, have been killed by Israeli forces or settlers in the occupied West Bank, which includes East Jerusalem. This has occurred during a time of increased and unjustified use of force by the Israeli military, together with a rise in officially approved settler aggressiveness. Amnesty International is now investigating these incidents.

The Israeli Ministry of Health reports that more than 1,400 individuals, primarily civilians, have perished in Israel. Furthermore, an unprecedented assault executed by armed forces originating from the Gaza Strip on October 7th has resulted in injuries to a grand total of 3,300 victims. The perpetrators commenced a campaign of indiscriminately launching rockets and dispatched armed combatants into southern Israel, perpetrating war crimes such as deliberately targeting non-combatant civilians and engaging in hostage-taking. According to the Israeli military, the combatants not only seized more than 200 civilian prisoners but also transferred military hostages to the Gaza Strip. It has been consistently observed that the Israeli military has either failed to notify civilians or provided insufficient warnings. Occasionally, they interacted with someone discussing a strike that had a substantial impact on entire buildings or streets crowded with people. In addition, the authorities provided ambiguous "evacuation" guidelines that left the residents uncertain about the duration of their evacuation. The Israeli military failed to provide a secure location for residents to depart under any circumstances. During the Jabalia market incident, residents were forced to leave their homes in compliance with an evacuation order. Regrettably, they met their demise at the very location where they were attempting to find refuge. The military actions carried out by Israel have caused different levels of devastation, ultimately resulting in a humanitarian catastrophe in Gaza. (Jonathan Kuttub 2023).

These instances clearly demonstrate that there have been substantial and devastating losses among innocent civilians on both sides, but the individuals responsible for planning and executing these attacks have remained unscathed. The question that emerges from the discussion is who should bear responsibility or face legal action? The optimal resolution to this predicament is to ensure that persons who possess authority over all military operations are held responsible.



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The military high command of Israel, along with Prime Minister Netanyahu and his cabinet, should be subject to legal prosecution. Similarly, when considering the issue, it is appropriate to examine the supreme commander and advisors of Hamas. During these instances of extensive destruction, there has been a noticeable lack of involvement from the civilian population on both sides, especially the citizens of Gaza who have suffered significant difficulties for the past seventy-five years. Nevertheless, the process of prosecution is more intricate than it may appear. Israel receives substantial support from the Western world, namely the American government. This support encompasses more than just social and political help, as it also includes significant economic aid totaling over 8 billion dollars. This money enables Israel to effectively carry out its many tasks. On the other hand, Hamas receives support from specific Islamic countries, such as Iran. In addition, Hamas aligns themselves with the Pro Palestinian narrative supported by Islamic regimes globally. Given the substantial backing of both parties involved, they are equally assured in their respective stances. In the event of any convictions against either of these two political and militant groups, it might potentially initiate a series of unforeseeable and unregulated events, leading to increased tension in the region.

The primary goal of the International Criminal Court (ICC) is to conduct investigations and, if necessary, prosecute persons who are accused of the most serious crimes that have significant implications for the global community. The offenses included in this category consist of genocide, war crimes, crimes against humanity, and the crime of aggression. The International Criminal Court (ICC) is presently the exclusive authority empowered to attribute criminal liability to specific groups based on their transgressions. Nevertheless, there are certain inadequacies in the organization of its legal system.

The International Criminal Court (ICC) would only have jurisdiction over the Gaza war if the Palestinian administration in Ramallah acknowledges and consents to the court's jurisdiction. Palestine became a member of the International Criminal Court (ICC) in 2015. Significantly, this has repercussions for Israel, regardless of its non-compliance with the ICC legislation. The Palestinian Authority has the authority to enforce laws and conduct judicial actions for crimes committed within its territory and affecting its inhabitants, in accordance with established legal norms and principles. As a result, the Palestinian Authority has the authority to provide the International Criminal Court (ICC) the same right to prosecute alleged violations carried out by Israeli soldiers in Gaza, as well as crimes committed by Palestinian groups like Hamas. (International Criminal Court, 2023). The potential charges from the International Criminal Court (ICC) would be primarily directed towards individual Israeli officials and military leaders holding high-ranking positions, rather than being intended for the entirety of the state of Israel. If arrest warrants are issued for Israeli officials, there will also be further arrest warrants filed for Hamas leaders, as indicated by specific reports. Under such circumstances, it would be atypical for the United States and its allies to attempt to suppress the International Criminal Court (ICC).

ICC Prosecutor Karim A. A. Khan's address on October 30, 2023, is expected to provide significant insights into the potential charges that the ICC plans to examine. During his address, he discussed the concepts of difference and proportionality, as well as the issue of Israeli settlement aggression and land seizure in the West Bank. In addition, he



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highlighted the obstruction of food and pharmaceutical supplies to the civilian population in Gaza, the intentional launching of rockets by Hamas targeting Israeli people, and the occurrences of attacks on civilians and incidents of hostage-taking since October 7, 2023. (Jonathan Kuttab, 2023). As the regulatory body tasked with settling conflicts of this kind, the ICC must render decisive judgments against individuals who have committed offenses. Nevertheless, the method by which the ICC will choose pursue one side while excluding the other remains uncertain in this specific instance. There are many challenges in identifying potential offenders. One particular challenge is the limited jurisdiction of its power. Palestine has formally recognized the jurisdiction of the International Criminal Court (ICC), while Israel has declined to adhere to the ICC's authority. Israel's alleged act of self-defense violates the limits set by International Criminal Law (ICL). Israel has the rightful power to protect its inhabitants, but there are also limitations that must be respected when doing so. On the other hand, if the ICC imposes fines on Hamas, it will be a subjective decision that may lead to more escalations in the region. (Lacey, D. 2011).

At times, when the International Criminal Court (ICC) does not have the required legal authority to determine guilt, ad hoc courts are established to fulfill the legal responsibilities and address the issue. An ad hoc court was established to handle the cases related to Yugoslavia. However, the establishment of an institution is not applicable to Israel and Gaza, as there is no political affiliation with any worldwide system. When one country agrees to have a specific institution act as a mediator, the other country refuses to accept it, and the same is true in reverse. Hence, this company is not a feasible choice for addressing this matter. The optimal method to commence a cessation of hostilities is by means of direct diplomatic discussions between the governing bodies, guaranteeing equitable treatment for all the parties concerned. Before setting up a negotiation table, it is crucial for the appropriate agencies, who are actively pursuing a cease-fire, to make sure that none of the parties engaged reignite hostilities by breaking any provisions of the agreement or interrupting the negotiation process. (Lacey, D. 2011).

The International Criminal Court (ICC), albeit a relatively recent establishment, is seeing a decline in its legitimacy among multiple African nations. These states argue that they have been subjected to an unfair level of scrutiny and inquiry by the International Criminal Court (ICC). In 2019, the Philippines chose to withdraw from the International Criminal Court (ICC) due to the court's announcement of its plan to examine Manila's anti-drug campaign. Although the prospect of an arrest warrant for Netanyahu or other influential Israeli officials may be supported in certain regions, it could pose difficulties for the ICC due to the fact that some of its most ardent proponents among European nations are equally dedicated to protecting Israel's security. Germany is confronted with a difficult predicament as it assumes the responsibility of promoting global criminal justice based on the Nuremberg trial and ensuring the safety and well-being of the state of Israel, both of which are consequences of World War II. (Fahmy, S., & Neumann, R. (2012).

These challenges are clearly evident and necessitate targeted focus from certain states. Nevertheless, the court functions according to a distinct and precise rationale. Ensuring the genuineness and legitimacy of the International Criminal Court (ICC) is of paramount significance. However, it is imperative that the prosecutors and judges of the court base their decisions on verifiable factual



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evidence, specifically pertaining to the current circumstances and the laws of the International Criminal Court (ICC), rather than being influenced by geopolitical interests. This strategy is the only way to maintain and enhance the court's long-term legitimacy. If any geopolitical factors require attention, it is the duty of the United Nations Security Council to address them. To summarize, international rules are crucial in dealing with global disputes, yet they do have certain weaknesses that allow countries to exploit each other. Concerning the conflict between Gaza and Israel, it is apparent that Hamas initiated an assault on non-combatants, so flagrantly contravening international regulations. Nevertheless, rather than complying with international sanctions, Israel retaliated by initiating a military campaign against Gaza, leading to a catastrophic humanitarian crisis. Although the stakeholders of international institutions have made conscientious efforts, the war and its terror persist. If this issue is not resolved promptly, the intensification of conflicts will spread worldwide, leading to a new international catastrophe.

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