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**THE PROBLEM OF THE ENFORCEMENT OF ICC OVER WAR  
CRIMES COMMITTED DURING THE PALESTINIAN-ISRAELI  
CONFLICT: A LEGAL STUDY**



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**MASTER OF LAWS  
UNIVERSITI UTARA MALAYSIA  
2025**

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CONFLICT: A LEGAL STUDY**



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**A thesis submitted to the Ghazali Shafie Graduate School of Government,  
Universiti Utara Malaysia, in fulfilment of the requirements for the Master of  
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## ABSTRACT

The Palestinian - Israeli conflict has been characterised by prolonged violence, displacement, and allegations of war crimes, prompting critical enquiries into accountability under international law. The International Criminal Court (ICC), established in 2002 to prosecute the most serious international crimes, has faced both criticism and limitations in addressing this conflict. The primary challenges lie in the ICC's jurisdictional restrictions, insufficient cooperation from states, and the political constraints that undermine its effectiveness in prosecuting alleged breaches of international humanitarian law. This study examines the role and jurisdiction of the ICC in prosecuting war crimes within the Palestinian - Israeli conflict and identifies the key challenges that weaken its mandate. A qualitative doctrinal approach, grounded in historical and legal analysis, is employed. The study traces the evolution of the conflict from the Ottoman era to the 1948 Nakba, as well as subsequent international interventions, most notably the Oslo Accords. It further explores the Rome Statute, the ICC's jurisdictional limitations with respect to territory, temporal scope, and subject matter, and the ICC's engagement with the Palestinian issue. The findings suggest that while the ICC represents a major development in international criminal justice, its ability to ensure accountability remains limited. Jurisdictional disputes, geopolitical pressures, and lack of state cooperation hinder the ICC capacity, restricting both deterrence and justice for victims. The study concludes by proposing measures to strengthen the ICC's effectiveness, including clarifying its authority in cases of contested statehood, expanding its enforcement mechanisms, and reducing political interference. By addressing these issues, the ICC could play a more significant role in promoting accountability and advancing justice under international law.

**Keywords:** Enforcement, International Criminal Law, Jurisdiction, Rome Statute, War Crimes.

## ABSTRAK

Konflik Palestin–Israel telah dicirikan oleh keganasan yang berpanjangan, pengusiran penduduk, serta dakwaan jenayah perang, sekali gus mencetuskan persoalan kritikal mengenai kebertanggungjawaban di bawah undang-undang antarabangsa. Mahkamah Jenayah Antarabangsa (ICC), yang ditubuhkan pada tahun 2002 untuk mendakwa jenayah antarabangsa paling serius, telah berdepan dengan kritikan serta keterbatasan dalam menangani konflik ini. Cabaran utama terletak pada kekangan bidang kuasa ICC, kekurangan kerjasama daripada negara, serta tekanan politik yang melemahkan keberkesanannya dalam mendakwa pelanggaran undang-undang kemanusiaan antarabangsa yang berlaku. Kajian ini meneliti peranan dan bidang kuasa ICC dalam mendakwa jenayah perang dalam konflik Palestin–Israel serta mengenal pasti cabaran utama yang melemahkan mandatnya. Kajian ini menggunakan pendekatan doktrinal kualitatif, berasaskan analisis sejarah dan perundangan. Kajian ini menelusuri evolusi konflik daripada era Uthmaniyyah hingga ke peristiwa Nakba 1948, serta campur tangan antarabangsa yang menyusul, khususnya Perjanjian Oslo. Ia turut mengupas Statut Rom, kekangan bidang kuasa ICC dari segi wilayah, skop masa, dan perkara pokok, serta penglibatan ICC dalam isu Palestin. Dapatkan kajian menunjukkan walaupun ICC mewakili satu perkembangan penting dalam keadilan jenayah antarabangsa, keupayaannya untuk memastikan kebertanggungjawaban masih terbatas. Pertikaian bidang kuasa, tekanan geopolitik, dan kegagalan negara untuk bekerjasama melemahkan kapasiti ICC, sekali gus menghadkan fungsi pencegahan serta keadilan bagi mangsa. Kajian ini merumuskan beberapa cadangan bagi memperkuuh keberkesan ICC, termasuk memperjelaskan autoritinya dalam kes yang melibatkan pertikaian kenegaraan, memperluas mekanisme penguatkuasaan, dan mengurangkan campur tangan politik. Dengan menangani isu-isu ini, ICC berpotensi memainkan peranan yang lebih signifikan dalam memupuk akauntabiliti dan meningkatkan keadilan di bawah undang-undang antarabangsa.

**Kata Kunci:** Penguatkuasaan, Undang-undang Jenayah Antarabangsa, Bidang Kuasa,

Statut Rom, Jenayah Perang..

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# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

International humanitarian law (IHL), referred to as the law of armed conflict, was established to govern conduct on the battlefield and protect civilians and non-combatants. The codification of International Humanitarian Law began with the Hague Conventions of 1899 and 1907, followed by the Geneva Conventions of 1949. These agreements establish the foundation of international law regulating armed conflict, including the classification of certain actions, such as intentional killing, torture, and attacks on civilian targets, as war crimes.<sup>1</sup> The Rome Statute of the International Criminal Court clarifies the definition of war crimes; however, its enforcement depends on political dynamics, particularly in prolonged and asymmetrical confrontations such as the Palestinian-Israeli conflict.<sup>2</sup>

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<sup>1</sup>Larry May, *War Crimes and Just War* (Cambridge: Cambridge University Press, 2007).

<sup>2</sup> Mohammad Al-Deeb, *Hudud Filastin: Dirasatan Tahliliatan Liwathiqat al-Intidab* (Ma'had al-Buhūth wa-al-Dirāsāt al-‘Arabīyah, al-Qāhirah, Miṣr, 1999), 109.

The Palestinian-Israeli issue presents unique challenges to international law. The origins of this conflict can be traced back to the 1917 Balfour Declaration, a pivotal event that has significantly impacted the legal landscape of the region. The execution of this policy during British Mandate governance enabled extensive Jewish immigration, heightening tensions and resistance among the indigenous Arab populace.<sup>3</sup>

The 1948 establishment of the State of Israel and the ensuing conflict resulted in the mass displacement of more than 700,000 Palestinians, referred to as the Nakba, or catastrophe. Whole villages were obliterated, and hundreds of people were deprived of their right to return to their residences, contravening international law.<sup>4</sup>

The displacement persisted after the 1967 Six-Day War, during which Israel captured the rest of ancient Palestine, encompassing the West Bank, East Jerusalem, and the Gaza Strip. Currently, more than five million Palestinian refugees remain stateless or in exile, encountering limitations on mobility, property rights, and civil liberties. Since 1967, Israel has sustained a military occupation of the West Bank and Gaza, marked by significant human rights violations and potential war crimes. These encompass the proliferation of unlawful settlements, residential demolitions, coerced evictions, the deployment of live ammunition against civilian demonstrators, and indiscriminate assaults during military operations.<sup>5</sup>

The persistent siege of the Gaza Strip, enacted since 2007, has resulted in a grave humanitarian crisis, denying inhabitants access to potable water, medical services,

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<sup>3</sup>Al-Jihaz al-Markazi li-l-Iḥṣā’ al-Filastīnī, *Al-Kitāb al-Sanawī al-Iḥṣā’ ī al-Filastīnī* (Ramallah, Filastīn, 2017), accessed January 24, 2019, [www.pcbs.gov.ps/site](http://www.pcbs.gov.ps/site).

<sup>4</sup>Nur Masalha, *The Palestine Nakba: Decolonising History, Narrating the Subaltern, Reclaiming Memory* (London: Bloomsbury Publishing, 2012).

<sup>5</sup>Ardi Imseis, “Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967–2020,” *European Journal of International Law* 31, no. 3 (2020): 1055–85.

power, and freedom of movement. The Rome Statute, enacted in 1998, confers jurisdiction upon the International Criminal Court over genocide, crimes against humanity, war crimes, and the crime of aggression. In 2015, Palestine ratified the Rome Statute and submitted its position to the ICC, pursuing responsibility for offences perpetrated in the occupied Palestinian territory. In 2021, the ICC Pre-Trial Chamber affirmed the Court's territorial jurisdiction over Gaza, the West Bank, and East Jerusalem. Nonetheless, Israel, not a signatory to the Rome Statute, has declined to acknowledge the jurisdiction of the ICC or assist with its inquiries.<sup>6</sup>

This absence of collaboration poses considerable legal and administrative obstacles. The ICC encounters challenges in gathering evidence, finding witnesses, and enforcing arrest warrants in a region experiencing military occupation. Moreover, geopolitical pressure from influential nations has compromised the Court's autonomy and restricted its capacity to respond assertively to politically sensitive matters, such as the Palestine issue. This indicates a wider dilemma in international law, wherein legal frameworks frequently inadequately safeguard the rights of marginalised or stateless individuals because of power disparities. Although several Palestinian militant organisations, including Hamas and Islamic Jihad, have been charged with breaching international law by firing rockets into Israeli territory, it is crucial to interpret these actions within the paradigm of a protracted occupation and systemic oppression. Furthermore, international law differentiates between the obligations of states and the actions of non-state actors. The activities of particular groups do not

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<sup>6</sup> Anwar Abu Moor, *Mashrū‘ al-Ta‘awwur al-Tārīkhī li-l-Dawlah al-Filastīniyah* (master's thesis, Al-Jāmi‘ah al-Islāmīyah, 2014), 151.

reflect the entirety of the Palestinian populace or their rightful quest for self-determination, as articulated in the UN Charter and other legal frameworks.<sup>7</sup>

The unequal dynamics of the conflict between an occupying force with superior military resources and a stateless population seeking fundamental rights pose significant challenges to the unbiased enforcement of international law. Notwithstanding the increasing evidence of war crimes perpetrated in the occupied regions, substantial accountability has continued to be unattainable. This impunity has encouraged other violations and sustained the cycle of violence and injustice.

This study seeks to examine the legal obstacles associated with the application of the Rome Statute within the Palestinian context. It analyses the ICC's jurisdiction over offences perpetrated in the occupied territories, the legal standing of Palestine under international law, and the challenges posed by Israel's non-cooperation and the Court's political constraints. The research highlights the urgent need for reform in the international legal system. It emphasises the imperative that all peoples, irrespective of statehood or geopolitical clout, obtain equal protection under international laws. The complexity of these legal challenges underscores the intricacy of the issues at hand.

## **1.2 Problem Statement**

Since 1948, the Palestinian-Israeli conflict has posed a continual and profound challenge to the international community, signifying a notable failure in the application of international law and diplomatic principles. The persistent nature of conflict,

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<sup>7</sup> Sam Najafian Razavi, *Palestine and the ICC: A Study in the Criteria for Statehood and the Jurisdiction of the International Criminal Court* (master's thesis, Stockholm University, Faculty of Law, 2016).

marked by military occupation, population displacement, recurrent armed conflicts, and severe human rights violations, has elicited urgent concerns about accountability under international criminal law.<sup>8</sup> In 2009, the Palestinian National Authority submitted a declaration to the International Criminal Court, under Article 12(3) of the Rome Statute, to address these crimes. This Article permits a non-State Party to acknowledge the Court's jurisdiction regarding purported crimes occurring inside its territory or perpetrated by its people. The submission urged the Court to commence an inquiry into purported war crimes perpetrated by Israeli soldiers and officials against Palestinian civilians. This phase initiated a legal dispute on jurisdictional authority, enforcement capability, and interstate collaboration in a highly sensitive contemporary conflict, underscoring the urgent need for action.<sup>9</sup>

Palestinian-Israeli hostilities have featured recurrent violations of international humanitarian law (IHL) and international human rights law (IHRL), several of which may constitute war crimes and crimes against humanity under the Rome Statute. Enforcing international criminal law principles in a politically contentious and militarily occupied region where the alleged offender (Israel) is not a party to the Statute and refuses to recognise the Court's jurisdiction is the main issue.<sup>10</sup> President Mahmoud Abbas presented Palestine's application to the UN on September 23, 2011. Resolution 67/19 of the UN General Assembly<sup>11</sup> Gave Palestine non-member observer state status on November 29, 2012. Palestine received the international recognition needed to join treaties like the Rome Statute with this status. The Palestinian

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<sup>8</sup> Sam Najafian Razavi, *Palestine and the ICC: A Study in the Criteria for Statehood and the Jurisdiction of the International Criminal Court* (master's thesis, Stockholm University, Faculty of Law, 2016).

<sup>9</sup> General Assembly Resolution 67/19.

<sup>10</sup> Eugene Kontorovich, "Israel/Palestine — The ICC's Uncharted Territory," *Journal of International Criminal Justice* 11, no. 5 (December 2013): 979–99, <https://doi.org/10.1093/jicj/mqt070>.

<sup>11</sup>UN General Assembly, *Status of Palestine in the United Nations*, Resolution 67/19, A/RES/67/19 (November 28, 2012).

leadership then agreed to submit to the ICC for the occupied territory. This established legal jurisdiction under Article 12 of the Rome Statute.<sup>12</sup>, which allows the Court to exercise jurisdiction when the State where the crime occurred is a State Party or has recognised it.<sup>13</sup>

Despite these advances, enforcement proved to be difficult. Israeli authorities directly opposed the ICC. In an official memorandum, Israel's Attorney General argued that Palestine was not a sovereign state and hence could not grant the ICC jurisdiction over the Palestinian territories. Israel informed the UN in 2002 that it would not ratify the Rome Statute, which it had signed in 2000. As allowed by Article 125 of the Vienna Convention<sup>14</sup> on the Law of Treaties, Israel disassociated itself from Statute commitments. According to reports, Israeli Prime Minister Benjamin Netanyahu supported sanctions on the ICC and its officials, viewing their actions as politically motivated.<sup>15</sup>

The ICC's jurisdiction is fundamentally challenged by this political and legal opposition. Israel is not a party to the Rome Statute. Yet, customary international law can be applied to its violations of jus cogens principles, such as war crimes and crimes against humanity. According to Article 12(2)(a) of the Rome Statute<sup>16</sup> The Court has jurisdiction over conduct that happened in a State Party's territory, in this case, Palestine, after its 2015 accession.

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<sup>12</sup> Rome Statute of the International Criminal Court, adopted July 17, 1998, entered into force July 1, 2002, 2187 UNTS 3, art. 12.

<sup>13</sup> Jeremie Bracka, "A False Messiah? The ICC in Israel/Palestine and the Limits of International Criminal Justice," *Vanderbilt Journal of Transnational Law* 54 (2021): 283.

<sup>14</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 125.

<sup>15</sup> Daniel Benoliel and Ronen Perry, "Israel, Palestine, and the ICC," *Michigan Journal of International Law* 32 (2010): 73.

<sup>16</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, art. 12(2)(a).

The ICC Pre-Trial Chamber confirmed its jurisdiction over Palestinian crimes in Gaza, the West Bank, and East Jerusalem on February 5, 2021. On January 22, 2020, the Prosecutor requested clarification under Article 19(3)<sup>17</sup> To confirm jurisdiction before commencing a formal investigation. Human Rights Watch called this decision an accountability milestone. However, major challenges persist. Articles 86 to 98 of the Rome Statute require States Parties to fully cooperate with the Court in investigations and prosecutions. This article requires arresting suspects, producing evidence, and permitting inspections. Israel's refusal to cooperate with the ICC limits its ability to collect evidence, access crime scenes, and execute arrest warrants.<sup>18</sup>

Israel's non-cooperation with the ICC is a key enforcement issue. This includes barring the Court from accessing crucial documents, witnesses, and the occupied Palestinian territory. Thus, the Court's investigation and prosecution are limited by law and practice. This refusal violates international principles of criminal justice and sets a precedent that allows powerful states to evade accountability by denying cooperation. Non-cooperation is not a defence under the Rome Statute, especially for grave Geneva Convention violations or widespread or systematic attacks on civilians.

The events of the Great March of Return, which began on 30 March 2018 in Gaza, represent a significant example of alleged crimes within the context of the Palestinian–Israeli conflict. On the first day alone, Israeli forces killed 16 unarmed Palestinian demonstrators near the Gaza border. The United Nations Commission of Inquiry, along with several human rights organisations, concluded that these killings constituted unlawful executions resulting from the excessive use of lethal force.

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<sup>17</sup> Rome Statute of the International Criminal Court, art. 19(3).

<sup>18</sup> UN General Assembly. *Rome Statute of the International Criminal Court* (last amended 2010), July 17, 1998, ISBN 92-9227-227-6. <https://www.refworld.org/docid/3ae6b3a84.html>.

Subsequent escalations, such as in May 2019 and May 2021, involved indiscriminate rocket attacks by Palestinian armed groups and retaliatory airstrikes by Israeli forces, which resulted in the deaths of hundreds of civilians and extensive destruction of civilian infrastructure, including hospitals, schools, and residential buildings.

In addition, the forced removal of Palestinian families from East Jerusalem neighbourhoods such as Sheikh Jarrah has raised grave concerns under international criminal law. Article 7(d)<sup>19</sup> of the Rome Statute of the International Criminal Court defines crimes against humanity to include “deportation or forcible transfer of population” when committed as part of a widespread or systematic attack directed against any civilian population. Omnipresent sub-provisions of Article 7 include “murder,” defined as the intentional killing of civilians, “extermination,” referring to the mass killing of civilians, and Article 7(h), which prohibits “persecution” against any identifiable group on national, ethnic, or political grounds.

Palestine joined the ICC in 2015; however, enforcement remains largely symbolic. The absence of executed arrest warrants and the continuous trend of alleged war crimes demonstrate the Court's limitations in instances involving non-State Parties that refuse cooperation. Rome Statute enforcement relies on state collaboration, and justice is often difficult to achieve without it. These issues affect humanity. Persistent violations have killed thousands of civilians and destroyed schools, hospitals, and places of worship. The Gaza Strip barrier restricts access to necessities, healthcare, and education, contributing to a protracted humanitarian crisis, according to the UN. These conditions qualify as crimes against humanity under Article 7(1)(k)<sup>20</sup>, which includes

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<sup>19</sup> UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, ISBN 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html>.

<sup>20</sup> Rome Statute of the International Criminal Court, art. 7(1)(k), [legal.un.org](http://legal.un.org).

intentional acts that cause significant pain or harm to the body, mental, or physical health.

Impunity may persist without vigorous enforcement of international criminal norms. Without accountability, a future Palestinian state built on justice, and the rule of law may be weakened. The weakening of civilian legal protections and the lack of deterrents embolden transgressions. The prosecution of war crimes stemming from the Palestinian-Israeli conflict encounters substantial obstacles, principally due to jurisdictional and enforcement issues. A primary concern pertains to the disputed legal status of Palestine as a state, which hinders the International Criminal Court's capacity to exercise jurisdiction, especially regarding offences committed in occupied territory. Furthermore, Israel is not a signatory to the Rome Statute and denies the jurisdiction of the ICC, thereby refusing to participate in investigations or extradite individuals. The jurisdictional uncertainties are exacerbated by enforcement limits, as the ICC does not possess its police force and depends on state cooperation to execute arrest warrants and conduct investigations. The reluctance of principal parties to collaborate, coupled with geopolitical tensions and power imbalances, significantly diminishes the efficacy of international legal frameworks and hinders accountability for serious breaches of international humanitarian law.<sup>21</sup>

### **1.3 Research Questions**

1. Does the ICC have jurisdiction over the Palestinian-Israeli territories under international law in war crimes?

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<sup>21</sup> Acer, Yücel. "The International Criminal Court and Israel's Acts in the Occupied Territories: Progress and Prospects." *Insight Turkey* 23, no. 3 (2021): 69-92.

2. How does the non-cooperation of Israel in the ICC's investigation of alleged war crimes during the Palestinian-Israeli conflict significantly affect the enforcement of international criminal justice?
3. What are the potential legal mechanisms or reforms that could significantly strengthen the ICC's ability to prosecute war crimes in protracted conflicts like the Palestinian-Israeli?

#### **1.4 Research Objectives**

1. To analyse the ICC's jurisdiction over the Palestinian and Israeli territories under international law in war crimes.
2. To investigate how Israel's non-cooperation with the ICC impacts the effectiveness of war crimes investigations and the broader enforcement of international criminal justice in the region.
3. To identify the potential legal mechanisms and reforms that could enhance the ICC's capacity to prosecute war between Israel and Palestine.

#### **1.5 Research Design**

This study applied research based on libraries, based on legal principles, concepts, and beliefs. It includes a rigorous methodological presentation, analysis, and critical evaluation of legal norms and principles, and their interrelationships. The study process is represented in the evaluation, analysis, auditing, and proposal of relevant recommendations in the field of gaps related to alternative mechanisms for the investigation of the ICC in possible war crimes between the parties to the Palestinian-

Israeli conflict, considering the lack of cooperation of the Israeli party in the investigations.<sup>22</sup>

### **1.5.1 Research Methodology**

The researcher focused on the doctrinal approach to answer the first research question in the jurisprudence of the International Criminal Court and to define the legal framework for war crimes and the legal force to conduct the necessary investigations to investigate them through a series of well-organized procedures whereby a certain subject is researched and useful conclusions that aid in solving the problem are achieved. More specifically, the research methodology employs an investigative approach that progresses through successive steps, from initial assumptions to research design and data collection.<sup>23</sup> It concerns how carefully the researcher plans the investigation to ensure valid and trustworthy results that address the study's goals. To answer the second question, the researcher turned to qualitative legal research (sociolegal and thematic analysis), which allows them to observe objects in their natural settings, understand and interpret their social contexts, and make suggestions about the various aspects of social life that pose a problem to study. A synergy is created when the two approaches are combined. In addition to resorting to the interview method, the researcher conducted 12 interviews with people from the study sample (academics, NGOs activists, and journalists). The sessions were conducted online due to the researcher's spatial distance from the location, which is a common approach in qualitative legal research. This approach encompasses the following characteristics: description of the social context, interpretation of social facts,

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<sup>22</sup> Anwarul Yaqin, *Legal Research and Writing*, (Malaysia: lexis Nexis, 2007).

<sup>23</sup> United Nations General Assembly, *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, December 10, 1948.

confirmation of assumptions, and evaluation of policies. Its steps include developing targeted research questions, selecting tools to collect data, sampling and analysing it, and interpreting the results. This approach facilitates a nuanced understanding of the intricate world of ICC legal analysis. The results of violating these laws, and the investigation of possible war crimes on both sides of the Palestinian-Israeli conflict, in this case, are indicative of the researcher's insights and impressions, projective methods, and in-depth interviews.<sup>24</sup>

### **1.5.2 Research scope**

The purpose of this study is to examine potential war crimes committed during the Palestinian-Israeli conflict between 2015, the year Palestine became a member of the International Criminal Court, and 2022, as well as the role played by the International Criminal Court in conducting these investigations.

### **1.5.3 Types of Data**

The data used in the study was determined by the research approach, which in turn determines the quality and relevance of the data. This study employs intellectual, sociological, and legal perspectives to provide a legal framework for the International Criminal Court's investigation procedures in the context of the Palestinian-Israeli conflict. The researcher used both primary and secondary data to supplement the primary data.<sup>25</sup>

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<sup>24</sup>Mike McConville, ed., *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2017).

<sup>25</sup> Chakravanti Rajagopalachari Kothari, *Research methodology: Methods and techniques*, (New Age International, 2004.) 94.

### **1.5.3.1 Primary Data**

The primary data is raw, unadulterated information that has not been interpreted, condensed, or reviewed by others. The preliminary data for this study come from a thorough examination and debate of the statutes and rules governing state-to-state relations in times of peace and conflict, such as the fundamentals, The Geneva Conventions Of August 12, 1949, Convention on the Prevention and Punishment of the Crime of Genocide, The International Criminal Court's Rome Statute, enacted in Rome on July 17, 1998, as well as laws and earlier judicial judgments. One example is the case that was referred to the International Criminal Court in March 2005 by the United Nations Security Council. Investigations into the suspected genocide and war crimes in Darfur, Sudan, started in June 2005 based on Resolution (1593), making it the first time the court had conducted an inquiry on the soil of a non-member state because Sudan is not a state party to the International Criminal Court, Omar Al-Bashir, the former president of Sudan, was found guilty after these inquiries, and the court charged him with committing the crime of genocide; nevertheless, the two arrest warrants issued against him were never carried out. Given that Israel claims that it is not a member of the court, drawing a comparison to the Palestinian dilemma offers some hope for the prosecution of offenders. However, there is still the issue of non-implementation.

### **1.5.3.2 Secondary Data**

Secondary data was information that others had already gathered. This information aids in refining the main data collection process, enabling the researcher to identify pertinent topics. In addition, they can supply background information and a framework in the field of law to the researcher and organise legal principles. Consequently,

secondary data was used to understand and analyse the original data. In addition, this study used theses, journals, magazines, books, legal reports, news articles, and Internet resources as secondary data.<sup>26</sup>

#### **1.5.4 Data Collection Methods**

The researcher collected and explored the primary and secondary data in the following ways.

##### **1.5.4.1 Primary Data Collection**

The primary data for this study were obtained through semi-structured interviews with twelve selected respondents who possessed relevant expertise and experience concerning the enforcement issues of the Rome Statute in the Palestinian–Israeli conflict. A purposive sampling method was employed to ensure that participants had professional backgrounds in international law, human rights, humanitarian law, journalism, and the operations of the International Criminal Court.

The interviews aimed to provide in-depth perspectives on the legal, political, and practical challenges faced by the ICC in prosecuting war crimes in the Palestinian–Israeli context. Each interview lasted approximately 45 to 90 minutes and was conducted either face-to-face (in-person) or through secure online platforms (e.g., Zoom, Webex), depending on the respondents' availability, geographical location, and security considerations. All interviews were conducted between August 2023 and June 2024. They were recorded with participants' full consent, transcribed verbatim, and analysed using thematic coding to identify recurring patterns and themes relevant to

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<sup>26</sup> Chakravanti Rajagopalachari Kothari, *Research methodology: Methods and techniques*, Ibid, 95.

the research questions. Ethical principles, particularly confidentiality, voluntary participation.<sup>27</sup>



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<sup>27</sup> Jennifer Mason, "Qualitative researching," *Sage* 1, no. 1 (2017): 63.

Table 1.1: List of Respondents

Code	Professional Role	Affiliation / Expertise	Method used	Date	Time
<b>A</b>	Palestinian Lawyer with a PhD	International Law Expert	Webex	26 Aug 2023	55 min
<b>B</b>	Lecturer	Faculty of Law, Al-Azhar University, Gaza	WhatsApp Video	1 Sep 2023	30 min
<b>C</b>	Legal Researcher	International NGOs	Face-to-Face	21 Sep 2023	1 hr 20 min
<b>D</b>	Human Rights Lawyer	Palestine	Zoom	6 Nov 2023	45 min
<b>E</b>	Legal Journal Writer	Middle East	Email+ Webex	14 Nov 2023	1 hr
<b>F</b>	Journalist	Official News Study	WhatsApp Video	26 Nov 2023	35 min
<b>G</b>	Researcher	International Law / Humanitarian Law	Face-to-Face	9 Jan 2024	1 hr 20 min
<b>H</b>	Legal Advisor	NGOs	Webex	8 Feb 2024	50 min
<b>I</b>	Human Rights Activist	Gaza	Zoom	19 Feb 2024	1 hr 10 min
<b>J</b>	Professor & Former Dean	Faculty of Law, Al-Azhar University, Gaza	Zoom	22 May 2024	45 min
<b>K</b>	Legal Consultant	International Criminal Tribunals	Email + Webex	By Jun 2024	55 min
<b>L</b>	Policy Analyst	International Criminal Justice	Email+ Zoom	By Jun 2024	1 hr

#### **1.5.4.2 Collection of Secondary Data**

Secondary information was also gathered from the libraries. Data was also gathered by visiting research-related programs, workshops, meetings, and conferences, as well as internet resources, online databases, and popular search engines, such as Google Scholar. As a result, this study relied on e-theses and articles from Palestinian journals.

#### **1.5.5 Analysis of data**

The first step in the research process is information gathering, frequently focusing on legal sources such as case law, court decisions, laws, and other legal sources without challenging or questioning the application of the law, but reviewing the law only regarding internal consistency, including the history of the law, what the law was previously, what the law is now, and if there are any clues to how the law has developed or evolved, instead of looking at the context in which it is being applied. Second, gathering data and information formed the basis of the analysis. Data refers to precise information that can help the researcher respond to research questions, such as how the social environment is represented, how social data is interpreted, how assumptions are verified, and how policies are evaluated. Where the researcher reads the texts, gets lost in the intricacies, tries to get to the heart of the data, uses what has been recorded in the texts and field notes, and then analyses them to give meaning to the data. Although qualitative analysis is more intriguing, it is feasible to refer to the data collected during the analysis process to copy the original data during the coding phase.<sup>28</sup>

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<sup>28</sup> Helene O'Connor and Nancy Gibson, "A Step-by-Step Guide to Qualitative Data Analysis," *Pimatisiwin: A Journal of Indigenous and Aboriginal Community Health* 1, no. 1 (2003): 63–90.

## **1.6 Significance of The Study**

This study is relevant to various key stakeholders, primarily policymakers, legal practitioners, enforcement officials, advocates, and scholars. Policymakers may utilise their findings to inform legal reforms and enhance international justice processes. ICC officers and investigators might gain valuable information regarding jurisdictional and enforcement problems in non-member states such as Israel. Human rights organisations and NGOs will find it beneficial for lobbying and collaborative initiatives. The study additionally seeks to assist victims and impacted communities by fostering justice and accountability. Furthermore, it enhances scholarly understanding, providing a basis for subsequent investigations into war crimes and the ICC's involvement in politically charged conflicts.

## **1.7 Limitations of The Study**

The major shortcoming of this study is that the researcher was not able to collect information or opinions from the Israeli authorities because they did not recognize the investigation and were therefore not willing to cooperate after Palestine joined the ICC in 2015 until the year 2022, which was an obstacle to the researcher and directed him to search for Information from the Internet and research by some researchers.

## **1.8 Operational Definitions**

The following definitions are provided to clarify the words found in the search and facilitate a deeper understanding for the reader. For example,

The Intifada: A broad popular movement to resist occupation or oppression. The Palestinian popular movement resisting Israeli occupation has been called the Intifada.<sup>29</sup>

The International Criminal Court: It was created as a permanent judicial body by the Rome Statute of 1998 to investigate and try those charged with genocide, war crimes, and crimes against humanity. On July 1, 2002, the court convened after the necessary number of nations (60) had approved. The Hague is home to the Netherlands' headquarters.<sup>30</sup>

Justice: A framework or collection of laws created to decide who should typically benefit or suffer when the law is applied to a person's unique facts.<sup>31</sup>

War crimes refer to violations of the rules or customs of war that fall within the jurisdiction of the Court, as stated in Article 8, which encompasses "severe violations of the laws and customs applicable in international armed conflicts and non-international conflicts".<sup>32</sup>

The Palestinian Issue "The Palestinian-Israeli conflict": refers to the ongoing political, historical, and humanitarian crisis in Palestine since 1897 (the year of the First Zionist Conference). The rise of Zionism, Jewish immigration, and settlement in Palestine are integrally connected to this war.<sup>33</sup>

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<sup>29</sup> Don Peretz, *Intifada: The Palestinian Uprising* (New York: Routledge, 2019).

<sup>30</sup> T. Britannica, eds., "International Criminal Court," *Encyclopedia Britannica*, December 20, 2021, <https://www.britannica.com/topic/International-Criminal-Court>.

<sup>31</sup> Tom Campbell and Tom Campbell, *What Justice is About* (London: Macmillan Education UK, 1988).

<sup>32</sup> ICC Statute, Article 8 (*cited in Vol. II, Ch. 44, § 3*).

<sup>33</sup> John Collins, *Occupied by Memory: The Intifada Generation and the Palestinian State of Emergency*, Paperback – December 1, 2004.

The Palestinian Liberation Organisation (PLO) is a paramilitary political organisation recognised by the UN and the Arab League as the sole legal advocate for the Palestinian people, both inside and outside of Palestine. The Arab Summit Conference 1964 was founded in 1964, and the first Palestinian Arab conference was held there to represent Palestinians in an international forum (Cairo).<sup>34</sup>

Israeli settlements: Notwithstanding Israel's protests, the world community views Israeli settlements as violations of international law. They are civil settlements made up of Israeli residents, mostly of Jewish ancestry, built on the territory Israel acquired during the Six-Day War of 1967.<sup>35</sup>

Palestine Liberation Organisation (PLO): This political and paramilitary organisation was founded in 1964 with the primary aim of achieving the liberation of Palestine and establishing Palestinian sovereignty. It is recognised by the United Nations and the Arab League as the sole legitimate representative of the Palestinian people. The PLO initially focused on armed struggle but later shifted toward diplomacy and negotiations.<sup>36</sup>

Occupation: Refers to Israel's control and governance of Palestinian territories following the 1967 Six-Day War. Under international law, the occupying power must adhere to specific legal obligations, including protecting the rights of the occupied population.<sup>37</sup>

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<sup>34</sup> *The New York Times*, "Arabs Create Organisation for Recovery of Palestine," May 29, 1964.

<sup>35</sup> Matar, Ibrahim (1981). "Israeli Settlements in the West Bank and Gaza Strip". *Journal of Palestine Studies*. 11 (1): 93–110. doi:10.2307/2536048. ISSN 0377-919X.

<sup>36</sup> Dominic Green, "Palestine Liberation Organization (PLO)," 2011, <https://doi.org/10.1002/9781444338232.WBEO470>.

<sup>37</sup> Sadi Safaa and Ilias Bantekas, "The Status of Gaza as an Occupied Territory under International Law," *International and Comparative Law Quarterly* (2023), <https://doi.org/10.1017/s0020589323000349>.

The Balfour Declaration was a public statement made in 1917 by the British government to support the construction of a "national home for the Jewish people" in Palestine, an Ottoman province with a small Jewish population at the time.<sup>38</sup>

## 1.9 Literature Review

The literature review aims to examine the existing literature on the key concepts of the study. For this purpose, the literature review is divided into the following subsections. To make the topic of study more academically relevant to the investigation of war crimes in the Palestinian-Israeli conflict, the researcher must describe, critique, and analyse previous studies related to this topic. In addition, the study served as a tool for understanding the topic and identifying knowledge gaps that were not included in previous literature. Therefore, this study contributes to filling this gap.

### 1.9.1 The Legal Framework for the ICC jurisdiction over the Palestinian Israeli territories under international law in war crimes

Christiano<sup>39</sup> argues that the United States, China, and Russia are the three most powerful military in the world, yet the International Criminal Court lacks jurisdiction over them for the most heinous crimes that may be committed under the present international system (unless their members commit the crimes on the territory of a state that has ratified the ICC). Under the restricted jurisdiction of the International Criminal Court, it is impossible to see anything other than the clear elevation of the most powerful actors in international politics above the law. It has also had an impact on the

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<sup>38</sup>James Renton, *The Zionist Masquerade: The Birth of the Anglo-Zionist Alliance 1914–1918* (Basingstoke: Palgrave Macmillan, 2007).

<sup>39</sup> Thomas Christiano, "The Arbitrary Circumscription of the Jurisdiction of the International Criminal Court," *Critical Review of International Social and Political Philosophy* 23, no. 3 (2019): 352–370, <https://doi.org/10.1080/13698230.2019.1565715>.

rest of the world. Nonetheless, one of the pillars of the International Criminal Court's legitimacy is its state acceptance. Nevertheless, the International Criminal Court is not entirely exonerated by culpability. They argue that the Court's jurisdiction has been narrowed arbitrarily and breached fundamental justice principles, jeopardising its credibility

In cases brought to the International Criminal Court, the more serious the problem, the higher the likelihood of a formal investigation, whereas the higher the strategic importance of member states in a particular case, the lower the likelihood of a formal investigation, as explained by Christopher Rudolph,<sup>40</sup> state cooperation with the International Criminal Court is influenced by political, domestic, and international factors.<sup>41</sup> This does not imply that dominant states are controlled by the Court. Rather, it suggests that the ICC will likely pursue formal investigations into the most serious cases while considering the perceived interests of powerful states to secure their support. Such an approach aligns with principles of ethically sound litigation.

Sarkin argues that state collaboration with the International Criminal Court is strongly influenced by its operational environment.<sup>41</sup> The International Criminal Court stated that it was working in a challenging environment. States and non-state actors have accused the court of being uncooperative regarding war crime arrests and investigations. Consequently, each state party must express their sincere support for the court to affirm that it is our collective responsibility to advance international justice.

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<sup>40</sup> Christopher Rudolph, *Who Pursues the Perpetrators? State Cooperation with the International Criminal Court* (New York: Routledge, 2017), 45.

<sup>41</sup> Sarkin, Jeremy. "Reforming the International Criminal Court (ICC) to achieve increased state cooperation in investigations and prosecutions of international crimes." *International Human Rights Law Review* 9, no. 1 (2020): 27-61.

As Alex Whiting explains,<sup>42</sup> when investigating, the Prosecutor of the International Criminal Court must consider multiple factors, including where to investigate, how to allocate resources, and the speed at which to proceed once sufficient evidence is available. The planning and management of ICC investigations resemble a complex strategic game, akin to multi-dimensional chess. Adding to these challenges, countries and key actors, including witnesses, often change positions or priorities, which can obstruct the progress of investigations. Unlike most domestic prosecutors (judges), ICC prosecutors, who have a limited number of tools to deal with the variables they face, cannot keep testimony or witnesses in enclosed spaces or easily obtain other evidence, such as wiretapping, telephone, and document subpoenas.

Victims' reactions to the International Criminal Court are often ambiguous but generally appear positive, as noted by Catherine Gigot.<sup>43</sup> Victims, on the other hand, could not agree with the ICC's work because they thought it lacked legitimacy, was biased, did not offer protection, did not bring justice in the way it saw it, and did not adhere to its mandate. Justice, considering the few cases that the ICC handles, can only be symbolic. Only 30 people have been charged since 2002. In addition, the ICC's choice of suspects may not agree with the victims of the conflict. For instance, the Times, which is a member of the same ethnic group as Thomas Lubanga in the Democratic Republic of Congo, was perplexed by Lubanga's incarceration. Given these facts, victims frequently avoid testifying before the ICC out of concern that they will be singled out again. Victims who favour domestic legal systems over international justice may do so. By reconciliation, restorative justice, as opposed to

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<sup>42</sup> Alex Whiting, *The International Criminal Court: The Politics of Jurisdiction and Investigation* (Oxford: Oxford University Press, 2013), 112.

<sup>43</sup> Catherine Gigot, *Victims and the International Criminal Court: Perspectives and Experiences* (Oxford: Oxford University Press, 2013), 78.

retributive justice, may be promoted. The ICC appears to be a neocolonial organisation.

Christiano<sup>44</sup> and Christopher<sup>45</sup> examined in this review, address the International Criminal Court's limited jurisdiction, particularly regarding powerful states. Both studies emphasise the ICC's dependence on state consent to initiate investigations, highlighting how this requirement undermines the Court's authority when dealing with nations wielding significant political and military influence. The authors argue that the ICC's ability to pursue accountability is often curtailed by the geopolitical interests of such states, especially when the gravity of the alleged offence is subjectively assessed. This observation aligns with the central argument of this thesis: that selective enforcement and state-driven jurisdictional limitations compromise the principles of universal justice and erode the credibility of the ICC in prosecuting war crimes.

In contrast, Sarkin, J.<sup>46</sup> underscores the role of state cooperation in facilitating the ICC's work, particularly in apprehending suspects and conducting investigations. It critiques the persistent challenges of non-cooperation, especially in cases involving non-state actors. This study supports this thesis's view that genuine and explicit state support is essential for the ICC to assert its jurisdiction effectively and fulfil its mandate. It reinforces the argument that without a shared international commitment, the Court's efforts to promote global justice will remain fragmentary and ineffectual.

Alex Whiting,<sup>47</sup> shifts focus to the practical challenges faced by the ICC Prosecutor in conducting investigations, such as witness relocation, lack of access to territories, and

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<sup>44</sup> Christiano, "The Arbitrary Circumscription," 355.

<sup>45</sup> Rudolph, *Who Pursues the Perpetrators?*, 52.

<sup>46</sup> Sarkin, *State Collaboration and the ICC*, 47.

<sup>47</sup> Whiting, *The International Criminal Court*, 115.

the political resistance of states like Russia. Drawing a comparison with the situation in Ukraine, it illustrates how prosecutorial diligence is often constrained by real-world logistical and political hurdles. This study challenges prior assumptions that cooperation from all states can be presumed and that access to suspects is readily achievable. It highlights the need for the ICC to develop more robust prosecutorial tools and mechanisms to navigate complex and often hostile environments.

Finally, Catherine Gigot<sup>48</sup> explores the perceptions of war crime victims regarding the ICC's efficacy. It concludes that many victims view the Court as offering symbolic rather than substantive justice, pointing to its limited number of prosecutions and the reluctance of witnesses to testify. Notably, it cites the ongoing ICC investigation into war crimes committed during the Russian invasion of Ukraine, where Prosecutor Karim Khan, empowered by referrals from member states under Article 14 of the Rome Statute, conducted field investigations alongside Ukrainian authorities. This case illustrates both the potential and the limitations of the ICC in responding to active conflicts, particularly in terms of evidence collection and international collaboration.

Collectively, these studies reflect a mixed scholarly assessment of the ICC's effectiveness, jurisdictional challenges, and operational limitations. They provide critical context for this research, which argues that the ICC's structural and political constraints significantly impede its ability to ensure justice in complex conflicts like the Palestinian-Israeli situation. Therefore, greater legal and institutional reforms are essential to strengthen the Court's enforcement capacity and restore its legitimacy as a mechanism of international criminal justice. The International Criminal Court recently made a significant change in its operations when it established a special portal

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<sup>48</sup> Gigot, *Victims and the International Criminal Court*, 82.

enabling people to immediately send material pertinent to the situation in Ukraine straight to ICC investigators. This project marks a shift toward more accessible and inclusive methods of evidence collection, reflecting a broader change in the Court's operating tactics. Particularly through the use of digital instruments and increased international cooperation, the researcher notes that the ICC's role and the efficacy of its investigation processes have undergone significant evolution in recent years.

Whether carried out by nationals of member states or inside the territory of a state party to the Rome Statute, these systems are crucial in allowing the ICC to investigate criminal conduct qualifying as war crimes. They reflect the Court's jurisdictional mandates' pragmatic implementation, as well as its ability to respond to complex, worldwide offences.

This study seeks to investigate other opportunities and systems that can enable the Office of the Prosecutor to gather evidence more successfully and guarantee witness cooperation in war crimes investigations. Particularly in circumstances like the Palestinian-Israeli conflict, where cooperation and access to evidence remain difficult, the study aims to help improve the ICC's investigatory capacities within its current legal framework by means of the analysis of current practices and suggested new strategies.

### **1.9.2 Challenges of Enforcing International Law Over War Crimes in The Palestinian-Israeli Conflict.**

Daniel Ronen<sup>49</sup> presents a critical analysis of the foundation of the state of Palestine within the framework of international law. It draws attention to the discrepancies

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<sup>49</sup> Daniel Ronen, *The Foundation of the State of Palestine in International Law* (New York: Routledge, 2010), 52.

between the arguments that support the sovereignty of Palestine and the norms of international law, as well as historical events associated with Palestine, the United Nations, and the wider global community. The international community as a whole, in light of the existence of a previous recognition of the state of Palestine, discussed many theoretical and practical arguments for recognizing the state of the Palestinian-Israeli conflict, the most important of which are the arguments that support the establishment of the state of Moreover, Resolution 6 of the UN Security Council has been debated. Human rights organisations charged both Israel and Hamas with war crimes. They called on the Security Council to conduct investigations and lawsuits after arguing that the International Criminal Court could not take the case because it did not have jurisdiction over Israel as a non-member state in the Court. At the same time, Article 12 of the Rome Statute authorises non-member states to accept the court's jurisdiction. However, loopholes remain in not exploring ways to prosecute leaders for war crimes during this conflict.

John Duggar notes that in 2013,<sup>50</sup> it was hotly debated which cases the Prosecutor of the International Criminal Court chose to investigate. The most contentious case involved prosecutors' refusal to investigate crimes committed by Israel and Hamas during Operation Cast Lead in 2008–2009. The absence of Palestine as a state first explained this. The author believes that this defence is no longer valid in light of the General Assembly's November 2012 recognition of the State of Palestine as an observer state. The Prosecutor's failure to investigate this problem and the Assembly of State Parties' refusal to allow one when asked to do so in November 2012 led to accusations of political prejudice. The author contends that this failure validates the

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<sup>50</sup> John Duggar, *Decision-Making and Case Selection at the International Criminal Court* (London: Routledge, 2013), 88.

assertion made by the African Union that the Office of the Prosecutor has decided to concentrate on Africa and refuse to investigate "cases" on other continents.

This essay examines the Palestinian attempt to delegitimise Israel and reduce its capacity to defend itself against violence, as analysed by Eytan Gilboa.<sup>51</sup> The third section of the article critically evaluates the conclusions of three committees that the ICC and UN Human Rights Council established to examine allegations that Israel committed war crimes during its fight with Hamas in Gaza. It appears that the commission's goals have been misaligned, and its leaders and members, methods of inquiry, selection of evidence, and conclusions have all been chosen to establish Israel's culpability for war crimes related to human rights. Furthermore, the Council and the ICC focused on Israeli behaviour throughout the Palestinian-Israeli conflict without addressing that of the other side, "Hamas," which engaged in behaviour that may have qualified as war crimes under the Rome Statute.

In 2009, the Palestinian National Authority submitted a request to the International Criminal Court and the Secretary-General of the United Nations, demanding that the Court investigate suspected war crimes committed by Israeli soldiers and lawmakers against Palestinian civilians, as noted by Sam Najafian.<sup>52</sup> The declaration divided legal specialists into two factions, one of which discussed the validity of the statement and the other on whether Palestine was a state and aimed to determine whether Palestine was a state and how its membership in the ICC would affect the authority of the Court. This article also speculates on future court rulings involving war crimes committed by Israeli citizens against Palestinians in the Palestinian National Authority territory.

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<sup>51</sup>Eytan Gilboa, "The Palestinian Campaign against Israel at the United Nations Human Rights Council," *Israel Affairs* 27, no. 1 (2021): 68–88.

<sup>52</sup> Sam Najafian, *The Palestinian National Authority and the International Criminal Court: Legal and Political Implications* (New York: Routledge, 2010), 52.

According to the illustrated constitutive concepts of statehood, it may be concluded from this article that Palestine is a state. Furthermore, the International Criminal Court will have jurisdiction over crimes committed in Palestine if Palestine joins the sovereign state. The "all states" provision in the Rome Statute and UN General Assembly Resolution 67/191 are used by the author to refute any claims that Palestine is not a nation, further demonstrating that the ICC would be aggressive in defending its authority. Thus, the Court is powerless to address crimes perpetrated in Palestine.

Eugene Kontorovich<sup>53</sup> argues that the International Criminal Court lacks jurisdiction over suspected war crimes related to the future expansion of the civilian Jewish population in the West Bank and their survival in the Palestinian-Israeli conflict. The relevant conduct did not originate in the Palestinian territories. Therefore, it does not fit the Court's standards, and agreements between Israel and the Palestinian government limit ICC jurisdiction. Potential actions against Israel also underscore the number of key provisions in the ICC statute that remain unclear or unspecified. Moreover, the ICC has little case law for defining related concepts such as "territory," "the interests of justice," and "no crime without text". As a result, it is possible for the ICC to forcefully define all essential terms and dismiss doubts about accepting such a referral. However, given the multiple challenges of such a jurisdiction and the unique nature of such a case in international criminal law, accepting the referral despite these objections would raise significant concerns about the court's impartiality, particularly among non-member states. Moreover, a committed and energetic view of jurisdiction will only dissuade reluctant governments from joining the court, defeating the primary objective of the ICC.

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<sup>53</sup> Eugene Kontorovich, *The Jurisdictional Limits of the International Criminal Court: Legal Challenges in Occupied Territories* (New York: Cambridge University Press, 2013), 112.

In this policy brief, Salam al-Shaer<sup>54</sup> examines whether Palestinian efforts to join the Court to enable it to exercise jurisdiction are timely or premature. The brief also discusses the extent of the ICC's jurisdiction to consider Palestinian-Israeli disputes in response to Israel's claims that the Court lacks this authority. Finally, it outlines the issues, challenges, obstacles, and pressures that decision-makers in Palestine face, including the following: the President of the State of Palestine, the position of the UN Security Council to clarify the political and legal interference between the Palestinians and Israelis, developing some solutions to overcome those fears and obstacles, and reaching the mechanisms that allow Israel to prosecute.

Mohammed Alashqar, Abdul Rahim, and Abd Aziz<sup>55</sup> highlight the Palestinian-Israeli conflicts in the Gaza Strip, noting that numerous essential infrastructures such as hospitals, schools, and United Nations relief centres were destroyed. Additionally, they emphasise the significant loss of innocent lives caused by Israeli forces. The author argues that these events constitute a violation of the fundamental principle of distinction outlined in international humanitarian law, which aims to safeguard civilians during times of armed conflict. This study examines the culpability of individual perpetrators of war crimes committed in the aforementioned conflicts, as outlined in the Rome Statute of the International Criminal Court. This was achieved by delimiting the extent of these criminal acts. Consequently, the researchers concluded that Israeli military commanders ought to be held accountable for these transgressions by the provisions outlined in Article 8 of the Statute. The Rome Statute

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<sup>54</sup> Salam al-Shaer, *Palestinian Accession to the International Criminal Court: Timing and Jurisdictional Considerations* (Amman: Al-Quds Center for Policy Studies, 2019), 23.

<sup>55</sup> Mohammed Alashqar, M., Abdul Rahim, A., and Abd Aziz, A. S., *The Gaza Strip Conflicts: Impacts on Civil Infrastructure and Humanitarian Relief* (Kuala Lumpur: University Press, 2023), 56.

of the International Criminal Court unequivocally dismisses any justification that seeks to protect individuals from being held accountable for illegal acts.

The first research addresses claims made by human rights groups against both Israel and Hamas for violations of war crimes. By citing the International Criminal Court's lack of jurisdiction over Israel, as it is not a State Party to the Rome Statute, it supports the United Nations Security Council's involvement in initiating investigations. Central to the current research, this jurisdictional gap remains unresolved and presents an ongoing challenge to hold accountable those guilty of international crimes within the framework of the Palestinian-Israeli conflict. Like the present researcher, the author of this study advocates for creative institutional and legal systems to bridge this disparity and promote accountability.

The second and third investigations criticise the ICC Prosecutor's neglect to prosecute charges involving claimed war crimes carried out by Israel and Hamas during the 2008 conflict. The Court decided at the time not to move forward because Palestine lacked statehood. However, this reasoning is no longer valid, as the United Nations General Assembly acknowledged Palestine as a non-member observer state in 2012 and subsequently allowed it to join the Rome Statute. The third study criticises the objectivity of investigating panels established by the UN Security Council and the ICC while nevertheless reviewing their setup. This thesis, on the other hand, holds that, in line with the norm of judicial impartiality, the Court has a responsibility to conduct inquiries into war crimes perpetrated by both parties, free from political bias.

The fourth study employs legal theory, particularly through explanatory and basic conceptions of statehood under international law, to affirm Palestine's statehood. It argues for Palestine's eligibility for sovereign state status at the ICC, as well as the

Court's jurisdiction over crimes committed on its territory. The author emphasises that any claims undermining Palestine's state status violate the "all states" provision of UN General Assembly Resolution 67/191, as well as that of the Rome Statute. This study is particularly significant as it bolsters the legal standing of ongoing ICC investigations in Palestine and reinforces the argument that political obstacles, rather than legal ambiguities, predominantly influence these investigations.

The final research investigates a more disputed area: the ICC's jurisdiction over claimed crimes connected to the growth of Israeli settlements on the West Bank. The author argues that bilateral agreements between Israel and the Palestinian Authority limiting ICC authority and the fact that these territories are not acknowledged as Palestinian territory complicate jurisdiction. This fits the sixth study, which notes the ICC's jurisdiction over crimes carried out during the conflict but notes ongoing challenges, particularly resulting from Israel's non-cooperation. These studies underline how political and diplomatic opposition from Israel limits the Court's practical capacity to investigate and punish, even if it nominally has jurisdiction. With particular regard to crimes committed in the Gaza Strip, the sixth research adopts a focused approach to personal criminal responsibility under Article 8<sup>56</sup> of the Rome Statute. It supports the Israeli government's responsibility for events that might qualify as war crimes. This study does not address the ICC's investigative function, or the pragmatic means by which evidence and witness testimony are gathered, even while it conforms with the main goal of this research, holding offenders accountable. Still, it is a useful source since it complements the emphasis on enhancing institutional structures that support the responsibility addressed in this thesis. Ultimately, the body of research examined reveals both agreement and disagreement among academics

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<sup>56</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, art. 8.

regarding the jurisdiction and enforcement issues of the ICC in the Palestinian-Israeli context. While there is consensus on the necessity of accountability and the evolving capacity of the Court, significant discrepancies remain in the practical application of jurisdiction and the support for investigations. Despite the non-participation of powerful non-member states, this study seeks to address these gaps by proposing practical measures to enhance the ICC's ability to gather evidence and ensure witness cooperation.

### **1.9.3 The potential legal mechanisms strengthen the ICC's ability to prosecute war crimes in protracted conflicts like the Palestinian-Israeli Israeli**

Yves Beigbeder<sup>57</sup> suggests that, according to the Rome Statute, states are generally required to fully assist the International Criminal Court (Article 86). However, a provision exists to penalise a nation that refuses to comply. The Court may rely only on the procedures outlined in Article 87, paragraphs 5 and 7. In other words, it can inform the United Nations Security Council of a state's reluctance to comply, or it can inform the Security Council if the UN Security Council sends the issue to the International Criminal Court (which lacks the authority to sanction a state).

Every request made by the court throughout its inquiries and prosecutions is subject to the principle of cooperation. Requests may be made for assistance with conducting searches and arrests, providing documents or evidence, apprehending suspects, transporting them to court, or in other ways. States are permitted to confidently provide the prosecutor with information (Article 54.3, e). Imagine, however, that the state feels that revealing information or documents may undermine its interests in national

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<sup>57</sup> Yves Beigbeder, *International Criminal Justice: Law and Practice* (London: Routledge, 1998), 112; Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, art. 86.

security. If this is the case, it may turn down the court's request. The Court and the State are required to take all practical measures to address the issue of using studies without endangering the State's national security. However, the state determines that there are no ways or situations in which it can approve the release of information. In that situation, it must inform the court, which is left with just the options outlined in Article 87.

The book by Graham, Kathryn, and Ross Homel<sup>58</sup> stated that, considering the decline in some Arab governments' support for the Palestinian cause and the increase in international support, Palestine needs to move within a broad international support group, according to a strategy of liberation from the Israeli apartheid regime and achieving self-determination. The Arab presence in the Court is weak; it is limited to Palestine, Jordan, Tunisia, Djibouti, and Comoros, and all Arab countries have not succeeded in electing a single Arab judge to represent them in the judicial circles since the start of the Court's work, while Western donor countries and Japan are exploiting their influence to single out the largest number of judges, which is a violation of the geographical rule representation in the Court. Despite this, Palestine enjoys the support of many other countries.

Suppose that the group of Western European countries, for example, includes countries that strongly oppose the investigation, such as Canada and Germany. In that case, it includes the most pro-Palestine Western countries, such as Sweden and Ireland, whose parliament voted that the construction of the Israeli occupation of settlements is a "de facto annexation of Palestinian lands and calls for comprehensive sanctions against Tel Aviv. This support is also evidenced by the letter recently signed by more than 50

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<sup>58</sup> Kathryn Graham and Ross Homel, *Palestine and International Justice: Political Support and Judicial Representation* (London: Routledge, 2019), 45.

prime ministers, foreign ministers, and other figures supporting the investigation of war crimes committed by Israel in the occupied Palestinian territories. This provides an opportunity to create the Friends of Palestine Network as a pressure group within the Assembly of States Parties and other international organisations such as the European Union and the United Nations. Moreover, Palestine's support within the Assembly authorises the authority to request the convening of an extraordinary session whenever it is found that the investigation into the situation in Palestine is subject to procrastination, marginalisation, or distortion. Extraordinary sessions of the Assembly may be convened at the initiative of its Bureau, which currently includes a representative of Palestine, or at the request of one-third of the State Parties by paragraph 2 of Article 112 of the Statute.<sup>59</sup>

Examining the fundamental idea of mandatory cooperation ingrained in the Rome Statute which mandates State Parties to assist the International Criminal Court in tasks including arresting and surrendering suspects and supplying required documentation to enable investigations Study No. 1 looks at the study does draw attention to a significant flaw, though: nations that neglect to comply lack strong enforcement systems or fines. When considering non-member governments like Israel, which have no official obligation to assist the Court, this exception is especially pertinent. Therefore, the problem of getting assistance from non-State Parties remains a fundamental one, especially regarding the Palestinian-Israeli conflict, to impede the ICC's capacity to gather evidence and bring claimed offenders before justice. The present study revolves mostly around this unresolved gap.

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<sup>59</sup> Open Society Justice Initiative, *Raising the Bar: Improving the Nomination and Election of Judges to the International Criminal Court* (New York: Open Society Foundations, 2019), 33, accessed July 7, 2021, <https://bit.ly/2WoKNj0>.

The second study emphasises the Palestinian cause inside the ICC framework, therefore stressing the need for more worldwide support, especially from State Parties. While certain Arab governments have shown declining support, the researchers observed, in contrast, other countries have supported thorough investigations and sanctions on Israel. According to the study, coordinated diplomatic efforts, particularly by states that back Palestinian claims, can be rather helpful in pushing the Court to act forcefully and prevent political marginalisation of the issue or procedural delays. Notwithstanding these suggestions, the fundamental issue is Israel's non-cooperation and continuous absence of objective prosecution for crimes carried out on both sides. The analysis also recognises the Palestinian perspective that their acts are conducted in self-defence against occupation, an argument that emphasises the requirement of complex, impartial adjudication and further confuses the prosecutor's balance. The third research parallels other cases of non-cooperation, including the rejection of ICC probes by the African Union and opposition from several nations in cases involving Russian military activities in Georgia and Afghanistan. It points out that resistance to ICC investigations into Israeli activities in Palestine fits more general political resistance by strong nations. Though the report offers a critical comparison viewpoint, it falls short of suggesting concrete steps that would force Israel, a non-member, to collaborate with ICC investigations. The present study aims to investigate exactly this unresolved gap: the requirement of practical solutions and the role of supporting actors in transcending diplomatic and jurisdictional obstacles. Moreover, the study addresses the growing participation of the United Nations and other foreign players in tracking and assessing evidence provided by Palestine, generally under technical backing from ICC-affiliated specialists. This partnership suggests a feasible path to improve investigative efficiency. The current study contends that such international

cooperation could be a model for how third-party states, especially Arab countries, can improve the ICC's position using political, logistical, and evidential support. Using these partnerships could put greater pressure on Israel to participate positively, therefore opening the path for a fairer probe. This can then encourage responsibility, discourage future transgressions, and help to achieve the long-term objective of ending the ingrained cycle of violence in the area.

## **1.10 Conclusion**

In Chapter One, a thorough summary of the research project is presented, including its objective, importance, and the approach that will be used to examine the legal structure of war crimes in the Palestinian-Israeli conflict. The chapter commenced by presenting the research inquiries and goals that seek to investigate the existing legal procedures for dealing with war crimes, the difficulties presented by Israel's lack of cooperation.

This part elucidates the dual strategy of doctrinal and qualitative legal research, underscoring the need for both theoretical analysis and actual data gathering via interviews with relevant players. This methodology is essential for acquiring a sophisticated comprehension of the legal and social factors involved in conflict.

The literature evaluation conducted a thorough analysis of extant research, revealing notable deficiencies in the present knowledge base, including the constraints of the International Criminal Court's authority and difficulties in obtaining cooperation from states. The existence of these gaps highlights the significance of the present study, which aims to enhance the existing analysis by providing new perspectives and practical suggestions.

Chapter One establishes the foundation for a thorough examination of intricate legal and ethical matters related to the Palestinian-Israeli conflict. The introductory chapter lays a solid groundwork for the subsequent chapters, which will further explore the legal analysis, empirical data, and suggestions for enhancing the pursuit of justice in this challenging endeavour.



## CHAPTER TWO

### BACKGROUND OF THE PALESTINIAN-ISRAELI HISTORY

#### **2.1 Introduction to Palestine's History**

Palestine is widely acknowledged as a region of significant historical and cultural significance in the Middle Eastern context. The history of this subject is characterised by its richness and complexity, encompassing a vast expanse of time during which significant civilisations emerged and numerous cultural influences were amalgamated. The period of Palestinian history, both preceding and following the Nakba, is widely regarded as a pivotal juncture that significantly influenced the trajectory of the Palestinian people. During this period, a series of profound changes and extraordinary historical occurrences occurred. Accordingly, I will address Palestine before and after the Nakba.

##### **2.1.1 Before Nakba (1516-1917)**

###### **1. Ottoman Palestine**

The duration of Ottoman dominion over Palestine ranged from 1516 to 1917. During this historical era, the region of Palestine was notably impacted by the Ottoman Empire, resulting in a rich tapestry of cultural and theological variety. Prominent metropolitan areas such as Jerusalem, Nablus, and Gaza saw significant growth and development, fostering a vibrant cultural and creative milieu.

###### **2. Palestinian society and culture**

Before Nakba, Palestine was a hub of cultural and religious variety, with many influences. Palestinian culture encompassed arts, literature, and economics, and faiths coexisted peacefully. Family cooperation unified social life in prosperous cities like Jerusalem, Nablus, and Gaza. Palestinian civilisation thrived on religious and linguistic variety and a strong story and legends. Before Nakba, Palestine was a hub for cultural exchange and wealth.<sup>60</sup>

### **3. Religious coexistence**

Religious variety was prevalent during the period under consideration, with Muslims, Christians, and Jews coexisting as an integral aspect of their everyday lifestyles. There have been instances of peaceful cooperation and cultural contact among many religious groups.

The themes discussed above constitute integral components of the multifaceted Palestinian identity that existed before the Nakba. Palestine, a hub for cultural and civilizational exchange, served as a testament to the region's cultural plurality and deep-rooted historical significance.

### **4. Jewish immigration to Palestine**

During the period before Nakba, Palestine had a significant influx of Jewish migrants because of the emergence of the Zionist immigration movement, which sought to establish a Jewish state in the region. The migration in question was driven by a multitude of circumstances, including persecution and the pursuit of Zionist aspirations. The Arab-Jewish conflict and the subsequent displacement of Palestinians

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<sup>60</sup> Ahmad Qabaha, Bilal Tawfiq, and Hamamra, "The Nakba Continues: The Palestinian Crisis from the Past to the Present," *Journal of Unity* 1, no. 1 (2021), <https://doi.org/10.2021/JU.V1I1.2315>.

in 1948, known as the Nakba, may have had a profound impact on Palestinian society and the subsequent escalation of hostility.<sup>61</sup>

Palestine was viewed as an integral component of the Ottoman Empire. Following the dissolution of the empire after the conclusion of World War I, the geographical area in question underwent a partitioning process, as stipulated by the Sykes-Picot Agreement, resulting in the establishment of distinct British and French spheres of influence. During the period of the British Mandate, there was a notable escalation in hostility between the Arab and Jewish communities residing in the area.<sup>62</sup>

The Balfour Declaration, issued in 1917 by the British government, pledged support for the establishment of a "national home for the Jewish people" in Palestine. This declaration has since been a significant contributor to political tensions. During the subsequent decade, there was a notable escalation in social instability and conflicts between the Arab populace and Jewish immigration.<sup>63</sup>

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<sup>61</sup> *Between Nakba and Independence*, in *Title of Book or Collection*, ed. [Editor Name if available] (Cambridge: Cambridge University Press, 2022), <https://doi.org/10.1017/9781108233743.007>.

<sup>62</sup> Yousef Sami, "The German Role in Encouraging Zionist Immigration and Settlement in Palestine (1860–1942)," *Journal/Book Title 3* (2022), <https://doi.org/10.60138/17120226>.

<sup>63</sup> Carly Beckerman, "1 A Divisive Promise," in *Israel in a Turbulent Region: Security and Foreign Policy* (London: Routledge, 2019), 15.

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### **2.1.2 After Nakba (1948)**

#### **1. Effects of the Nakba**

The Nakba, a significant event that transpired in 1948, had profound consequences on Palestine and its inhabitants. The population of Palestinian refugees has reached around 700,000 individuals, and presently they comprise a total of two and a half million refugees officially registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). A significant demographic shift occurred over the specified period, wherein the Jewish population in the region experienced a notable increase from 33% in 1947 to over 80% by the conclusion of 1948. Approximately 400 settlements were founded by Jewish communities on the lands that were captured, resulting in a significant impact on the Palestinian economy. These events have resulted in enduring tensions and an ongoing issue of Palestinian refugees, which continues to endure today. Despite the provision of international assistance, conflict and tension continue to be integral aspects of the regional and global milieus.<sup>65</sup>

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<sup>64</sup> Susan Pedersen, "Writing the Balfour Declaration into the Mandate for Palestine," *International History Review* (2022), <https://doi.org/10.1080/07075332.2022.2123377>.

<sup>65</sup> Nuzha Allassad Alhuzail, Ibrahim Mahajne, and Anan Abo Saleh Khawaled, "Addressing the Ongoing Effects of the Nakba: Experiences and Challenges that Israel's Arab Social Workers Face," *British Journal of Social Work* (2023), <https://doi.org/10.1093/bjsw/bcad225>.

## 2. Resistance parties

Following the Nakba in 1948, Palestine experienced the emergence of a resistance movement that established the Palestine Liberation Organisation (PLO) as its primary political framework. Various armed resistance movements, including but not limited to the Fatah, Popular Front, and Islamic Jihad movements, developed during this period. These factions accepted armed struggle as a method to oppose Israeli occupation. The period from 1960 to 1970 was marked by a series of guerrilla assaults and significant occurrences that brought international attention to the matter of Palestinian refugees and their causes. The trajectory of the movement was influenced by the unfolding of armed conflicts and popular revolts, resulting in an ongoing struggle and persistent quest for political resolution.<sup>66</sup>

## 3. Conflicts and wars (1948-1993)

The Palestinian-Israeli conflict resulted in a sequence of conflicts and wars. The series of armed conflicts in the Middle East commenced with the 1948 War, which ensued after the proclamation of the founding of the State of Israel. This sequence of hostilities encompassed notable military engagements such as the Sinai conflict in 1956, the Six-Day War in 1967, and the October War in 1973. The year 1987 marked the start of the Palestinian Intifada, also known as the First Intifada, which experienced a notable increase in demonstrations and confrontations against Israeli occupation.

Arab nations, including Palestine, were actively involved in the Second Gulf War, which occurred from 1990 to 1991. The present era has witnessed substantial

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<sup>66</sup> Mamoun Abujarad, “Armed Resistance and Peaceful Settlement in the Thought and Political Practice of Fatah 1965–2017,” *The Journal of Academic Social Science* 104 (2021): 433–441.

transformations within the locality, resulting in a noteworthy influence on the day-to-day experiences of its inhabitants.

The year 1948 was a significant period of change in Palestine, resulting in far-reaching consequences for regional landscapes. Following the formation of the State of Israel, a significant number of Palestinians experienced the displacement of their lands and assets, resulting in the emergence of the Palestinian refugee predicament. The regions under occupation were partitioned into Israel, the West Bank, and the Gaza Strip, subsequently leading to an escalation in social and political turmoil.<sup>67</sup>

There was an escalation of tensions between the Israeli state and the residual Palestinian people residing in the regions acquired by Israel in 1948. The protracted war endured for several decades, marked by recurrent endeavours to attain peaceful resolutions, as exemplified by the Oslo negotiations throughout the 1990s and subsequent peace initiatives in the 2000s.

The ongoing escalation of tensions and wars in the area has underscored the significance of addressing the rights and international recognition of the Palestinian people. These issues have become integral topics of discussion in both regional and international contexts. The ongoing Palestinian-Israeli conflict is a multifaceted and unsolved issue of global significance.

#### **4. Oslo Agreement (1993)**

The signing of the agreement in September 1993 marked a significant milestone in the ongoing endeavour to attain a political resolution between the Palestinian and Israeli

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<sup>67</sup> *Towards Nakba: The Failure of the British Mandate of Palestine, 1922–1939*, (2022), [https://doi.org/10.31390/gradschool\\_theses.2774](https://doi.org/10.31390/gradschool_theses.2774).

parties. The objective of the agreement was to build a self-governing framework for the Palestinian Authority, and its implementation occurred progressively in many phases. The initial stage commenced with the delegation of restricted administrative responsibilities and authority to the Palestinian Authority in the regions of Gaza and Jericho. Despite the early optimism surrounding the Oslo process, significant obstacles emerged regarding issues related to borders, settlements, and the rights of refugees. Despite the development of administrative and security frameworks in various Palestinian regions, the Oslo Accords did not result in the attainment of enduring peace and instead saw episodes of strain and conflict.<sup>68</sup>

## **5. Wars and Conflicts (1993)**

The region, including Palestine-Israel, has seen complex changes and enduring conflicts since the endorsement of the Oslo Accords in 1993. The second Intifada, also referred to as the Al-Aqsa Intifada, was initiated in 2000, with a sequence of military and terrorist operations. The hostilities in the Gaza Strip endured over the timeframes of 2008-2009, designated as Operation Sparkling Lead, and 2014, often referred to as Operation Protective Edge. The military actions have resulted in substantial human casualties and massive infrastructural devastation throughout the region.<sup>69</sup>

Despite the adoption of mediation attempts and diplomatic efforts, the achievement of a lasting resolution to the conflict was hindered by the ongoing barriers and complications. The perpetuation of hostility continued as a result of the continuous process of resolving disputes over disputed regions and territories. During this

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<sup>68</sup> Fatih Soleimani, “The Oslo Agreement: A Study of the Conflict Peace Process, Arabic-Israel,” *International Journal of Science and Society* 2, no. 4 (2020): 72–83.

<sup>69</sup> *Nakba and Survival: The Story of Palestinians Who Remained in Haifa and the Galilee, 1948–1956* (2021), <https://doi.org/10.1525/luminos.129>.

historical period, a significant series of events occurred, accompanied by a noticeable escalation in tension between the two opposing factions. Persistent obstacles, such as the delineation of boundaries and the status of Jerusalem, continue to cause formidable difficulties in achieving a sustainable and enduring resolution.

### **2.1.3 The Armed Confrontations and Military Conflicts Within the Context of The Palestinian-Israeli Conflict.**

The course of military conflicts in the Palestinian-Israeli conflict has significantly evolved over the decades, heavily influenced by colonial legacies, ideological movements, geographical disputes, and enduring power disparities. The British Mandate period (1920–1948) established the underlying tensions for the conflict, as escalating Jewish immigration, driven by Zionist ambitions and enabled by the Balfour Declaration, faced intensifying opposition from the native Arab Palestinian populace. The interwar period experienced significant turmoil, notably the 1936–1939 Arab Revolt, which was quelled by British forces aided by Zionist paramilitary organisations. These clashes generated enduring patterns of resistance and repression that would persist in defining the struggle.<sup>70</sup> The conclusion of the British Mandate and the 1947 UN Partition Plan instigated a critical period in Palestinian history: the 1948 War, known to Palestinians as the Nakba (catastrophe). On May 14, 1948, Israel proclaimed its independence, inciting military involvement from Egypt, Jordan, Syria, Lebanon, and Iraq. The war concluded in 1949 with armistice terms advantageous to Israel, which had acquired lands exceeding those designated under the UN plan.<sup>71</sup>

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<sup>70</sup> José Abu-Tarbus and Isaías Barreñada Bajo, “Emergencia, articulación y declive del Movimiento Nacional Palestino durante el periodo de entreguerras,” *MEAHRABE* 69 (2019), <https://doi.org/10.30827/MEAHRABE.V69I0.1067>.

<sup>71</sup> Yechiam Weitz, “1948 as a Turning Point on the Israeli Political Map,” *Israel Studies* 24, no. 3 (2019), <https://doi.org/10.2979/ISRAELSTUDIES.24.3.07>.

More than 700,000 Palestinians were forcibly relocated, and more than 400 communities were either depopulated or obliterated. This enormous exodus resulted in a lasting refugee catastrophe and founded Israel as a state on the remnants of historic Palestine. The displaced Palestinians, many of whom remain stateless, persist in asserting their right of return, a fundamental issue in international legal and diplomatic discussions regarding the war.

In the decades after the Nakba, a succession of significant wars further solidified the militarisation of the struggle. The 1956 Suez Crisis involved Israel, in conjunction with Britain and France, invading Egypt following President Gamal Abdel Nasser's nationalisation of the Suez Canal. Despite Israel's military success in capturing the Sinai Peninsula and Gaza Strip, international pressure, notably from the United States and the Soviet Union, necessitated a retreat. The 1967 Six-Day War was very momentous; Israel, anticipating Arab threats, initiated strikes against Egypt, Jordan, and Syria, resulting in the acquisition of the Sinai Peninsula, Gaza Strip, West Bank, East Jerusalem, and Golan Heights. The conflict resulted in the displacement of an additional 300,000 Palestinians and initiated Israel's military occupation of the West Bank and Gaza, a condition that continues in various manifestations to the present day.<sup>72</sup>

UN Security Council Resolution 242 mandated Israeli disengagement from occupied lands and the recognition of all regional governments; yet its ambiguous wording enabled divergent interpretations and obstructed resolution. The 1973 Yom Kippur War, launched by Egypt and Syria to recover lost territory, temporarily shifted the

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<sup>72</sup> Yossi Goldstein, "Ben-Gurion and the Palestinian Refugees: Ideology, Morality, and Praxis," *Israel Studies Review* 35, no. 1 (2020): 37–55.

military equilibrium but ultimately resulted in recurring stalemates and U.S.-facilitated peace initiatives. In 1982, Israel initiated a comprehensive invasion of Lebanon to oust the Palestine Liberation Organisation (PLO), resulting in the Sabra and Shatila massacres and an extended Israeli occupation of southern Lebanon that persisted until 2000. These conflicts, despite the involvement of other Arab nations, invariably yielded territory and political advantages for Israel, while exacerbating the marginalisation of Palestinian national ambitions.<sup>73</sup>

In the early 2000s, the Second Intifada (Al-Aqsa Intifada) commenced with Ariel Sharon's contentious visit to the Al-Aqsa Mosque compound, which Palestinians regarded as a calculated provocation. The uprising, which occurred from 2000 to 2005, was significantly more violent than the first Intifada (1987–1993), characterised by regular confrontations, suicide bombings, and severe Israeli military reprisals, including targeted assassinations, curfews, and incursions. More than 3,000 Palestinians and 1,000 Israelis lost their lives, while the infrastructure throughout the West Bank and Gaza sustained extensive damage. The insurrection resulted in heightened militarisation of Israeli security policy and the erection of the separation barrier, further dividing Palestinian land. In 2005, Israel unilaterally exited the Gaza Strip, demolishing all settlements and removing its armed forces. This withdrawal, although first regarded as a measure for de-escalation, did not terminate hostilities. In 2006, Hamas secured a majority in the Palestinian legislative elections, leading to heightened tensions with Fatah that resulted in the political and military division of the Palestinian territories in 2007, with Fatah governing the West Bank and Hamas administering Gaza. These splits undermined Palestinian diplomatic initiatives and

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<sup>73</sup> David Rodman, "The Arab–Israeli Conflict, 1956–1975: From Violent Conflict to a Peace Process," *Israel Affairs* 24, no. 9 (2018), <https://doi.org/10.1080/13537121.2018.1454033>.

facilitated successive Israeli military incursions in Gaza. The initial operation was Operation Cast Lead in 2008–2009, initiated in reaction to Hamas rocket attacks. The 22-day offensive led to more than 1,100 Palestinian fatalities, extensive devastation, and global denunciation of accusations of war crimes and the application of excessive force.<sup>74</sup>

Subsequent escalations occurred: in 2012, Operation Pillar of Defence resulted in an eight-day exchange of hostilities following Israel's killing of a Hamas commander. Egypt facilitated a ceasefire, yet no significant political advancement occurred. Operation Protective Edge in 2014 was the most lethal war since 2008. Triggered by the abduction and murder of three Israeli teens, together with a following offensive against Hamas in the West Bank, the conflict rapidly intensified into a comprehensive war. The conflict, which endured for 50 days, culminated in the fatalities of over 2,100 Palestinians and 73 Israelis, significant devastation of civilian infrastructure in Gaza, and prompted inquiries into war crimes by international human rights groups. In 2019, minor yet intense confrontations persisted as Israeli airstrikes eliminated prominent Islamic Jihad leaders, inciting retaliatory rocket assaults and a resurgence of hostilities. The biggest significant epidemic since 2014 transpired in May 2021, after Israeli intentions to displace Palestinian households from Sheikh Jarrah and incursions on pilgrims at Al-Aqsa Mosque during Ramadan. The 11-day conflict resulted in the deaths of nearly 250 Palestinians and caused extensive damage to Gaza's infrastructure, encompassing residential towers, roadways, and medical institutions. The conflict ceased due to Egyptian mediation; however, the fundamental issues—

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<sup>74</sup> Khairul Amilin Tengah, "The Gaza Strip and the Israel-Hamas Conflict: From 2008 until Nowadays," *Acta MN* (2022), <https://doi.org/10.54145/actamn.58.15>.

occupation, embargo, and absence of political resolution persisted unresolved.<sup>75</sup>

Throughout each phase of the conflict, the characteristics of military confrontations have mirrored overarching geopolitical dynamics, ranging from Cold War superpower alignments to current international legal discussions regarding human rights, occupation, and state accountability. The international community has consistently advocated for de-escalation and discussion but has encountered difficulties in addressing the fundamental causes of the violence and enforcing adherence to international humanitarian law.

Israeli security policies, marked by targeted assassinations, military blockades, and the growth of settlements, are sometimes defended as counter-terrorism strategies but are broadly condemned as collective punishment. In contrast, Palestinian militant factions, especially in Gaza, persist in executing indiscriminate rocket assaults, contravening international law. The cyclical nature of violence, along with the lack of political will and efficient international enforcement mechanisms, sustains a condition where people endure the greatest hardship. The armed confrontations and military conflicts between Israel and Palestine are not isolated incidents but constitute a deeply rooted and legally intricate struggle that complicates the enforcement of international humanitarian and criminal law in one of the world's most enduring conflicts.<sup>76</sup>

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<sup>75</sup> Maia Hallward, "International Relations Scholarship, Academic Institutions and the Palestinian-Israeli Conflict," *Cambridge Review of International Affairs* 23, no. 2 (2010): 259–280.

<sup>76</sup> Najah Duqmaq, "Israel's International Legal Responsibility for Human Rights Violations in the Occupied Palestinian Territory in Accordance with the Provisions of International Law," (2022), <https://doi.org/10.59994/pau.2022.1.4>.

## 2.2 The Position of The International Criminal Court In The Palestinian-Israeli Conflict

The International Criminal Court (ICC), officially inaugurated on July 1, 2002, under the Rome Statute, represents a significant advancement in international criminal law, originating from the ad hoc courts formed in the 1990s. The Security Council's passage of Resolution 827 on May 8, 1993, represented a key advancement in international justice by establishing a tribunal to prosecute serious violations of international humanitarian law perpetrated in the former Yugoslavia since 1991. This tribunal, based on the Secretary-General's report, was mandated to function in compliance with customary international humanitarian law. The act establishing the tribunal established offences and integrated procedural rules, consolidating the International Law Commission's efforts into a cohesive legal framework. The tribunal's authority was confined to the area of the former Yugoslavia and was under the Security Council's supervision for the continuation of prosecutions.<sup>77</sup>

In November 1994, the Security Council formed a tribunal following Rwanda's request to investigate genocide and significant breaches of international humanitarian law during the 1994 conflict in Rwanda and adjacent regions. Notwithstanding the domestic character of the Rwandan conflict, the regulations governing war crimes largely resembled those enforced in the Yugoslav tribunal.<sup>78</sup>

Drawing from these precedents, the Rome Statute of 1998, ratified in a diplomatic conference in Rome with participation from 160 states, 33 intergovernmental organisations, and 236 non-governmental organisations, resulted in the formation of

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<sup>77</sup> William Thomas Worster, "The Exercise of Jurisdiction by the International Criminal Court over Palestine," *American University International Law Review* 26 (2010): 1153.

<sup>78</sup> United Nations Security Council, *Resolution 955 (1994)*, S/RES/955, November 8, 1994.

the ICC. The Rome Statute was ratified with 120 votes in favour, 7 against, and 21 abstentions. Despite receiving support from significant nations such as France, Britain, and Russia, the United States distinctly rejected it.<sup>79</sup> The Statute conferred upon the ICC authority over four principal offences: genocide, crimes against humanity, war crimes, and aggression. This advancement succeeded the International Law Commission's efforts, which delineated these offences as prosecutable in international tribunals. The writing of the Rome Statute concluded a prolonged division between legal codes and statutes, integrating them into a cohesive legal framework. The Statute delineates the criteria and benchmarks for justice, eliminating uncertainties and establishing a stringent standard for legal precision and responsibility. The ICC's jurisdiction is classified into temporal, territorial, and subject-matter categories.<sup>80</sup>

It can pursue crimes committed after the Statute's implementation in a specific state. Its geographical jurisdiction encompasses crimes perpetrated within member nations, by their people, or in instances reported by the UN Security Council. Article 12(3) of the Rome Statute permits non-member states to recognise the Court's jurisdiction by sending a declaration to the ICC registrar, a provision initially utilised by Côte d'Ivoire in 2005; however, it remains insufficiently analysed in legal literature. Subject-matter jurisdiction includes the gravest offences: genocide, crimes against humanity, war crimes, and aggression.<sup>81</sup>

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<sup>79</sup> Mahnoush H. Arsanjani, "The Rome Statute of the International Criminal Court," *American Journal of International Law* 93, no. 1 (1999): 22–43.

<sup>80</sup> Dapo Akande, "The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits," *Journal of International Criminal Justice* 1, no. 3 (2003): 618–650.

<sup>81</sup> Carsten Stahn, Mohamed M. El Zeidy, and Héctor Olásolo, "The International Criminal Court's Ad Hoc Jurisdiction Revisited," *American Journal of International Law* 99, no. 2 (2005): 421–31, <https://doi.org/10.2307/1562506>.

War crimes denote grave breaches of international humanitarian law in the context of armed conflicts, encompassing acts such as the intentional targeting of civilians, the use of prohibited weapons, the maltreatment of prisoners of war, the forced displacement of populations, the recruitment of child soldiers, and the perpetration of sexual abuse. Such crimes may be committed by state or non-state actors and are deemed violations of customary international law, enforceable in both national and international courts, including the ICC. Crimes against humanity are characterised as extensive or systematic assaults on civilians, including transgressions such as murder, enslavement, torture, deportation, rape, persecution, apartheid, and other inhumane actions.<sup>82</sup>

These offences, historically grounded in the post-World War II Nuremberg trials, have developed into recognised standards of international law, facilitating prosecution in multiple legal jurisdictions. Genocide, a fundamental offence under the ICC's jurisdiction, entails deliberate actions intended to annihilate national, ethnic, racial, or religious groups, as exemplified by the Holocaust, Rwanda, and Bosnia. Notwithstanding global initiatives to avert genocide, it continues to pose a persistent threat worldwide. The crime of aggression entails the unlawful deployment of military force by one state against another, contravening international law and jeopardising world peace and security. The ICC's capacity to punish aggression further emphasises its responsibility to deter unlawful uses of force and uphold the international order.<sup>83</sup>

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<sup>82</sup> Jöbstl, Hannes. "Bridging the accountability gap: Armed non-state actors and the investigation and prosecution of war crimes." *Journal of International Criminal Justice* 18, no. 3 (2020): 567-597.

<sup>83</sup> Robert C. Johansen, "The Impact of US Policy toward the International Criminal Court on the Prevention of Genocide, War Crimes, and Crimes against Humanity," *Human Rights Quarterly* 28 (2006): 301.

The ICC's investigative and pre-trial procedure commences with a preliminary examination initiated by the Prosecutor, either autonomously or upon referrals from nations, the UN Security Council, or other organisations. Should it be deemed necessary, a formal investigation is initiated, encompassing evidence gathering, witness interrogations, and forensic examination. Upon collecting adequate evidence, the Prosecutor may petition the Pre-Trial Chamber to issue arrest warrants or summons.

The suspect's initial appearance guarantees the protection of their rights, while the charges and legal procedures are elucidated. The Pre-Trial Chamber thereafter determines whether to affirm the charges, which, if validated, result in a comprehensive trial. In pre-trial processes, evidence is revealed, motions are submitted, and legal tactics are formulated. ICC trials maintain the assumption of innocence, wherein the prosecution presents its case, the defence provides counterarguments, and the judges deliver verdicts.<sup>84</sup>

Sentencing occurs after a guilty conviction and may encompass incarceration, monetary penalties, or restitution to victims. Nonetheless, as the ICC does not possess its custody facilities, the execution of convictions relies on states prepared to accommodate condemned individuals. Furthermore, the ICC may mandate the confiscation of assets acquired through illicit activities. Notwithstanding its international mandate, the ICC encounters difficulties stemming from the non-ratification by pivotal nations, including the United States, which contests its jurisdiction and declines cooperation. These impediments obstruct the ICC's efficacy and underscore the political intricacies associated with international criminal justice.

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<sup>84</sup> Mark Findlay and Ralph Henham, *Beyond Punishment: Achieving International Criminal Justice* (Springer, 2009).

Nevertheless, the ICC continues to be a fundamental institution for accountability, justice, and the rule of law in confronting the most egregious crimes against humanity.

Palestine's Accession to The International Criminal Court, and in Return, The Israeli Side

### **2.2.1 Palestine and ICC**

Before Palestine acceded to the International Criminal Court in 2015, there had been earlier endeavours made to attain this objective. Several of these endeavours can be succinctly stated as follows.

In 2009, during the current year, the Palestinian Authority formally lodged an application seeking membership in the International Criminal Court. The initial rejection of this request was based on the absence of the requisite criteria for recognising Palestine as a sovereign state. Although he emphasised that the recognition of the State of Palestine should be contingent on a peace process, this requirement was subsequently nullified.

In the year 2012, In November 2012, the United Nations General Assembly conducted a vote, with a significant majority, to deliberate on the recognition of the State of Palestine as a non-member state inside the United Nations. The acknowledgement of Palestine as a sovereign entity facilitated its ability to formally apply for membership in the International Criminal Court.<sup>85</sup>

In the year 2014, In December 2014, the Prosecutor of the International Criminal Court, Fatou Bensouda, made the determination, following an impartial assessment,

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<sup>85</sup> Hyeyoung Lee, "Defining State for the Purpose of the International Criminal Court: The Problem Ahead after the Palestine Decision," *University of Pittsburgh Law Review* 77 (2015): 345.

that accession to the Court had become feasible. Consequently, Palestine formally applied to the court to attain membership as a sovereign state.

The State of Palestine attained membership as an international member state in the International Criminal Court (ICC) on January 2, 2015. On January 1, 2015, Palestine applied for membership to the court and consequently attained membership status on the following day. This particular phase was of significant importance and elicited a range of responses. By acceding to the jurisdiction of the International Criminal Court, Palestine would have the opportunity to lodge official grievances with the Court regarding potential criminal acts that have taken place within its territory, encompassing instances of conflict involving Israel.<sup>86</sup>

However, the admission faced criticism from Israel and many other nations, with certain parties seeing it as detrimental to the peace process and ongoing discussions.

The admittance mentioned is situated within the broader framework of persistent political tensions in the area, shedding light on the continuous diplomatic and legal changes occurring during the Palestinian-Israeli conflict.

### **2.2.2 Israel and ICC**

At present, Israel has not yet ratified its membership in the International Criminal Court. However, Israel maintains its reluctance to become a member of the court because it believes in the need to assert its national sovereignty through bilateral channels, rather than relying on international institutions.

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<sup>86</sup> Karen Wells et al., "Israel's War on Gaza and the Violation of Children's Rights," *Children's Geographies* (2024), <https://doi.org/10.1080/14733285.2024.2316752>.

Israel's decision to withdraw from the Rome Statute in 2002 was a response to the regulation that hindered the International Criminal Court's ability to investigate suspected war crimes in the Palestinian territories. The Rome Statute served as the foundational agreement of the International Criminal Court. Subsequently, Israel consistently reiterated its stance of rejecting the rulings issued by the Court about the Palestinian-Israeli conflict several times.

The ongoing dynamics between Israel and the International Criminal Court remain a subject of contention and discord, with their interactions being influenced by political shifts and regional occurrences.

### **2.3 Conclusion**

Chapter two presents a thorough examination of the historical and socio-political background of the Palestinian-Israeli conflict, from the Ottoman era to the present day. This chapter elucidates the notable cultural, religious, and social dynamics in Palestine before the Nakba, a time characterised by a diverse and multicultural fabric of cohabitation. The examination subsequently turned to the devastating consequences of Nakba in 1948, resulting in extensive displacement, the emergence of the Palestinian refugee issue, and a substantial transformation in the demographic and political environment of the area.

Furthermore, the chapter analysed the rise of resistance groups, the sequence of hostilities and wars from 1948 to 1993, and the ongoing endeavour for Palestinian self-determination. The Oslo Accord of 1993, originally perceived as a promising measure of peace, was examined, emphasising both its original commitment and the obstacles that impeded its effectiveness. The ongoing hostilities and violence after the Oslo

Accords highlight the enduring tensions and unsolved problems that have troubled the area, illustrating the intricate and unsolvable nature of the Palestinian-Israeli conflict.

Chapter Two provides a comprehensive analysis of the long-standing and deeply rooted historical origins of the Palestinian-Israeli conflict, highlighting the important events and transformations that have influenced the area. The persistent pursuit of peace and justice continues to be a pivotal matter, and the historical background presented in this chapter is essential for comprehending the present dynamics and function of international law, particularly the International Criminal Court, in tackling these complex issues.



# **CHAPTER THREE**

## **DETERMINE THE LEGAL FRAMEWORK FOR WAR**

### **CRIMES COMMITTED DURING THE PALESTINIAN- ISRAELI CONFLICT**

#### **3.1 Introduction**

It is imperative to acknowledge that the Palestinian-Israeli conflict is a very intricate and delicate struggle within contemporary history, characterised by the intricate interplay of religious, cultural, and historical factors. The war in question serves as evidence of its extensive repercussions on the populace and the wider area, specifically regarding the perpetration of legal transgressions and criminal activities during times of strife.

The Palestinian-Israeli conflict is associated with war crimes that hold substantial legal significance because they fall under the purview of an international system that safeguards the rights of civilian individuals and establishes regulations governing armed hostilities. The legal framework is a manifestation of the collective endeavours of the global community to attain justice and safeguard human rights within the realm of armed conflicts.<sup>87</sup>

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<sup>87</sup> Seada, Hussein, Adem. (2019). 8. Historical and Political Background of the Palestinian-Israeli Conflict. doi: 10.1007/978-94-6265-291-0\_2

This research places significant emphasis on comprehending the intricacies of the conflict and highlighting the imperative to examine breaches and crimes in line with the rules of international justice. To accomplish this objective, it is necessary to consider the historical and legal backdrop of the war alongside the humanitarian consequences of its occurrence. The enduring Palestinian-Israeli conflict presents a persistent dilemma within the framework of international law and principles of international justice. This situation underscores the necessity of scrutinising the functions of institutions and international courts in ensuring the responsibility of individuals and entities implicated in perpetrating war crimes and violations of human rights. This introduction offers a comprehensive examination of the legal framework for war crimes within the Palestinian-Israeli conflict, highlighting the significance of attaining justice and upholding human rights in this intricate and delicate setting.

### **3.2 Definition of Legal Framework**

The term "legal framework" pertains to the organisational and procedural system that regulates behaviours and interactions within a certain context, be it at a domestic or global level. The legal framework encompasses a comprehensive collection of rules, regulations, and procedures that establish and delineate rights and obligations, as well as govern conduct within a given community. This framework serves to establish and maintain equity and stability within a given society. The legal framework encompasses several fundamental components, notably the Constitution, which delineates the fundamental framework of governance and enshrines the fundamental rights of individuals. Additionally, rules and regulations play a pivotal role in governing the diverse facets of the societal, economic, and political spheres. The court and legal

system assume a significant role in the interpretation and execution of this framework, whereby laws are enforced, and conflicts are settled.

The legal system varies across different countries and undergoes continuous evolution to accommodate the evolving requirements and difficulties of society. The objective of this framework is to build a legal system that reflects social ideals and can strike a harmonious equilibrium between individual interests and the collective interests of the public.<sup>88</sup>

### **3.2.1 The Legal Framework for Countries**

The legal framework of states comprises a compilation of principles and protocols that delineate the regulations and responsibilities that regulate the conduct of governments in international relations. The framework examined possesses complex and wide-ranging ramifications, as it establishes connections with various facets of international law and reflects the dynamics between nations in a constantly evolving global environment.

The legal framework of states gives rise to various concepts.

- 1.** National sovereignty governs the capacity of a state to make independent decisions in the absence of external intervention, which is a fundamental concept. The concept is supported by how countries ratify international agreements that establish their obligations and rights within the context of the global community.

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<sup>88</sup> Rabith Madah Khulaili Harsya, Aryo Bhaskoro, Hasudungan Sinaga, Johannes Johny Koynja, and Loso Judijanto, "Environmental Justice and Sustainable Development: Assessing Legal Frameworks for a Balanced Future," *Global International Journal of Innovative Research* 1, no. 3 (2024): 274–281.

2. Diplomatic relations function as a concrete manifestation of the legal structure, given that diplomatic representatives exert significant influence throughout bilateral relations and shape nations' perspectives. Ensuring strict adherence to the legal frameworks that govern warfare and conflict is critical, as these establish the regulations and principles that armed conflict-affected governments are obligated to uphold.
3. International agreements and treaties are formal, obligatory arrangements in which sovereign nations mutually consent to achieve specific goals. These agreements function as essential elements within the jurisdictional framework of the states. The United Nations Security Council functions as a platform for the formulation of authoritative decisions that possess the capacity to influence the conduct of countries and offer directions.
4. The International Court of Justice provides legally binding judgments that are not susceptible to subsequent appeals, serving as the final arbiter for resolving disputes between sovereign nations. Furthermore, it serves an essential function of fostering compliance with international legal norms. International maritime law comprises the legal structure that regulates the responsibilities and entitlements of countries regarding waterways that span international borders. On the contrary, international environmental laws serve the purpose of protecting the environment on a global scale and encouraging the environmentally responsible use of natural resources.

Generally, the legal framework for states is an indispensable mechanism that regulates international relations and protects the independence and self-governance of countries.

The increasing intricacies of this framework are the result of diverse political, economic, and social changes that occur on a global scale.<sup>89</sup>

### **3.2.2 Legal Framework for War Crimes Committed During the Palestinian-Israeli Conflict.**

The Palestinian-Israeli conflict is considered to be one of the most complex conflicts in the world, and international law plays an important role in determining whether certain acts constitute war crimes. The legal framework for war crimes in this conflict can be analysed as follows:

Four conventions ratified in Geneva, Switzerland, comprise the 1949 Geneva Convention for the Protection of Civilian Persons during the Armed Conflict. As (Respondent 1) indicated in his answer, these conventions define the rights and responsibilities of individuals and combatant parties throughout armed conflicts. In the context of safeguarding civilians and occupiers throughout the armed conflict, this fourth agreement is regarded as the most crucial.

These are fundamental tenets of the Fourth Geneva Convention.

**Protection of Civilians:** Against the Convention, the targeting of civilians and communities is strictly forbidden, and belligerent factions are obligated to employ every feasible precaution to shield them from perils associated with the conflict.

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<sup>89</sup> Olga, Joos., Srdjan, Mrkic., Lynn, Sferrazza. (2021). 16. Legal Frameworks: A Starting Point for Strengthening Medicolegal Death Investigation Systems and Improving Cause and Manner of Death Statistics in Civil Registration and Vital Statistics Systems. *Academic forensic pathology*, doi: 10.1177/19253621211027747

Manners about captives of war: In the event of armed conflict, the Convention delineates the rights and responsibilities of detainees, with an emphasis on the imperative that they be detained in a humane and non-discriminatory manner.

Sanctions for cities and civilian property: Unprovoked assaults on civilian infrastructure and property are strictly prohibited under the Convention.

-Prohibition of inhumane and torturous treatment: The torture and inhumane treatment of individuals who are or have been detained are strictly forbidden under the Convention.

This agreement is a cornerstone in the establishment of international humanitarian law and the delineation of responsibilities and rights in the context of armed hostilities. In this particular context, it is important to highlight the key provisions under the Geneva Convention that pertain to potential war crimes perpetrated during the Palestinian-Israeli conflict:

### **1. Article 3 Geneva Conventions Of 1949**

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever concerning the above-mentioned persons.

- (a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment, and torture.
- (b) Taking of hostages.
- (c) Outrage upon personal dignity, in particular humiliating and degrading treatment.
- (d) The passing of sentences and the carrying out of executions without a previous judgment pronounced by a regularly constituted court, affording all judicial guarantees that are recognised as indispensable by civilised peoples.

2. The wounded and sick are collected and cared for.

Crossrail humanitarian bodies, such as the International Committee of the Red Cross, may offer services to the parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, using special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.<sup>90</sup>

## **2. Article 27 of the Rome Statute**

Protected persons are entitled, in all circumstances, to respect their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. At all times, they shall be humanely treated and shall be protected,

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<sup>90</sup> “Article 3,” (2022), <https://doi.org/10.1093/law/9780192862815.003.0005>.

especially against all acts of violence or threats thereof and against insults and public curiosity.

Women should especially be protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age, and sex, all protected persons shall be treated with the same consideration by the party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion, or political opinion.

However, the Parties to the conflict may take such measures of control and security regarding protected persons as may be necessary as a result of the war.

### **3. Articles 32, 33 of the Fourth Geneva Convention**

The parties involved in the agreement explicitly acknowledge and accept the prohibition on undertaking any action that might result in the infliction of bodily pain or the extermination of individuals under their custody, who are recognised as protected people. The ban encompasses a range of acts, including murder, torture, corporal punishment, mutilation, and medical or scientific experimentation, which are not essential for the medical care of an individual under protection. Additionally, it extends to any other form of cruelty, regardless of whether it is performed by civilian or military personnel. It is impermissible to subject an individual to punishment for an offence that they have not directly perpetrated. The use of collective sanctions as well as other forms of intimidation or terrorism is strictly forbidden. The act of pillaging is

strictly illegal. The act of retaliating against individuals who are protected, as well as their belongings, is strictly prohibited.<sup>91</sup>

As delineated in preceding articles on the Geneva Conventions, it is evident that the condemnation of assaults on non-combatants and their entitlements is paramount. Furthermore, these provisions underscore the imperative of safeguarding civilians and ensuring their well-being throughout periods of armed hostility and interstate conflict. In contrast to the unfolding events in the Palestinian-Israeli conflict, there are evident transgressions of the regulations and stipulations outlined in the accords. Consequently, the military actions conducted by Israel are seen as war crimes, encompassing offences such as genocide and forced displacement.

### **3.2.3 List of United Nations Resolutions**

The United Nations Security Council is often regarded as a fundamental institution within the global framework. The establishment of this entity was motivated by the objective of upholding global peace and security as well as addressing significant security issues on an international scale. The Council comprises 15 members who are chosen at regular intervals, five of whom possess the authority to use veto power. The Council exercises its authority to render legally binding decisions that apply to all member states while also demonstrating efficient responsiveness to international crises and armed conflicts. The Council assumes a prominent role as a significant forum for negotiating and formulating crucial international decisions. The Council's work is based on the principles outlined in the United Nations Charter, which embodies the principles of equality, fairness, and mutual respect among member states.

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<sup>91</sup> Kevin Jon Heller, “Mistake of Legal Element, the Common Law, and Article 32 of the Rome Statute: A Critical Analysis,” *Journal of International Criminal Justice* 6, no. 3 (2008): 419–445.

The Council's inception can be traced back to the post-World War era, during which its primary objective was to avert the recurrence of global hostility and foster worldwide security. The Council functions as an international hub for intellectual discourse and proactive measures to tackle global issues. The mission of the Council is extensive and includes the arbitration of military conflicts, the imposition of international sanctions, and the pursuit of peace and security. The Council demonstrated a comprehensive comprehension of contemporary security difficulties through its proactive approach to tackling topics encompassing terrorism, nuclear proliferation, and humanitarian disasters.<sup>92</sup>

In summary, the United Nations Security Council continues to hold a significant influence within the global community, playing a crucial role in promoting justice and equilibrium in inter-state relations. Moreover, it serves as a platform for fostering international collaboration, with the ultimate aim of establishing a world characterised by peace and security. In the following discourse, we will delve into a selection of United Nations resolutions regarding the protracted Palestinian-Israeli conflict.

### **1. Resolution 242 (1967)**

The decision, which was rendered on November 22, 1967, is regarded as one of the most significant in the aftermath of the 1967 conflict, also referred to as the "Six-Day War." This resolution addresses the issue of territories occupied during the Arab-Israeli War and reflects international efforts to resolve the conflict.

The content of Resolution 242 comprises several fundamental tenets.

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<sup>92</sup> Pasar Abdulkareem Fendi, "Role of the United Nations Security Council in Resolving International Disputes," *Turkish Journal of Computer and Mathematics Education (TURCOMAT)* 12, no. 2 (2021): 269–278.

(a) Withdrawal of Israel from occupied territories:

The resolution demanded that Israel cease its occupation of the occupied Syrian Golan, West Bank, and Gaza Strip, which it occupied during the 1967 War.

(b) Achieving just and enduring peace: Calls for negotiations to produce a lasting and equitable resolution to the conflict while emphasising the significance of achieving just and lasting peace in the region.

(c) It is imperative that all nations in the region sustain peaceful coexistence while ensuring that their independence and liberties are acknowledged.

Despite widespread international support, Resolution 242 continues to be subject to varying interpretations of its precise intent and practical implementation. The term "withdrawal from the occupied territories" generated considerable debate due to its implication of either a complete or partial withdrawal, in addition to concerns regarding the legal viability of fully restoring the territories. The framework established by this resolution persisted in efforts to resolve the Arab Israeli conflict.<sup>93</sup>

## **2. Resolution 1860 (2009)**

On January 8, 2009, the United Nations Security Council passed Resolution 1860 in response to the confrontation between Israel and Hamas that emerged in the Gaza Strip. This choice fits into the larger picture of the international community's attempts to stop violence from escalating, secure an immediate ceasefire, and bring about peace in the area. The main points of the 1860 resolution are as follows.

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<sup>93</sup>Ruth Lapidot, "The Misleading Interpretation of UN Security Council Resolution 242 (1967)," *Jewish Political Studies Review* (2011): 7–17.

1. Quick end to hostilities: Demands an instant cessation of hostilities and a ceasefire in the Gaza Strip.
2. Israel's withdrawal: Calls for the evacuation of Israeli military personnel from the Gaza Strip.
3. Humanitarian aid delivery: Understanding the importance of opening borders so that those living in the Gaza Strip can more easily obtain essential supplies and humanitarian help.
4. The United Nations' role highlights how important it is for the UN to lead and organise relief operations in the area.
5. Backing earlier agreements: Stresses the need to adhere to and carry out earlier agreements, such as Security Council Resolution 1701 concerning Israel and Hezbollah's dispute in Lebanon.

The execution of resolutions in this kind of conflict is still difficult because of the intricate conflicts and interests in the region, despite Resolution 1860 falling within the context of international peace efforts and the demand to cease the violent escalation in the region.<sup>94</sup>

### **3. Resolution 2334 (2016)**

The aforementioned declaration, released on December 23, 2016, pertains to Israeli colonisation within the occupied Palestinian lands, encompassing East Jerusalem, within the framework of the Palestinian-Israeli conflict. This resolution, which

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<sup>94</sup> Billingsley, Anthony. "Under the Spotlight: the United Nations Fact Finding Mission on the Gaza Conflict." In *Gaza: Morality Law and Politics*, pp. 145-175. Crawley, WA: UWA Publishing, 2010.

emphasises the imperative of achieving a peaceful conclusion to the conflict and expresses condemnation towards Israeli settlements, is widely recognised as one of the most consequential resolutions.

Resolution 2334 encompasses several noteworthy elements.

1. Israeli Settlement Operations in Occupied Palestinian Regions: The user expresses concern about the escalation of Israeli settlement activities in regions occupied by Israel, including East Jerusalem.
2. Ongoing building operations within settlements: The continuous development of Israeli settlements in Palestinian territories is strongly condemned, as it is considered a violation of international law and a threat to the potential achievement of a two-state solution.
3. Call for the cessation of settlements: Calls upon Israel to promptly and comprehensively halt all settlement operations in the Palestinian territories.
4. Establishing borders based on the 1967 line: This assertion highlights that any measures taken in the occupied territories since 1967, including the creation of settlements, are not in compliance with legal regulations. Moreover, this necessitates the establishment of boundaries based on the 1967 armistice line.
5. Advocating for the bilateral state approach: The declaration highlights the commitment of the global community towards resolving the issue through the establishment of two nations, namely Israel and a democratic and independent Palestinian state.

Resolution 2334 had significant backing from member states of the United Nations, who endorsed its suggested conflict resolution strategy and called for the cessation of settlement endeavours. However, this decision provoked dissatisfaction and protests from the Israeli government, which strongly objected to it.<sup>95</sup>

### **3.3 Conclusion:**

In the pursuit of a lasting resolution, it is imperative to acknowledge the complex and varied nature of the Palestinian-Israeli conflict. The complex interplay of historical, theological, and cultural factors underscores the need for a holistic strategy that acknowledges and honours the perspectives of all relevant stakeholders. The city of Jerusalem, serving as a microcosm of these intricate dynamics, necessitates a strategy characterised by sensitivity and tolerance, duly acknowledging its profound importance to the three major Abrahamic religions: Judaism, Christianity, and Islam. International diplomacy plays a crucial and central role in the pursuit of a just and equitable settlement, necessitating ongoing conversation and the collective commitment of all relevant parties. The significance of acquiring knowledge from previous disputes, cultivating a sense of reconciliation, and advocating for a collective vision of cohabitation is emphasised by lessons derived from historical events.

Ultimately, Palestine's aspiration transcends mere political accord. The essence of this sentiment lies within the collective consciousness of individuals, manifesting in their yearning for a forthcoming era characterised by the acknowledgement and preservation of their entitlements, as well as the ability to exist harmoniously and with a sense of worth. In the context of the enduring problem at hand, the international

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<sup>95</sup> McGarry, Brian. "United Nations Security Council Resolution 2334." *International Legal Materials* 56, no. 3 (2017): 645-649

community must prioritise the cultivation of comprehension, compassion, and mutual aspiration for a cohesive and prosperous tomorrow.

This chapter addresses the first research question by examining the topics of war and conflict in the Palestinian-Israeli context. Specifically, the focus was on the legal framework of war crimes in this setting. This begins by examining the international rules and agreements that govern armed conflicts, safeguards the well-being of civilians and prisoners, and forbids acts of war crimes. Subsequently, I present an overview of the Palestinian-Israeli conflict and pertinent international legal framework. Two prominent resolutions were emphasised: Resolution 242, published in 1967, which demanded Israel's retreat from the occupied areas and the establishment of enduring peace, and Resolution 2334, issued in 2016, which denounced Israeli settlements in the Palestinian territories. Subsequently, additional rulings on the Palestinian issue were referenced.

Furthermore, it examines the legal structure of nations and their compliance with international regulations concerning armed conflict. The significance of the United Nations Security Council and its resolutions in resolving crises and upholding global peace was also elucidated. Ultimately, this study provides a scholarly overview of the global legal structure and the Security Council's function in enforcing it.

## **CHAPTER FOUR**

### **ANALYSES OF OBSTACLES CAUSED BY ISRAELI NON-COOPERATION IN THE INVESTIGATIONS OF THE ICC OVER WAR CRIMES COMMITTED IN THE PALESTINIAN-ISRAELI CONFLICT**

The ongoing Palestinian-Israeli conflict is experiencing escalating humanitarian and political problems. Consequently, the global discourse on the settlement of this complex conflict has prominently incorporated the topics of human rights and war crimes. Viewed from this perspective, the ICC into alleged war crimes committed in this area has emerged as a prominent legal tool for achieving justice and ascertaining accountability. The objective of this introduction is to provide an understanding of the difficulties faced by the ICC due to Israel's non-compliance with ongoing investigations.

Considering the significant impact of the conflict between Israel and Palestine on regional security and global politics, this hesitance may be seen in the context of the broader hesitancy of different nations to cooperate with the CPI. Nevertheless, its importance is heightened because of the ongoing hostility between the two nations. The objective of this chapter is to examine the effects of Israel's non-cooperation in investigations on the advancement of global justice and its effect on the likelihood of victims obtaining justice. The study also examines the legal and political challenges

faced by the court in this context. This refusal illuminates the humanitarian and political consequences, possible ramifications for the future of international justice, and its ability to address future human rights violations.<sup>96</sup>

#### **4.1 ICC Investigations**

The International Criminal Court was established as an autonomous international judicial body to prosecute individuals suspected of committing crimes against humanity, war crimes, genocide, and aggressive crimes.

The establishment of the Court is considered a major milestone in international law because it aims to prevent those who have committed serious crimes from evading punishment and to provide a forum for global justice. The International Criminal Court can initiate an inquiry autonomously or in response to complaints filed by member states or the United Nations Security Council. The purpose is to assess an individual's degree of responsibility and present the accused person for a trial in court. The International Criminal Court has launched investigations in 11 countries, namely Burundi, two countries in the Central African Republic, Côte d'Ivoire, Darfur in Sudan, the Democratic Republic of Congo, Georgia, Kenya, Libya, Mali, and Uganda. The Public Prosecutor's Office is currently conducting preliminary investigations into ten cases in Afghanistan, Bangladesh, Myanmar, Colombia, Guinea, Iraq, the United Kingdom, Nigeria, Palestine, the Philippines, Ukraine, and Venezuela. These investigations are related to incidents that have occurred since April 2017. A conclusion was reached during the initial inquiry. Encompassing vessels flagged by Comoros, Greece, Cambodia, South Korea, and Venezuela, in addition to those

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<sup>96</sup> Karen Wells et al., "Israel's War on Gaza and the Violation of Children's Rights," *Children's Geographies* (2024), <https://doi.org/10.1080/14733285.2024.2316752>.

flagged by Gabon and Honduras. Investigations on the Palestinian-Israeli issue are particularly notable in the court's investigations. These investigations focused on the incidents and offences that may have occurred within the framework of this intricate dispute. However, the court is now facing many significant challenges, including a lack of collaboration from some nations, which might hinder the progress of the investigation and prosecution processes. The International Criminal Court remains a crucial component of international justice and the global community's pursuit of justice and peace. It continues to actively promote international accountability and prevent impunity among individuals involved in grave offences.<sup>97</sup>

#### **4.2 Starting an Investigation (Article 53)<sup>98</sup>**

The Public Prosecutor is entitled to conduct investigations under three specific circumstances:

1. The state in question refers to the circumstances.
2. The United Nations Security Council refers to a situation pertaining to the threat to world peace and security.
3. The Pre-Trial Chamber grants permission to initiate an inquiry based on information obtained from sources other than the government, such as individuals or non-governmental organisations.

The ICC investigative process is dependent on rigorous protocols, which involve member nations, the UN Security Council registering complaints, or the court making

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<sup>97</sup> Al Saleh Shraideh, "The International Criminal Court: A Judicial Institution with a Room for Politics," *International Affairs and Global Strategy* 8 (2018).

<sup>98</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, arts. 15, 53.

a *Suo motu* judgment. Analysed data from several sources is then subjected to a legal evaluation to ascertain the presence of any potential criminal activity. The process further involves interrogating witnesses and collecting evidence to substantiate the case. Investigators endeavour to establish collaboration with relevant nations, and in cases where cooperation is not forthcoming, they must employ diplomatic pressure to encourage cooperation. Prosecutors receive periodic reports and decide whether to initiate legal proceedings. If they decide to proceed, the matter is presented in court for trial, depending on the evidence provided.

#### **4.2.1 ICC Investigations of The Palestinian Israeli Case**

Investigations on the Palestinian-Israeli problem hold particular significance in the court's investigations. These investigations concentrated on the occurrences and offences that may have taken place within the context of this complex conflict. Atrocious offences with severe repercussions for non-combatants occur in intensifying conflicts between Israel and the Palestinian factions. The absence of punishment for previous transgressions undeniably plays a role in the occurrence of current transgressions. However, governments have not paid much attention to the significant function of the International Criminal Court, which is the sole international institution entrusted with the responsibility to deliver unbiased justice.

On December 20, 2019, Fatou Bensouda, the Prosecutor of the International Criminal Court, declared her intention to initiate a formal investigation into alleged "war crimes" in Palestine. However, she requested that the court provide further rules on territorial jurisdiction. In her statement, she stated that Bensouda had finished the preliminary study of the situation in Palestine and had determined that all the legal conditions outlined in the Rome Statute had been fulfilled to initiate an inquiry. However, due to

the complex and disputed legal and factual matters involved in this circumstance, including the limitations on where the inquiry may take place, it was deemed essential to utilise Article 19(3) of the Statute to address this particular issue.

The Israeli Ministry of Foreign Affairs unequivocally rejected the Prosecutor's decision and strongly urged other nations to follow suit. A clear demonstration of refusal to collaborate with inquiries was conducted by the International Criminal Court.<sup>99</sup>

#### **4.3 Obstacles to the ICC investigation of the Palestinian-Israeli conflict**

The International Criminal Court is now experiencing a significant struggle in the pursuit of international justice. Among the several obstacles confronted, the Palestinian-Israeli conflict emerges as a particularly intricate and delicate source of stress. The court is currently grappling with allegations of war crimes and breaches of human rights within this framework. However, several impediments impede the advancement of investigations. The presence of these impediments hinders the International Criminal Court's ability to uncover the purported crimes that occurred during the Palestinian-Israeli conflict. This study aims to comprehend the inherent complexities encountered during investigations, such as the absence of collaboration from certain parties and the obstacles posed by legal and political factors.

The legal details of past preliminary rulings indicate the challenges the International Criminal Court encountered during its investigation of the Palestinian-Israeli conflict.

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<sup>99</sup> Yassir Al-Khudayri, "Procedural Haze: The ICC's Jurisdiction over the Situation in Palestine," *The Palestine Yearbook of International Law Online* 20, no. 1 (2020): 117–147.

They also highlighted the broader issue of introducing political matters into the legal system.

In 2020, the International Criminal Court in The Hague deliberated on how to address legal issues regarding potential probes into the "situation in Palestine." Specifically, Fatou Bensouda, the prosecutor of the International Criminal Court, asked the court to clarify its jurisdiction and geographical scope. According to Article 19(1) of the Rome Statute, the International Criminal Court must have the necessary jurisdictional competence to investigate any specific case. The prosecutor requested clarity due to the complex and disputed legal and factual problems surrounding whether "Palestine," as a member of the International Criminal Court, should be recognised as a state.

Pre-Trial Chamber I (PTC I) of the International Criminal Court, consisting of three judges, listened to the subject. The majority decision issued on February 5, 2021, concluded that the International Criminal Court had jurisdiction over the matter, including Gaza, the West Bank, and East Jerusalem. On March 3, Bensouda said that her office started an investigation into the issue.

An investigation is underway on Israeli settlement policy, the Gaza border confrontations in 2018 and 2019, and the Gaza conflict in 2014. Events related to violence in May 2021 can potentially be included. Some accusations do not pertain to Israeli actions. For instance, in the prosecutor's initial request for a ruling on the court's jurisdiction, she mentioned having a "reasonable basis to believe that Hamas and Palestinian armed groups committed war crimes of intentionally directing attacks

against civilians and civilian objects, using protected persons as shields, and torture or inhuman treatment," among other offences.<sup>100</sup>

#### **4.3.1 The Preliminary Ruling**

On February 5, the PTC reached three conclusions in its verdict.

1. Palestine is recognised as a State Party to the Rome Statute.
2. That the ICC possesses territorial jurisdiction over it
3. The International Criminal Court has territorial jurisdiction over Palestine, including Gaza, the West Bank, and East Jerusalem, which Israel has occupied since 1967.

Judge Peter Kovacs partially dissented by expressing his disagreement with the last two conclusions. Although he agreed with all three conclusions, Judge Marc Perrin de Brichambaut issued a partially distinct opinion regarding a procedural point that impacted the prosecutor's power to request a preliminary ruling.

If the state where the incident occurred is a member of the legislation or has agreed to the authority of the International Criminal Court through a declaration, then the ICC has jurisdiction over the case, as outlined in Article 12(2)(a) of the Rome Statute. Some Amici Curiae contended that Palestinian statehood is generally incomplete, and that the resolution passed by the United Nations General Assembly in December 2012, granting "Palestine non-member observer state status" in the United Nations, does not compel United Nations members or the International Criminal Court to acknowledge a Palestinian state. However, the three justices focused on the application of the RS rather than the broader issue of whether Palestinians should be recognised as a state

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<sup>100</sup> Yücel Acer, "The International Criminal Court and Israel's Acts in the Occupied Territories," *Insight Turkey* 23, no. 3 (2021): 69–92.

according to international law. Consequently, they concluded that Palestinian membership as a "State Party" to the ICC was properly obtained. They stress that this result does not impact the broader issue of statehood. They mentioned two prior advisory opinions delivered by the International Court of Justice. The titles of both decisions are "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" (2004) and "Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo<sup>101</sup>.(2010) "

The majority ruling referenced Article 21(1)(a) of the Rome Statute, which directs the International Criminal Court to prioritise the application of the Rome Statute, Elements of Crime, and its Rules of Procedure and Evidence. The majority ruling deemed the circumstances sufficient to establish jurisdiction of the International Criminal Court in this specific scenario. The dissenting judge referenced paragraph 1(b) of the article, which directs the court to consider the relevant treaties and principles of international law, including those of the international law of armed conflict. He mentioned that the decisions made by the United Nations General Assembly are not legally binding. He also stated that the Oslo Accords established the legal authority of the Israeli and Palestinian authorities. He argues that these components serve as proof that the achievement of complete Palestinian statehood has not been fulfilled, as evidenced by annexes including declarations from Palestinians and the United Nations on the issue.

The majority ruling only cited Resolution 67/19 and the right to self-determination to establish the International Criminal Court's jurisdiction over the Gaza Strip and the West Bank (including East Jerusalem). The judge who partially dissented from the majority ruling said that the International Criminal Court's jurisdiction was determined

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<sup>101</sup> Ahmed Jamal Shaqura, "Activating the Jurisdiction of the International Criminal Court in Confronting Israeli Crimes," *Journal of Human Sciences* (2019): 199–211.

by the distinctions outlined in the Oslo II Accord. The distinctions involve comparing Areas A/B with Area C and East Jerusalem, as well as differentiating between Israelis and non-Israelis as suspected perpetrators of crimes. He stated that investigating requires either reaching an ad hoc arrangement with Israel, as specified in Article 87(5)(a) of the RS, or obtaining Israeli acceptance of the International Criminal Court's jurisdiction, as specified in Article 12(3). This relies on the location of the alleged crime and the individuals accused of committing it.

#### **4.3.2 No Guarantee Prosecutions Will Proceed**

Bensouda notified Israel and the Palestinian Authority of her decisions in a letter. She also allowed them to ask for a delay in the legal process if local investigations or prosecutions related to the issues were ongoing. Israel stated that it does not believe war crimes have occurred and maintained that the International Criminal Court has jurisdiction to probe these crimes.

Bensouda's judgement does not guarantee that Israeli or Palestinian political and military officials will face trial at The Hague. The courts can choose to halt prosecution if it is not deemed "in the interests of justice" or reconsider an original investigation decision in light of new evidence due to the RS. On June 16, British attorney Karim Khan assumed the position of prosecutor for the International Criminal Court, replacing Bensouda. Moreover, PTC I's majority opinion seemed to acknowledge that the ICC would encounter challenges in asserting jurisdiction in such circumstances. The ruling noted that "the Chamber's conclusions are relevant to the current stage of the proceedings." If arrest warrants or summonses are issued later in the process, or if challenges are raised by a state or suspect, the chamber will be able to consider further jurisdictional problems that may emerge at that time. New possibilities may arise,

which are crucial in a political context in which both the United States of America and Israel have inaugurated new governments this year.

#### **4.3.3 The International Criminal Court Faces Multiple Challenges and Barriers When Investigating the Palestinian-Israeli Conflict**

The ICC faces considerable legal and operational challenges in investigating alleged war crimes in the Palestinian-Israeli conflict, despite Palestine's accession to the Rome Statute in 2015. These barriers primarily arise from Israel's non-cooperation, jurisdictional disputes, and limited enforcement capacity under the Rome Statute.

##### **1. Non-Cooperation and Article 86**

Article 86<sup>102</sup> The Rome Statute obliges States Parties to cooperate with the ICC. However, Israel is not a party to the Statute and refuses to recognise the Court's jurisdiction. This obstructs investigations, particularly under Article 54(1)<sup>103</sup>, which mandates the Prosecutor to uncover both incriminating and exonerating evidence. In 2015, Israel denied ICC investigators access to the Occupied Palestinian Territories, severely hampering the fact-finding process. Similar non-cooperation hindered ICC proceedings in Darfur (Sudan), where access to witnesses and documents was blocked by state authorities.

##### **2. Jurisdiction and Article 17**

Israel argues that its domestic legal system is capable of investigating alleged crimes, invoking the principle of complementarity under Article 17<sup>104</sup>. However, genuine

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<sup>102</sup> *Rome Statute of the International Criminal Court*, adopted July 17, 1998, entered into force July 1, 2002, 2187 U.N.T.S. 90, art. 86.

<sup>103</sup> *Rome Statute of the International Criminal Court*, adopted July 17, 1998, entered into force July 1, 2002, 2187 U.N.T.S. 90, art. 54(1).

<sup>104</sup> *Rome Statute of the International Criminal Court*, adopted July 17, 1998, entered into force July 1, 2002, 2187 U.N.T.S. 90, art. 17.

proceedings, not mere existence of judicial mechanisms, are required to render a case inadmissible. In *Prosecutor v. Katanga*, the ICC held that superficial or biased domestic inquiries do not bar ICC jurisdiction. Given persistent concerns over the impartiality of Israeli investigations into incidents such as the 2014 Gaza conflict, the Court may find Article 17 satisfied and assert admissibility.

### **3. Access to Evidence and Witness Protection (Articles 54 & 68)**

The ICC cannot effectively fulfil its investigative duties without access to crime scenes, records, and witnesses. Article 54 requires proactive evidence gathering, yet Israel's restrictions have made this impossible. Moreover, Article 68 mandates victim and witness protection, which is difficult to implement in the OPT due to instability and a lack of enforcement infrastructure. This resembles the Kenya cases, where witness interference and lack of state cooperation led to case collapses.

### **4. Lack of Enforcement Power and Article 87(7)**

The Rome Statute grants the ICC no independent enforcement mechanism. While Article 87(7)<sup>105</sup> Allows the Court to refer non-cooperation to the UN Security Council, political dynamics, particularly U.S. support for Israel, make any meaningful enforcement unlikely. This reflects earlier frustrations in the Sudan situation, where UNSC inaction rendered ICC referrals ineffective.<sup>106</sup>

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<sup>105</sup> *Rome Statute of the International Criminal Court*, adopted July 17, 1998, entered into force July 1, 2002, 2187 U.N.T.S. 90, art. 87(7).

<sup>106</sup> Yassir Al-Khudayri, "Procedural Haze: The ICC's Jurisdiction over the Situation in Palestine," *The Palestine Yearbook of International Law Online* 20, no. 1 (2020): 117–147.

#### **4.4 Legal Proceedings in a Political Context**

According to Dr. Alexander Loengarov 2021), in today's world, there are many cases of disputed statehood and sovereignty, and the criteria provided by international law may not definitively determine the situation. RS is a legal instrument designed to address severe international crimes. However, its references to statehood and the United Nations suggest that political matters may be introduced into courtroom processes.

Once the ICC takes a stance on the subject as needed, the two sets of provisions in the RS guide the court in conflicting directions. The ICC may reasonably consider an entity with disputed state status for operational and judicial purposes. The International Criminal Court derives its authority from the principle of complementarity, as outlined in Article 1 and other provisions of the Rome Statute. This indicates that the ICC does not intervene if national or equivalent judicial processes sufficiently address the purported offences. The Palestinian Authority lacks the legal authority to prosecute most of the issues under investigation in this context, as per the Oslo Accords, except for alleged war crimes committed by Hamas and other Palestinian groups.

The ICC was created to gain universality but was not given universal jurisdiction. The ICC's functionality relies on its membership, unless a situation is submitted by the United Nations Security Council, as seen in Libya and Darfur. Currently, only two of the five permanent members of the Security Council are participants in the RS. Moreover, states often oppose international inquiries regarding their activities. Two instances are Russia and the Philippines, both of which withdrew from the

International Criminal Court following the preliminary investigations of their officials.<sup>107</sup>

The initial question posed in the ruling delivered by PTC I on February 5 was whether the matter in question was political and hence not subject to legal judgment. This shows that the International Criminal Court is acutely cognizant of the global political landscape. The justices responded negatively to the question, and their endeavour to distinguish between the political and legal aspects can be seen as a bold endeavour within their judicial role. However, they may encounter substantial obstacles that may hinder their effectiveness. Regardless of one's stance on whether the International Criminal Court should be responsible for preventing serious global crimes, it is crucial to acknowledge that the court often deals with allegations arising from intricate political conflicts that international criminal justice alone cannot resolve.<sup>108</sup>

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#### **4.4.1 The Impact of Obstacles on ICC Investigation**

The International Criminal Court encounters numerous hurdles and impediments to achieving its objectives. Regarding inquiries into the Palestinian-Israeli conflict, the challenges primarily involve international and domestic collaboration, legal and

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<sup>107</sup> David Kaye and Kal Raustiala, *The Council and the Court: Law and Politics in the Rise of the International Criminal Court* (2015): 713.

<sup>108</sup> Domenico Carofiglio, "To What Extent Have Politics Restricted the ICC's Effectiveness?," *E-International Relations Publishing* (2015).

political inquiries, and security and economic obstacles. Which impacted the International Criminal Court's investigations in the following ways<sup>109</sup>:

**1. Delaying investigations**, the ICC encounter various challenges in their pursuit of examining war crimes and humanitarian violations in the region, with one of the most notable being the postponement of investigations related to the conflict between Israel and the Palestinians. The delay is caused by various factors, including a lack of cooperation between Israel and the Palestinians, legal and political obstacles related to the conflict, external interference, and international pressure. Delays in investigations can negatively affect justice and transparency, potentially resulting in delayed justice for the victims. Delays can result in the loss of crucial evidence and testimony, hindering the thorough and efficient pursuit of justice. A delay could lead to a loss of trust in the ICC and its effectiveness, negatively impacting international relations and hindering peace and reconciliation efforts in the region.<sup>110</sup>

## **2. Reducing confidence ICC** Universiti Utara Malaysia

Research on the Palestinian-Israeli conflict has been hindered by a notable decrease in public confidence in the ICC. This challenge arises from various factors, such as the lack of collaboration between Israel and the Palestinians, complex legal and political concerns related to the conflict, interference from external sources, and pressure from the international community. A decline in trust can negatively impact the execution of justice and transparency in investigations, potentially leading to delays in victims receiving justice. Delays can result in the loss of crucial evidence and testimony,

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<sup>109</sup> Shvan Ahmed Abduqader Alaziz, "Obstacles of the International Criminal Court," *QALAAI ZANIST JOURNAL* 5, no. 4 (2020): 386–427.

<sup>110</sup> Seada Hussein Adem, "Perspectives on the Intervention of the ICC in Palestine," *Palestine and the International Criminal Court* (2019): 187–219.

hindering the comprehensive and efficient pursuit of justice. A delay could lead to a loss of trust in the International Criminal Court (ICC) and its effectiveness, negatively affecting international relations and hindering peace and reconciliation efforts in the region.

### **3. Impact on Security**

An important challenge facing investigations into the Palestinian-Israeli conflict is the impact on the security situation in the region. This challenge arises from various elements, such as the lack of collaboration between Israel and the Palestinians, complex legal and political concerns related to the conflict, interference from external sources, and pressure from the international community. Security concerns may cause delays in delivering justice to victims and negatively affect the transparency and integrity of the investigations. Delays can result in the loss of crucial evidence and testimony, hindering the pursuit of justice thoroughly and efficiently. A delay could lead to decreased confidence in the International Criminal Court and its effectiveness, impacting international relations and hindering peace and reconciliation efforts in the region.

### **4. Impact on human rights**

Human rights violations in the region hinder investigations related to the Palestinian-Israeli conflict. This challenge arises from various factors, such as the lack of collaboration between Israel and the Palestinians, intricate legal and political concerns related to the conflict, interference from external sources, and influence from the international community. Violations of human rights can negatively impact the administration of justice and the transparency of investigations. They can also lead to the disappearance of vital evidence and testimony, making it more difficult to achieve

justice thoroughly and efficiently. A delay could lead to a loss of trust in the ICC and its effectiveness, negatively impacting international relations and hindering peace and reconciliation efforts in the region.

#### **4.5 Data Analysis**

To get a thorough understanding of the enforcement issues encountered by the International Criminal Court regarding the Palestinian-Israeli conflict, primary data were gathered via semi-structured interviews with twelve chosen experts. The respondents were deliberately selected because of their profound expertise and practical experience in international law, human rights advocacy, and the functioning of the ICC. The sample comprises legal practitioners, academic scholars, human rights advocates, and journalists who offer varied and comprehensive insights into the intricate legal and political processes affecting the Court's jurisdiction and efficacy.

The participants' diverse professional experiences guarantee a comprehensive examination of the subject, incorporating academic, practical, and policy-oriented perspectives. This diversity allows the study to examine several aspects of the issue, including legal frameworks, political collaboration, evidential obstacles, and the on-the-ground reality in Palestine and Israel. The table below delineates the principal professional positions and connections of the respondents participating in this research.

##### **4.5.1 Analysis of the legal framework for war crimes committed during the conflict**

The analysis of the interview data under Research Question 1 reveals that the respondents broadly recognised several key international legal frameworks as central

to addressing war crimes in the Palestinian-Israeli conflict. These include the UN Charter, the Fourth Geneva Convention, the Rome Statute, and various international human rights instruments. Respondent A<sup>111</sup> emphasised the importance of the UN Charter's principles of non-aggression and human rights, expressing that adherence to these norms could facilitate justice in the Palestinian territories. Respondent B<sup>112</sup> highlighted the Fourth Geneva Convention's critical role in civilian protection during armed conflicts, particularly relevant given the nature of hostilities and civilian suffering in Palestine. Similarly, Respondent F noted the historical context of the conflict and underscored the Geneva Conventions' function in safeguarding civilians under occupation. Respondent C<sup>113</sup> stressed the Rome Statute's importance as the foundation of the International Criminal Court, asserting that the Palestinian Authority should actively engage with the ICC to pursue accountability. This respondent also pointed to international human rights laws as complementary mechanisms that not only reinforce individual protections but also impose obligations on states to uphold them.

Despite their shared acknowledgement of these legal instruments, the respondents varied in their evaluations of the effectiveness and implementation of these frameworks. Respondent A viewed international legal commitment positively, believing that if upheld, it could bring tangible benefits. In contrast, Respondent B argued that the complex political landscape poses serious obstacles to effective enforcement. Respondent C suggested that legal frameworks, though significant, are insufficient on their own without genuine political will to ensure their execution.

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<sup>111</sup> Palestinian Lawyer with a PhD, International Law Expert, August 26, 2023.

<sup>112</sup> Lecturer, Faculty of Law, Al-Azhar University, Gaza, September 1, 2023.

<sup>113</sup> Legal Researcher, International NGOs, September 21, 2023.

Respondent D<sup>114</sup> voiced scepticism about the ICC's capacity to prosecute Israeli officials, citing Israel's refusal to recognise the Court's jurisdiction. Similarly, Respondent E<sup>115</sup> pointed to the challenges of establishing jurisdiction and adhering to the principle of complementarity, which further complicates the practical application of international law. Respondent H<sup>116</sup> brought up the problem of immunities granted to certain political leaders and the lack of international cooperation as major legal hurdles to delivering justice. Respondent F<sup>117</sup> identified a lack of effective universal jurisdiction, and the ongoing challenges victims face in accessing justice, as well as persistent impunity for perpetrators. These responses point to several structural and jurisdictional obstacles that hinder accountability. Jurisdictional uncertainty—particularly Israel's non-recognition of the ICC, was flagged as a recurring issue, rendering prosecution efforts ineffective. The problem of sovereignty, referenced by respondents D, E, and F, indicates the tension between respecting state authority and ensuring compliance with international humanitarian obligations. Immunity from prosecution, especially for political and military leaders, compounds the difficulty of achieving justice. Furthermore, universal jurisdiction, while theoretically available, is inconsistently applied and rarely pursued effectively in the Palestinian context.

Another recurring theme among the interviews is the fragmented and inconsistent implementation of international law. Respondent D argued that international legal instruments are often inadequately enforced, reducing their impact. Respondent E observed divergent views on the legitimacy and weight of international resolutions, particularly in politically charged environments. Respondent F noted a disjunction

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<sup>114</sup> Human Rights Lawyer, Palestine, November 6, 2023.

<sup>115</sup> Legal Journal Writer, Middle East, November 14, 2023.

<sup>116</sup> Legal Advisor, NGOs, 8 Feb 2024.

<sup>117</sup> Journalist, Official News Study, November 26, 2024.

between international law in theory and its application in practice, where rights and protections enshrined in treaties often fail to materialise on the ground for Palestinian victims.

To overcome these obstacles, the respondents offered a range of suggestions aimed at legal and political reform. Respondent D emphasised the need for increased international collaboration and the resolution of political disputes that impede legal processes. Respondent E advocated for concrete steps such as halting settlement activity and addressing final status issues, including the future of Jerusalem and the right of return for refugees. Respondent F called for greater judicial accountability and the establishment of more robust enforcement mechanisms to ensure justice is not merely aspirational but achievable.

Collectively, the respondents' insights indicate a consensus on the centrality of international legal frameworks in addressing war crimes within the Palestinian-Israeli conflict yet also reflect a shared frustration over the systemic limitations that impair their enforcement. The interviews suggest that while international law provides an important foundation, its current implementation is uneven and often ineffective due to political interference, jurisdictional limitations, and structural weaknesses. The feedback calls for a multifaceted approach combining legal reform, international cooperation, and political will to ensure justice for victims and accountability for perpetrators.

Moreover, it is evident from the data that legal accountability in the Palestinian-Israeli conflict cannot be achieved solely through judicial mechanisms without comprehensive political engagement. The deeply entrenched political conflicts, along with the failure to implement international decisions and resolutions, such as UN

Security Council Resolutions 242 and 338 and the Oslo Accords, underscore the gap between legal norms and political realities. Respondents emphasised the importance of aligning political will with legal obligations. For instance, Respondent D called for stronger international pressure on Israel to comply with international law and to respect the jurisdiction of the ICC. This view was echoed by Respondent F, who stressed the need for an independent and empowered international body capable of enforcing legal norms without political compromise. Respondent E pointed to the ineffectiveness of non-binding resolutions and the lack of enforcement mechanisms as serious impediments.

In summary, the data clearly show that while there is widespread agreement among respondents on the relevance of international legal frameworks to address war crimes, there remains a stark divergence in their views on the implementation and efficacy of those frameworks in practice. This highlights the necessity of comprehensive legal and institutional reforms at both national and international levels, coupled with sustained political efforts. Only then can international legal norms transition from aspirational declarations to effective tools of justice and accountability in the context of the Palestinian-Israeli conflict.

#### **4.5.2 Analyse the Obstacles Caused by Israeli Non-Cooperation in The Investigations of the ICC**

The International Criminal Court, as the foremost international judicial body tasked with addressing grave crimes such as genocide, crimes against humanity, and war crimes, plays a critical role in global justice. However, its ability to function effectively often depends on the cooperation of states, particularly in politically charged contexts such as the Palestinian-Israeli conflict. The ICC's pursuit of justice in this situation has been severely constrained by Israel's steadfast non-cooperation. The interviews

conducted with various legal experts and practitioners reveal consistent concerns about the repercussions of this lack of cooperation and highlight the profound implications it has on the ICC's legitimacy, investigative capacity, and broader justice goals.

Across the board, respondents viewed Israeli non-cooperation as a fundamental obstacle to the ICC's mission. Respondent C emphasised that the ICC operates under a system of apparent double standards, pointing to the contrasting international responses to the Ukraine crisis versus the Palestinian case. This discrepancy, in their view, severely undermines the Court's credibility. While not all interviewees explicitly referred to double standards, they generally acknowledged that political dynamics and international alliances substantially influence the Court's decisions and effectiveness. These political pressures were described as limiting the ICC's independence and its ability to initiate or follow through with prosecutions, especially when one of the involved parties refuses to acknowledge the Court's jurisdiction, as is the case with Israel.

Respondent A stressed that Israel's refusal to cooperate not only hampers evidence collection but also erodes public confidence in international justice mechanisms. This sentiment was echoed by Respondent B, who further argued that such non-cooperation reinforces perceptions of bias within the ICC and fuels scepticism about the Court's neutrality and commitment to justice. Respondent C painted a more pessimistic picture, warning that Israel's ongoing resistance may cause endless procedural delays, rendering the Court's efforts ineffective and justice unattainable. These insights collectively illustrate that non-cooperation is not merely a procedural inconvenience; it is a strategic impediment that undermines the very foundation of international legal accountability. Divergences emerged, however, regarding how the ICC and the

international community might address this obstacle. Respondent A advocated for a diplomatic approach, suggesting that building trust through dialogue with Israeli authorities could foster incremental cooperation. This respondent held a cautiously optimistic view that engagement might gradually lead to breakthroughs in investigations and a restoration of faith in international justice. In contrast, Respondent B took a more assertive stance, calling for international diplomatic and economic pressure on Israel to compel cooperation. They argued that only through concerted international advocacy and exposure of Israeli actions could meaningful pressure be applied. Respondent C was the most sceptical, asserting that cooperation would remain elusive unless Israel ratifies the Rome Statute, a prospect they deemed highly unlikely shortly. According to this view, without Israel's formal accession to the ICC framework, any other efforts would be largely ineffective.

When considering the broader implications of Israeli non-cooperation, the respondents again offered varied insights. Respondent A pointed out the damage this stance inflicts on the Court's credibility and the resulting disenchantment among victims seeking redress. They argued that the perception of selective justice weakens the ICC's moral authority and disincentivises further victim cooperation or participation. Respondent B extended the analysis to the international arena, suggesting that prolonged non-cooperation might eventually provoke stronger international responses, including economic sanctions or political isolation, which could shift Israel's cost-benefit calculus. Conversely, Respondent C maintained that Israel's entrenched position, combined with its strategic alliances, would likely allow it to resist such pressures, prolonging the legal stalemate and perpetuating impunity.

The analysis also draws from the perspectives of Respondents D, E, and F, whose views further underscore the Court's jurisdictional and practical challenges in this context. All three agreed that political considerations significantly hamper the ICC's capacity to effectively adjudicate war crimes related to the conflict. Respondent D asserted that while the Court theoretically possesses the legal authority to act, its operational effectiveness is neutralised by a lack of political will, particularly in prosecuting members of the Israeli military. Respondent E noted that legal rulings perceived as favourable to Palestinians are often dismissed or resisted due to the overriding political interests of powerful states. Respondent F added a more critical observation, arguing that the Court has repeatedly failed to influence the situation in the Palestinian territories and, at times, appeared biased towards Israeli narratives.

In terms of solutions, Respondent D advocated for the imposition of real consequences on individuals or entities found guilty of war crimes, stressing the importance of robust enforcement mechanisms. Respondent E suggested leveraging international diplomacy to ensure compliance with ICC rulings, while Respondent F argued for the necessity of open political dialogue between stakeholders, although they admitted that such dialogue remains unlikely under current conditions. These varied proposals reveal a tension between legal formalism and political pragmatism, both of which must be reconciled to enhance the ICC's effectiveness. From a holistic perspective, the respondents' assessments highlight several major implications of Israeli non-cooperation. First, the refusal to engage with the ICC hinders evidence collection, delays investigations, and potentially nullifies the pursuit of justice. Second, it casts a shadow over the Court's legitimacy, feeding narratives of politicisation and bias. Third, it signals to other states that non-cooperation can be an effective strategy to avoid accountability, thus weakening the global justice system. Lastly, ongoing non-

cooperation may worsen the humanitarian crisis in Palestinian territories by perpetuating cycles of violence and impunity, further entrenching injustice.

In conclusion, the findings reveal that while there is a clear consensus among respondents regarding the severe challenges posed by Israeli non-cooperation, there is no agreement on the optimal strategy to overcome them. Some advocate for engagement and diplomacy, others for pressure and sanctions, and yet others believe structural changes to the international legal system or Israel's accession to the Rome Statute are necessary. These divergent views reflect the complex interplay between law and politics in conflict settings and suggest that meaningful accountability in the Palestinian-Israeli conflict will require a multi-layered approach—combining legal persistence, international solidarity, and strategic diplomacy. Only through such comprehensive efforts can the ICC hope to fulfil its mandate and offer a semblance of justice to the victims of this protracted conflict.

#### **4.5.3 Mechanisms to Obtain Information for The Investigations of the ICC**

The process of obtaining credible, admissible information remains one of the most significant and persistent obstacles confronting the International Criminal Court in conducting effective investigations into the Palestinian-Israeli conflict. The geopolitical complexity and longstanding tensions inherent in this conflict exacerbate difficulties that are already considerable in any international investigation of war crimes and crimes against humanity. A fundamental challenge arises from the lack of cooperation from key state actors, particularly Israel, which has repeatedly refrained from facilitating access to relevant territories, withholding critical information, and limiting the ICC's ability to engage with witnesses, victims, and other sources of evidence. This non-cooperation poses a direct impediment to the ICC's mandate to

deliver justice by collecting reliable evidence that meets the high standards of international criminal law.

Given these constraints, the ICC must rely on a diverse array of alternative mechanisms and innovative strategies for collecting, verifying, and preserving evidence. The complexity of the conflict and the geopolitical sensitivities necessitate a multi-dimensional approach that goes beyond traditional investigative methods. The analysis of interview responses gathered from various stakeholders in this research provides a broad spectrum of perspectives. These collectively suggest that a holistic strategy integrating diplomatic engagement, technological innovation, legal reform, and the empowerment of civil society actors is essential to overcoming the manifold obstacles to effective evidence gathering in this context.

Respondent (A) strongly advocates for enhancing international and diplomatic collaboration as a cornerstone of such a strategy. He emphasises the critical necessity of establishing and reinforcing legal treaties and intergovernmental agreements that facilitate structured, confidential evidence sharing among states and international institutions. According to him, diplomatic engagement through international organisations such as the United Nations, the European Union, and relevant non-governmental organisations (NGOs) plays a dual role. Firstly, these bodies are instrumental in applying political and diplomatic pressure on states that obstruct justice processes, encouraging them to comply with international legal obligations. Secondly, they serve as critical partners for independent data collection and verification in the field, providing technical support, logistical resources, and a neutral presence that can enhance the credibility and security of investigative efforts.

This perspective is strongly echoed by Respondent I, who highlights the paramount importance of fostering trust among witnesses and victims. He stresses that ensuring the protection of witnesses through robust international guarantees is vital for encouraging the voluntary submission of evidence and testimonies. In environments characterised by fear and intimidation, confidentiality and legal safeguards not only protect individuals from retaliation but also strengthen the integrity of the judicial process. Both Respondents (A) and I underscore the additional role played by regional organisations, such as the Arab League and the Organisation of Islamic Cooperation (OIC). These bodies, while sometimes limited in enforcement capacity, possess significant diplomatic leverage in the Middle East and can contribute to legitimising the ICC's investigative work, facilitating political dialogue, and exerting pressure on non-cooperative actors. In sharp contrast to the diplomatic emphasis, Respondent (B) proposes an alternative mechanism centred on harnessing technological innovation to circumvent physical and political barriers. He argues convincingly that the ICC should significantly expand its reliance on digital platforms, satellite imaging, and social media forensics to gather verifiable evidence, particularly in situations where on-the-ground access is severely restricted or denied. Satellite imagery, for instance, provides an invaluable, impartial visual record of conflict-related destruction, troop movements, and other events that can corroborate witness accounts and other forms of evidence. Moreover, the proliferation of mobile technology and social media has led to an unprecedented amount of user-generated content that, if properly authenticated, can serve as compelling documentation of war crimes and violations. Respondent (B) contends that the application of artificial intelligence (AI) and forensic verification techniques can enhance the reliability and admissibility of such digital evidence, effectively bypassing political obstacles that hinder traditional investigative methods.

This technologically focused view is further supported by Respondents (H) and (I)<sup>118</sup>, who articulate that digital tools not only enhance the collection of evidence but also play a crucial role in combating disinformation and misinformation, which are rampant in the context of the Palestinian-Israeli conflict. They advocate for the integration of advanced technologies such as blockchain to secure the chain-of-custody protocols and ensure the immutable preservation of evidence. Additionally, the use of encrypted data transmission is highlighted as essential to maintain the confidentiality and safety of sensitive materials, protecting both sources and investigators from digital threats. These digital advancements offer new pathways for the ICC to operate effectively even when traditional methods are obstructed, though they also raise complex issues related to privacy rights, data integrity, and the evolving standards of admissibility in international courts.

Meanwhile, Respondent (G)<sup>119</sup> directs attention to the structural and legal constraints embedded within the ICC's governing framework under the Rome Statute. He asserts that specific provisions, notably Articles 16 and 98, severely hinder the Court's operational autonomy by enabling political interference from powerful actors, especially the permanent members of the United Nations Security Council. These provisions permit delays, suspensions, or outright blocks of investigations and prosecutions based on political considerations rather than legal merit, thereby undermining the principle of impartial justice. Respondent (G) advocates for statutory amendments that would shield the ICC from such politically motivated disruptions and empower it to initiate and conduct investigations independently, without requiring consent or cooperation that can be arbitrarily withheld. This call for legal reform is

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<sup>118</sup> Human Rights Activist, Gaza, February 19, 2024.

<sup>119</sup> Researcher, International Law / Humanitarian Law, January 9, 2024.

echoed by Respondent (D), who emphasises the urgent need for institutional reforms to reinforce the ICC's authority to compel cooperation and enforce compliance with evidence requests, subpoenas, and summons to witnesses and suspects. The realisation of such reforms is undoubtedly complex, given the ICC's reliance on the voluntary cooperation of member states; nonetheless, they are essential for enhancing the Court's capacity to fulfil its mandate in politically sensitive contexts.

In addition to diplomatic, technological, and legal avenues, Respondent (F) stresses the indispensable role of civil society and local non-governmental organisations as critical sources of information, especially in regions where state cooperation is absent or actively obstructed. These grassroots organisations often have unparalleled access to affected communities and engage directly in the documentation of violations through interviews, field observations, and the collection of physical and digital evidence. Formalising partnerships between the ICC and these local actors, complemented by capacity-building initiatives to ensure that their documentation complies with international evidentiary standards, can significantly extend the Court's investigative reach. Such partnerships also promote community ownership of the justice process, which is vital for post-conflict reconciliation and the long-term legitimacy of international justice.

Several respondents highlight the importance of engaging regional actors more broadly. While their influence may sometimes be constrained by geopolitical realities, regional organisations can facilitate local access for investigators, increase the political legitimacy of the ICC's work, and assist in countering misinformation. Respondent (J)<sup>120</sup> notes that regional blocs such as the Arab League and the OIC hold potential

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<sup>120</sup> Professor & Former Dean, Faculty of Law, Al-Azhar University, Gaza. May 22, 2024.

diplomatic leverage to pressure Israel. However, he candidly acknowledges the substantial challenges posed by shifting geopolitical alliances, internal divisions within the Arab world, and the complex interplay of interests among regional powers, which limit the effectiveness of such diplomatic initiatives.

Despite the diverse perspectives and emphases among respondents, a clear consensus emerges on the need for an integrated, multi-pronged strategy. Such a strategy would combine soft power mechanisms, including diplomacy, regional advocacy, and civil society engagement, with cutting-edge technological tools and assertive legal reforms. All respondents agree that political obstacles, such as non-cooperation, selective compliance, and geopolitical interference, require the ICC to be flexible, innovative, and independent in its investigative methods. The ICC must therefore develop operational procedures and investigative techniques that can adapt to the realities of the conflict, including leveraging remote technologies, building broad-based alliances beyond traditional state actors, and pursuing institutional reforms to strengthen its autonomy. Some respondents also caution against over-reliance on precedents and lessons drawn from other international investigations. Respondent I, for instance, warns that the Palestinian-Israeli conflict's unique geopolitical, historical, and legal characteristics demand tailored solutions. He emphasises that concerns of neutrality, impartiality, and public perception are particularly acute given the global attention and the high stakes involved. The ICC must therefore exercise extreme care to maintain transparency, legal rigour, and fairness to safeguard its credibility and ensure that justice is not only done but is also seen to be done.

Ultimately, the insights gathered through this research illustrate that no single mechanism or strategy is sufficient on its own. Instead, a hybrid model that combines

international legal reforms, strategic diplomatic engagement, technological innovation, and grassroots civil society participation offers the most pragmatic and effective approach to gathering information and evidence in this challenging context. The ICC must continue to adapt its investigative methods to meet the complexities of the Palestinian-Israeli conflict. Achieving this requires not only institutional reform to enhance the Court's authority and independence but also the strategic use of partnerships, political pressure, and technological tools.

Such a comprehensive, multi-pronged approach will significantly enhance the ICC's potential to overcome current obstacles, secure reliable and admissible evidence, and ensure accountability for war crimes and other serious violations by international legal standards. By adopting these recommendations, the ICC can strengthen its role as a vital instrument of international justice, contributing meaningfully to the promotion of peace, security, and human rights in one of the world's most protracted and contentious conflicts.

#### **4.6 Conclusion**

The researcher in this chapter analysed the multifaceted challenges faced by the International Criminal Court in investigating the long-standing and complex Palestinian-Israeli conflict. This examination revealed that the ICC operates within a highly volatile political and legal environment, which presents significant barriers to its mandate of delivering justice. The analysis specifically addressed the wide range of obstacles that hinder the Court's effectiveness, including legal, political, security, economic, and institutional factors. Each of these dimension's interplays to create a

context in which accountability is extremely difficult to achieve, despite the existence of international legal frameworks such as the Rome Statute.

A central theme that emerged from the analysis is the Israeli government's persistent lack of cooperation with the ICC, which has profoundly affected the Court's ability to initiate and conduct effective investigations. This non-cooperation includes denying access to crime scenes, withholding vital documents and records, and refusing to facilitate interviews with relevant witnesses. By actively obstructing the investigative process, Israel not only impairs the Court's capacity to collect evidence but also undermines the broader objectives of international justice. The refusal to engage with the ICC exemplifies how state sovereignty and political interests can directly interfere with the pursuit of accountability, even in the face of serious allegations of war crimes and crimes against humanity.

As a consequence of this obstruction, investigations by the ICC face substantial delays, which in turn diminish the credibility of the Court and erode public confidence in its ability to deliver justice. Victims, particularly Palestinian civilians who have suffered during repeated cycles of violence, are left without recourse or resolution, exacerbating their trauma and sense of injustice. These delays not only impair judicial efficacy but also reinforce the perception that the ICC is selective and politically constrained in the cases it chooses to pursue. This perception is further compounded by the broader international political landscape, where certain states are shielded from accountability through powerful diplomatic alliances or Security Council vetoes. Moreover, the unwillingness of Israel to cooperate with the ICC not only impacts the legal process but has wider implications for international relations and efforts to foster peace in the region. The obstruction of justice mechanisms impedes reconciliation processes and

undermines the rule of law as a foundation for lasting peace. Without credible avenues for accountability, grievances remain unaddressed, and cycles of violence are likely to continue. In this sense, the failure to investigate and prosecute alleged war crimes perpetuates impunity and weakens the international legal order.

In light of these findings, it becomes evident that the ICC requires stronger mechanisms to overcome non-cooperation by states and to assert its mandate independently of political influence. Future strategies must involve enhancing legal tools, strengthening international diplomatic pressure, and incorporating technological innovations for evidence collection. The active role of international and regional organisations, as well as non-governmental entities, could be instrumental in supporting the Court's efforts in such politically sensitive contexts.

In the upcoming chapter, the researcher aims to further explore the available methods and strategies through which the ICC can obtain crucial information and reliable testimony from witnesses. These approaches are essential for strengthening the legal foundation of investigations into the Palestinian-Israeli conflict. The focus will be placed on analysing both traditional mechanisms, such as international cooperation and treaty obligations, and modern tools, including digital forensics and remote data collection. By examining these options, the study intends to propose realistic and practical solutions to enhance the ICC's investigative capacity and overall effectiveness in contexts marked by non-cooperation and political resistance.

# **CHAPTER FIVE**

## **MECHANISMS FOR OBTAINING INFORMATION OR**

## **WITNESSES NECESSARY FOR THE VALIDITY OF THE**

## **INVESTIGATIONS OF THE ICC**

### **5.1 Introduction**

The ability to obtain credible evidence and reliable witness testimony is crucial for the effective prosecution of war crimes, especially in protracted and intricate conflicts, such as those between Palestinians and Israelis. The International Criminal Court was established to address serious offences, including genocide, war crimes, and crimes against humanity, and it was tasked with securing justice for victims and accountability for perpetrators. Nonetheless, a significant challenge is that the International Criminal Court has obtained sufficient information and witnesses to substantiate its investigations. This is especially challenging in conflict zones, where access is limited, and countries often decline to collaborate. The challenge of collecting evidence in the Palestinian-Israeli conflict is exacerbated by political sensitivity and entrenched animosities between the relevant parties. Israel's noncompliance with ICC investigations, coupled with persistent military occupation, mobility limitations, and security apprehensions, considerably hinders the collection of direct testimonies or tangible evidence. In Palestinian areas, especially Gaza, the unstable security environment and internal discord provide further obstacles for efficient evidence

gathering. These circumstances compel the ICC to depend on alternative methods and inventive strategies to obtain the information required for legitimate investigations.

Moreover, the inherent characteristics of war crimes typically including senior military directives, systematic assaults on civilians, and the obliteration of essential infrastructure, necessitate extensive proof, which is challenging to obtain without direct access or collaboration from the implicated governments. Frequently, the most compelling evidence is found in the accounts of survivors, eyewitnesses, and local officials, whose readiness to disclose information is frequently obstructed by fear of retaliation, scepticism about foreign organisations, or insufficient protection.

Notwithstanding these problems, the ICC has devised and employed several techniques to overcome these impediments and enhance its investigations. This encompasses utilising international collaboration, applying contemporary technology such as satellite photography and remote sensing, and engaging with non-governmental organisations (NGOs), media entities, and grassroots organisations.

Moreover, witness protection programs have emerged as an essential component of the ICC's initiatives to protect those who may encounter personal danger in providing testimony. Even under challenging conditions, the ICC attempts to establish a fair atmosphere by employing secure and anonymous techniques for collecting testimony and collaborating with local entities and international organisations.<sup>121</sup>

The ICC's authority to investigate and prosecute war crimes is based on the principles of impartiality and justice, yet its effectiveness depends on its capacity to collect the requisite factual and legal foundations for prosecutions. Investigations are jeopardised

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<sup>121</sup> Zaneta Navickienė and Rolandas Krikščiūnas, "Witness Testimony: Guarantee of a Quality Judicial Decision, Issues, and Solutions," *SWS International Scientific Conferences on Social Sciences*, 2022, <https://doi.org/10.35603/sws.iscss.2022/s02.025>.

by a lack of credible information or witnesses, leading to insufficient evidence that hinders the court's capacity to deliver justice to culprits. Consequently, comprehending the processes employed by the ICC to acquire information and secure witness testimony is essential for evaluating its effectiveness in prosecuting war crimes in any conflict, especially within the politically sensitive context of the Palestinian-Israeli conflict.

This portion of the research will examine the several processes and tactics that the ICC can utilise to acquire the requisite evidence for its investigations into war crimes in the Palestinian-Israeli conflict. This research aims to elucidate how the ICC might surmount its challenges and validate its investigations by scrutinising the roles of international collaboration, technical improvements, local partnerships, and the significance of witness protection. This contributes to a wider discussion of the efficacy of international justice in areas with significantly limited access to evidence, yet the quest for responsibility remains essential.

## **5.2 Challenges in Evidence Gathering**

The quest for accountability for war crimes and atrocities in the Palestinian-Israeli conflict poses considerable obstacles, particularly in the area of evidence collection. The International Criminal Court, created to guarantee responsibility for egregious offences, encounters a multifaceted environment characterised by political sensitivities, security issues, and logistical obstacles. Evidence constitutes the

foundation of every court procedure, and its acquisition is particularly vital in disputes when the stakes are elevated, and the risk of prejudice and revenge is significant.<sup>122</sup>

The ICC's attempts to examine purported war crimes in the Palestinian-Israeli conflict were obstructed by several considerations. The primary among these is the non-compliance of state players, especially Israel, continuous military operations that foster a hostile atmosphere, and access limitations that obstruct investigators from reaching vital locations and witnesses. Political and security impediments significantly hinder the ICC's capacity to collect firsthand evidence and credible testimony, which are crucial for validating the accusations of war crimes.

Furthermore, the worry about retribution among prospective witnesses exacerbates this situation. Numerous people who have endured or observed atrocities may be reluctant to report owing to apprehensions about their safety or doubts over the ICC's neutrality and efficacy. This hesitance not only restricts the array of accessible testimony but also highlights the pressing necessity for robust witness protection systems that can ensure the safety of persons prepared to testify. The tumultuous character of the battle frequently undermines the integrity of the evidence gathered in conflict zones. The rapid obliteration of physical evidence and psychological distress endured by witnesses might impede the precise documentation and recollection of events. The legal difficulties of jurisdiction and statehood recognition create issues that require sophisticated comprehension of the hurdles encountered by the ICC in its investigations. This chapter examines the complex obstacles faced by the ICC in collecting evidence and obtaining witness testimony in the Palestinian-Israeli conflict. This research seeks to elucidate political, security, and legal barriers, along with the

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<sup>122</sup> Rozita Dara, *War and Justice in the 21st Century* (Oxford: Oxford University Press, 2022), <https://doi.org/10.1093/oso/9780197628973.001.0001>.

ramifications for witness cooperation, to thoroughly comprehend the challenges associated with achieving justice in one of the world's most enduring wars.<sup>123</sup>

### **5.2.1 Political and Security Barriers**

The International Criminal Court has significant challenges in carrying out its mandate to look into and punish war crimes because of the political and security climate surrounding the Palestinian-Israeli conflict. Due to war, which is rooted in decades-long political, historical, and geographical issues, obtaining witness testimony and assembling evidence is extremely difficult. These obstacles are defined by ongoing wars, refusal of important state actors to cooperate, and limitations placed on access to important locations and people.

### **5.2.2 Evidence Integrity and Documentation Challenges**

Inquiry into war crimes within the Palestinian-Israeli conflict encounters significant obstacles, especially in the collection, verification, and preservation of evidence.

Maintaining the integrity and authenticity of such evidence is crucial for the International Criminal Court (ICC) to efficiently administer justice. The unstable conditions of conflict zones, together with political impediments and technological intricacies, render these endeavours very challenging.

A key problem is the verification of evidence in war zones. Persistent violence and restricted access in the Palestinian-Israeli conflict hinder investigators from promptly reaching crime locations. This leads to essential evidence, such as explosive remnants, corpses, or structural damage, being manipulated, obliterated, or modified before a

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<sup>123</sup> Najah Duqmaq, *Israel's International Legal Responsibility for Human Rights Violations in the Occupied Palestinian Territory in Accordance with the Provisions of International Law* (2022), <https://doi.org/10.59994/pau.2022.1.4>.

thorough examination. The ICC's dependence on third-party information from NGOs, media organisations, and local entities introduces additional difficulty, as these sources may not fulfil the stringent legal criteria necessary for prosecuting war crimes. This circumstance presents a considerable challenge for the court, which must contend with possibly incorrect or insufficient facts. Precise documentation is crucial. The absence of collaboration by Israel, which does not acknowledge the ICC's jurisdiction, results in the denial of access to essential military and governmental data. These documents may offer insights into military activities and decision-making processes, which are crucial for establishing accountability. Political schisms between the Palestinian Authority in the West Bank and Hamas in Gaza resulted in irregular and fragmented record-keeping methods on the Palestinian side. This hinders the compilation of thorough evidence, which complicates the investigative process.

Digital and forensic evidence have distinct issues. The proliferation of cell phones and social media has markedly enhanced the digital documentation of wars. Verifying the legitimacy of digital evidence, such as films, photographs, and messages, can be intricate because digital materials are readily susceptible to manipulation. Forensic evidence, including bomb pieces and autopsy reports, is challenging to obtain due to limited access to battle zones and the risk of significant physical evidence damage. These issues undermine the overall integrity of the cases presented before the ICC, thus complicating the establishment of concrete facts.

The political manipulation of evidence exacerbates this issue. Israeli and Palestinian groups frequently articulate divergent narratives of war to influence global perceptions. Israel's media dominance and non-cooperation with ICC investigations restrict the accessibility of vital information, while Palestinian factions may also

present events selectively to align with their political objectives. Diplomatic pressures from influential foreign entities, especially those with vested interests in the dispute, introduce an additional degree of complication, affecting the sharing, interpretation, or withholding of evidence. Problems with evidence integrity and recordkeeping in the Palestinian-Israeli conflict were significant. Limited access, disjointed data, and the politicisation of evidence hinder the ICC's capacity to construct robust legal cases. To overcome these challenges, enhanced collaboration among the relevant parties, along with augmented international backing, is imperative to guarantee justice and responsibility for war crimes perpetrated in this prolonged conflict.

### **5.2.3 Legal and Jurisdictional Complexities**

The quest for accountability for war crimes in the Palestinian-Israeli conflict has encountered considerable legal and jurisdictional obstacles. The International Criminal Court, responsible for prosecuting such offences, functions within the intricate framework of international legislation, political dynamics, and issues of geographical jurisdiction. Legal and jurisdictional challenges frequently impede the Court's capacity to act decisively, especially in disputes as prolonged and politically delicate as the Palestinian-Israeli problem.<sup>124</sup>

#### **1. Jurisdictional Challenges**

Determining jurisdiction is a critical challenge faced by the International Criminal Court regarding the Palestinian-Israeli conflict. Israel's non-membership in the Rome Statute precludes recognition of the International Criminal Court's authority. This complicates the investigation and prosecution of crimes perpetrated by Israeli

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<sup>124</sup> Afaq Muhammad, Naveed Khan, Sohail Ahmad, and Aftab Alam, *Beyond Borders: The Complexities of Israel-Palestine Antagonism in the Modern Middle East* (2023), [https://doi.org/10.31703/gssr.2023\(viii-iv\).04](https://doi.org/10.31703/gssr.2023(viii-iv).04).

nationals or territories under Israeli control. The absence of collaboration engenders a legal void that compromises the International Criminal Court's capacity to pursue accountability effectively. Jurisdictional concerns are exacerbated by the contested nature of the Palestinian territorial status. Although Palestine acceded to the Rome Statute in 2015, its recognition as a state remains highly controversial in international forums. Significant scepticism exists over the International Criminal Court's jurisdiction over crimes committed in these territories, since some states, notably Israel, challenge its authority. Ambiguity about area and state recognition adversely affects the operational capabilities of the International Criminal Court and complicates its partnerships with other international entities. These entities may possess divergent perspectives on the status of Palestine. Consequently, the International Criminal Court must navigate a complex and often contentious legal landscape where jurisdictional issues remain a significant barrier to justice.<sup>125</sup>

## 2. Enforcement of International Law

The application of international law in the Palestinian-Israeli conflict presents significant challenges for the International Criminal Court, compounded by jurisdictional complexities. The International Court of Justice is responsible for differentiating between international humanitarian law, which governs military conflict, and international human rights law, which seeks to protect individual rights. This issue poses a significant problem in the context of urban warfare, as military operations often occur in densely populated civilian areas. The ambiguity of these conditions complicates the determination of violations by the International Criminal Court since they obscure the distinction between legitimate combat actions and

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<sup>125</sup> Ben Mahfoudh Haykel, "The Arab World and the International Criminal Court," *Journal of International Criminal Justice* (2023), <https://doi.org/10.1093/jicj/mqad052>.

potential war crimes. Israeli and Palestinian forces frequently justify their actions by asserting self-defence, thus complicating the establishment of clear legal accountability. The International Criminal Court's ability to formulate war crime accusations is significantly hindered by insufficient access to trustworthy evidence resulting from a confluence of political and logistical obstacles. Access to military documents and other essential materials is limited, as Israeli authorities have declined to cooperate with investigations carried out by the International Criminal Court. The disjointed nature of the Palestinian Authority complicates the collection of coherent and credible evidence. Consequently, the International Criminal Court faces challenges in constructing robust legal cases. This not only compromises its prosecutorial capacity but also affects the overall sense of its legitimacy and efficacy in administering justice in a conflict that is already laden with complexity and entrenched political narratives.<sup>126</sup>

### **5.3 Innovative Mechanisms for Evidence Collection**

The collection of credible and admissible evidence is a cornerstone of the International Criminal Court's ability to investigate and prosecute war crimes effectively. Yet, in conflict zones such as the Palestinian-Israeli territories, traditional investigative methods face severe limitations. Factors such as restricted physical access to sites, active hostilities, political resistance, and security risks significantly hinder on-the-ground evidence gathering. Additionally, the unwillingness of certain parties to cooperate exacerbates these challenges, risking the integrity and comprehensiveness of investigations. In response to these difficulties, the ICC must increasingly rely on

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<sup>126</sup> Haykel, "The Arab World and the ICC."

innovative mechanisms to collect, verify, and preserve evidence. The integration of cutting-edge technological tools, including satellite imagery, open-source intelligence (OSINT), digital forensics, and geospatial analysis, offers new opportunities to document crimes remotely and corroborate witness accounts without direct access. Alongside technological advances, strengthening cooperation with international bodies, non-governmental organisations, and regional agencies is essential to facilitate information sharing, witness protection, and logistical support.

This section examines the potential of such innovative mechanisms to enhance the ICC's investigatory capabilities within the Palestinian-Israeli conflict. It highlights how adapting to technological advances and fostering broader collaboration can help overcome entrenched barriers, thereby supporting the Court's mission to uphold international justice under extraordinarily complex circumstances.

### **5.3.1 Utilisation of Technology and International Collaboration**

**Digital Evidence Gathering:** ICC can utilise digital tools for remote evidence collection, enabling real-time data acquisition while overcoming physical obstacles to evidence gathering. Online platforms can be established for anyone to submit testimonies, reports, and relevant study work safely and privately. Social media has emerged as a vital source of information during conflicts, with users frequently filming events in real-time. Through the analysis of data from various platforms, the ICC may obtain insights and validate incidents, establishing a solid basis for further investigations. This method enhances the quantity of accessible evidence and democratises the evidence-collection process, fostering grassroots involvement.<sup>127</sup>

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<sup>127</sup> Lindsay Freeman, "Digital Evidence and War Crimes Prosecutions: The Impact of Digital Technologies on International Criminal Investigations and Trials," *Fordham International Law Journal* 41, no. 2 (2018): 283–327.

Satellite Imagery and Remote Sensing: The integration of satellite imagery and remote sensing technology serves as an innovative method for providing crucial evidence of war crimes. This device can monitor alterations in infrastructure, uncover patterns of violence, and record devastation in real time, without requiring direct access to conflict areas. Using high-resolution satellite imagery, the ICC can ascertain the effects of military operations on civilian populations and essential infrastructure, thus providing strong evidence for its cases. This approach augments the ICC's investigative capabilities while allowing it to persist in monitoring situations without on-site access.

A pertinent example that exemplifies the difficulties and advancements in evidence collection for the ICC in a war, such as the Palestinian-Israeli issue, is the Darfur probe. In Darfur, Sudan, the ICC encountered significant constraints on direct access to evidence and witnesses, owing to governmental non-cooperation and security threats in war areas. Nonetheless, ICC evolved by employing technology and collaborations to collect evidence remotely and from external sources. Satellite imagery was used to record assaults on civilian settlements, monitor the devastation of residences and infrastructure, and locate mass graves. These satellite photos support witness accounts gathered from displaced communities outside Sudan, frequently through NGOs functioning in refugee camps. Moreover, digital forensics was essential for verifying the validity of films and photographs disseminated by witnesses and activists, surmounting the physical obstacles that rendered evidence collection in combat zones practically unfeasible.<sup>128</sup>

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<sup>128</sup> Emmanuel Sakarombe, “Challenges Facing the International Criminal in Trying to Accomplish its Mission Focusing on Omar Al Bashir’s Prosecution,” *International Journal of Law and Public Policy* 5, no. 1 (2023), <https://doi.org/10.36079/1amintang.ijlapp-0501.434>.

In the Palestinian-Israeli conflict, the ICC might utilise satellite technology to record the devastation resulting from airstrikes, unlawful settlement growth, or other acts of aggression in the Gaza Strip and West Bank. In both instances, collaboration with NGOs and civil society is essential, since they frequently possess the capacity to collect the most relevant on-the-ground evidence and establish contact with witnesses who may be too vulnerable or fearful to come forward otherwise. This form of collaborative and technology-driven evidence gathering has been essential in constructing cases of war crime prosecution when political and security impediments obstruct conventional investigative procedures. Satellite imagery was employed to record assaults on civilian settlements, monitor the devastation of residences and infrastructure, and locate mass graves. These satellite photos supported witness accounts gathered from displaced communities outside Sudan, frequently through NGOs functioning in refugee camps. Moreover, digital forensics was essential in verifying the validity of films and photographs disseminated by witnesses and activists, therefore surmounting the physical obstacles that rendered evidence collection in combat zones practically unfeasible.

In the Palestinian-Israeli conflict, the ICC might utilise satellite technology to record the devastation resulting from airstrikes, unlawful settlement growth, or other acts of aggression in Gaza or the West Bank. In both instances, collaboration with NGOs and civil society is essential, since they frequently possess the capacity to collect the most relevant on-the-ground evidence and establish contact with witnesses who are too vulnerable or fearful to come forward otherwise. This collaborative and technology-driven evidence collection is essential in constructing cases of war crime prosecution

when political and security impediments obstruct conventional investigative procedures.<sup>129</sup>

Bellingcat, an independent international research group, has utilised digital methodologies, particularly Open-Source Intelligence (OSINT), to investigate potential war crimes in the Palestinian-Israeli conflict. The group systematically gathers and verifies evidence from diverse sources, including social media, documentaries, satellite imagery, and other publicly accessible online materials. In Gaza, for instance, Bellingcat employed geolocation techniques and satellite data to document Israeli strikes on civilian infrastructure as of 2021. These methods enabled the reconstruction of attack patterns and the assessment of their impact on civilian populations. Similarly, the United Nations Operational Satellite Applications Programme (UNOSAT) has conducted damage assessments in conflict zones through satellite imagery. During the 2014 Gaza conflict, UNOSAT documented the destruction of residential areas, hospitals, and schools, producing reports that were later used by human rights organisations to advocate for accountability. Such documentation may also be incorporated into the evidentiary record of the International Criminal Court in its investigations.<sup>130</sup>

Digital technology, satellite images, and collaborations with NGOs have enabled the ICC and other international organisations to remotely examine alleged war crimes in extremely limited and dangerous areas, such as the Palestinian territories, by gathering credible evidence.

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<sup>129</sup> James E. Archibong and Chidi Julius Lloyd, “Long Road to Justice: Omar al-Bashir and the Issue of Heinous Crimes in Darfur,” *Journal of Organizational Culture, Communications and Conflict* 25, no. 1 (2021).

<sup>130</sup> Joshua Lyons, “Documenting Violations of International Humanitarian Law from Space: A Critical Review of Geospatial Analysis of Satellite Imagery during Armed Conflicts in Gaza (2009), Georgia (2008), and Sri Lanka (2009),” *International Review of the Red Cross* 94, no. 886 (2012): 739–63.

Partnerships with NGOs and Civil Society: Collaborating with non-governmental organisations (NGOs) and local civil society groups can substantially enhance the ICC's investigative capabilities. These organisations frequently possess established networks inside impacted communities, allowing them to collect evidence and provide access to elusive witnesses. Non-governmental organisations that have established trust with local communities may significantly contribute to the documentation of occurrences, collection of testimonials, and contextualisation of evidence. This collaborative strategy enhances the evidence base and promotes community involvement, enabling ICC to function more efficiently in a politically delicate context.<sup>131</sup>

The utilisation of digital tools and satellite imagery offers a substantial possibility for the International Criminal Court to collect evidence in intricate war zones, like as the Palestinian territories, where access is highly constrained. The interview findings robustly endorse the utilisation of this technology. A legal expert with experience in international investigations remarked, “Conventional evidence collection methods are inadequate in areas such as Gaza, where investigators face restrictions on access.” The ICC must utilise digital forensics and satellite imagery to construct convincing cases.

Interviewee (D)

Collection of Digital Evidence: Numerous respondents affirm that internet platforms provide an effective method for collecting stories, documents, and audiovisual materials from impacted communities in real time. These methods not only augment the quantity of evidence but also democratise the process, enabling grassroots participants to input safely. A participant stated: Social media and encrypted

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<sup>131</sup> Nassima B. Daddosh, “International Criminal Cooperation for Exchanging Information with the International Criminal Court” (2018), doi:10.26735/16588428.2019.0011.

applications are emerging as primary sources of frontline evidence. The ICC must modify and create instruments for secure uploads and source authentication. (Respondent B) Satellite images and Remote Sensing: Numerous interviewees emphasise the significance of satellite images in corroborating assaults on civilian infrastructure. This method parallels earlier ICC inquiries, such as those in Darfur, where satellite imagery substantiated village destruction and validated witness testimonies. A prominent legal expert stated: "Satellite imagery has confirmed the extent of destruction observed in Sudan." Identical actions may and must be implemented in Gaza and the West Bank. Interviewee (G) Case Reference – Darfur: In Darfur, the ICC surmounted access limitations by collaborating with NGOs and employing satellite imagery to detect mass graves and damage patterns. These methodologies were supported by digital verification of photographs and films from displaced communities, a process that interviewees advocate for replication in Palestine.

Current Applications: Organisations such as Bellingcat and UNOSAT have utilised open-source intelligence (OSINT) and satellite photography to monitor damage to civilian infrastructure in Gaza. A human rights advocate remarked: "Bellingcat's geolocation of Israeli strikes in Gaza provides a model for the ICC to utilise independent data sources in its investigations." Interviewee (E) highlighted the necessity of collaborations with NGOs and Arab governments for regional support. Non-governmental organisations can enable secure communication with witnesses, while Arab nations can assist by disseminating intelligence and motivating victims to go forward. A legal practitioner stated: "The ICC's technology-based evidence will be insufficient without reliable intermediaries on the ground, NGOs, community leaders, and regional actors." The human context is essential. Interviewee (C).

### **5.3.2 Training and Capacity Building**

Empowering Local Actors: Educating local NGOs and civil society members on the documentation of human rights breaches is crucial for enhancing the quality and volume of evidence accessible to ICC investigations. By providing local actors with competencies in evidence collection, preservation, and reporting, ICC can augment the integrity of the evidence obtained. Workshops, training sessions, and capacity-building efforts can be conducted to instruct local actors on the methodical and ethical documentation of occurrences, thus ensuring the preservation of testimony and physical evidence for future investigations. This empowerment enhances local capabilities and establishes a durable platform for continuous documentation.<sup>132</sup>

Developing Reporting Mechanisms: Implementing accessible reporting procedures for victims and witnesses can significantly improve the ICC's capacity to gather testimonies. This may entail the development of mobile applications, the establishment of dedicated hotlines, or the implementation of community outreach programs aimed at educating people about their rights and the importance of their testimony in the quest for justice. By enhancing the user-friendliness and accessibility of these reporting tools, the ICC can motivate a greater number of victims and witnesses to step forward, thereby ensuring that their voices are acknowledged and their experiences are recorded. This proactive method of evidence collection enhances the ICC's investigations and fosters a culture of accountability within impacted communities.

In conclusion, the International Criminal Court's capacity to investigate war crimes in the Palestinian-Israeli conflict can be significantly improved by implementing

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<sup>132</sup> Daniela Kravetz, “The Protection of Victims in War Crimes Trials” (2013), doi:10.1007/978-90-6704-912-2\_9.

innovative mechanisms for evidence collection. These mechanisms include the utilisation of technology, international collaboration, and the active involvement of Arab countries. The Court can traverse the complexity of the conflict and work towards attaining justice and accountability for victims of war crimes if it adopts and considers these techniques.<sup>133</sup>

#### **5.4 Conclusion**

This chapter has examined the creative strategies that may be utilised to address the significant obstacles the International Criminal Court has in gathering evidence and witnesses concerning war crimes in the Palestinian-Israeli conflict. The intricacy of probing war crimes in this politically delicate region arises from several impediments, such as limited access to combat zones, a lack of cooperation from state players, and the fundamental challenges in collecting credible evidence from war-affected areas. The employment of sophisticated technology instruments, global cooperation, and proactive participation of Arab nations present exciting opportunities to tackle these difficulties. The collection of digital evidence has transformed the methodology of real-time evidence acquisition, enabling the ICC to circumvent geographical and logistical obstacles. By employing Internet platforms, social media analytics, and various digital instruments, the Court can augment the quantity of accessible material and obtain testimonies from witnesses who might otherwise be inaccessible. Moreover, satellite photography and remote sensing technologies have demonstrated their immense value in recording infrastructure damage, validating violent patterns, and offering trustworthy independent verification of events. These instruments are

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<sup>133</sup> Haykel, “The Arab World and the ICC.”

especially crucial in war areas, such as Gaza, where direct access is frequently restricted or unattainable.

Moreover, collaborations with NGOs and civil society organisations are seen as essential for the ICC's capacity to collect evidence from local communities. These organisations, which frequently possess established trust within impacted communities, are essential in enabling access to witnesses, gathering testimony, and safeguarding evidence. Their partnership with the ICC bolsters the legitimacy of the court's investigations and guarantees the inclusion of local viewpoints in international justice initiatives. Arab nations play a crucial role in bolstering ICC investigative initiatives. Their regional influence and collaboration can alleviate political obstacles, enhance access to evidence, and offer logistical assistance for investigation. Arab governments may facilitate the pursuit of justice and accountability in the Palestinian-Israeli conflict by promoting collaboration between the ICC and the regional parties.

In summary, the ICC's capacity to investigate war crimes in the Palestinian-Israeli conflict relies on novel evidence-collecting methodologies. Digital technologies, satellite technology, and collaborations with NGOs augment the court's ability to collect reliable, verifiable evidence despite the adversities presented by the conflict. Arab nations significantly contribute to these initiatives via regional collaboration. Despite ongoing problems, these tools provide the opportunity for more efficient investigations, advancing the ICC's objective of establishing responsibility for war crimes and delivering justice to victims in one of the world's most enduring and politically sensitive wars.

## CHAPTER SIX

### RESULTS AND RECOMMENDATIONS

#### 6.1 Results of the Study

This research aims to examine the basic concerns related to the execution of international law, particularly the Rome Statute, concerning war crimes committed during the Palestinian–Israeli conflict. The study has yielded several significant conclusions that directly address the legal frameworks, obstacles to enforcement, and suggestions for improving ongoing investigations by the International Criminal Court. These findings align with the objectives of the present study.

##### 6.1.1 Legal Framework for War Crimes in the Palestinian-Israeli Conflict

The legal foundation for prosecuting war crimes in the Palestinian-Israeli conflict is predominantly regulated by international law, namely, the stipulations of the Rome Statute, which established the ICC. The Rome Statute delineates war crimes, encompassing serious violations of the Geneva Conventions, including deliberate assaults on people, illegal deportation, and targeting of humanitarian personnel, all pertinent to the current conflict. However, the analysis reveals that the special position of Israel and Palestine on the ICC complicates the legal system. Palestine formally joined the Rome Statute in 2015, allowing the ICC to examine crimes in the Palestinian territory. However, Israel is not a member of the ICC and does not acknowledge its authority. Non-cooperation by Israel significantly constrains the ICC's ability to

prosecute Israeli individuals for purported war crimes, notwithstanding the Court's authority over offences committed inside the territory of its State Parties, including Palestine.

The Court's capacity to adjudicate war crimes is limited by issues of geographical sovereignty and the disputed status of regions, such as East Jerusalem and the West Bank. Jurisdictional constraints, coupled with Israel's non-recognition, present considerable legal obstacles that impede the comprehensive implementation of the Rome Statute in this scenario. Notwithstanding these limitations, the ICC's engagement in examining crimes in Palestine signifies a significant advancement in the quest for accountability and justice, although its efficacy is constrained by the legal and political intricacies of the region.

### **6.1.2 Obstacles in Enforcing International Law**

Within the context of the conflict between Israel and Palestine, the implementation of international law involves a multitude of obstacles that transcend the legal, political, and logistical spheres. These impediments, which are mentioned below, pose a serious obstacle to the efforts made to establish responsibility for war crimes.

#### **1. Not cooperating with the International Criminal Court**

Israel's persistent unwillingness to recognize the authority of the International Criminal Court represents one of the most formidable challenges to accountability in the Palestinian-Israeli conflict, as its non-ratification of the Rome Statute absolves it of any formal obligation to cooperate with the Court's investigations. This manifests in several obstructive practices, most notably the consistent denial of access to ICC investigators, preventing them from entering Israeli-controlled territories such as Gaza

and the West Bank to gather first-hand evidence, interview key witnesses, or conduct on-site assessments of alleged war crimes. Furthermore, Israel withholds crucial evidence, including official military records, operational documents, and other materials vital for the substantiation of charges, which significantly weakens the evidentiary foundation of ICC proceedings. Legal barriers are also strategically imposed, as without Israel's cooperation it becomes exceedingly difficult to prosecute individuals under its jurisdiction, thereby undermining the effectiveness of the Court's mandate. This obstruction not only hampers the ability of the ICC to conduct impartial and thorough investigations but also perpetuates a cycle of impunity, where violations of international humanitarian law and human rights law remain unaddressed. In turn, the lack of cooperation compromises victims' access to justice, reduces the credibility of international accountability mechanisms, and highlights the limitations of international law when confronted with state sovereignty and political resistance.

## 2. Political Pressure and External Influence

Global political dynamics have a significant impact on the war, with strong states such as the United States playing a significant role in impeding the work of the International Criminal Court.

The United States of America, which is a staunch friend of Israel, has continually opposed investigations into the Palestinian-Israeli conflict by the ICC, claiming concerns over political bias and sovereignty as reasons for their opposition. Under the influence of external political pressure, international support for the enforcement of legal systems has diminished. Political disagreements among international organisations, such as the United Nations, frequently inhibit coherent action, which results in a lack of consensus on how to confront war crimes in the region. This was a

diplomatic roadblock. This impedes the work of the International Criminal Court and weakens worldwide attempts to uphold the law.

### 3. Challenges in Logistical Operations and Security

On-the-ground investigations face major challenges as a result of the unstable security environment in the Palestinian areas where they are being conducted:

Access Restriction: International Criminal Court investigators are restricted in their movement due to conflict zones, blockades, and checkpoints, which make it difficult for them to visit critical sites and crime scenes. Threats to the Safety of Investigators: The ongoing conflicts in regions such as Gaza pose significant threats to the safety of investigators, prohibiting them from gathering evidence in person or performing in-depth fieldwork. Instances of Destruction of Evidence: Military operations and continuous conflict frequently destroy essential evidence, which further impedes investigations.

### 4. Witness intimidation and the absence of protection against injury

Witnesses involved in investigations of the International Criminal Court face significant dangers from both factions of the war.

Palestinian witnesses may face intimidation or harassment from Israeli authorities, whereas Israeli witnesses risk legal and social repercussions in testifying against their government.

Inadequate Protection Mechanisms: The absence of comprehensive witness protection systems in combat zones results in individuals' hesitance to submit testimonies, thus undermining the available evidence for prosecution.

## 5. Constrained Investigative Proficiencies and Limited Resource Accessibility

The International Criminal Court operates with constrained resources, hindering its ability to comprehensively pursue and probe war crimes perpetrated during the Palestinian-Israeli conflict.

**Reliance on collaboration:** The Court relies on the cooperation of states and international organisations to achieve its objectives and gather evidence. ICC has resource limitations that hinder its capacity to effectively enforce international law without Israel's support.

**Restricted Investigative Scope:** The ICC has challenges in obtaining substantial evidence to meet the stringent evidentiary requirements for war crime allegations in regions with limited access and insufficient cooperation.

### 6.1.3 Mechanisms for Gathering Evidence and Witness Testimonies

The examination of the processes for acquiring evidence and witness testimony in the context of the conflict between Israel and Palestine has resulted in significant findings that highlight both creative methods and the existing issues that the ICC is now facing. This section summarises the findings based on the objectives of the research, as well as the numerous strategies that were found to improve the International Criminal Court's ability to conduct investigations.

#### 1. Utilisation of Technological Resources

**Accumulation of Digital Evidence.** According to the results, the ICC can make good use of digital platforms for the collection of evidence, which enables witnesses to submit statements safely and anonymously. When it comes to gathering information regarding episodes of violence in real-time, the ability to collect data from social media

is quite helpful. This technique not only mitigates some of the physical hurdles that are present in the process of evidence collection but also broadens the breadth of the evidence that is accessible. For instance, the ICC has been able to effectively collect testimonies from people who may otherwise be afraid of reprisal for their involvement. This was accomplished through the construction of safe Internet portals.

The practice of remote sensing and satellite imagery. The use of satellite images and remote sensing technology has emerged as an essential method for acquiring evidence of war crimes without the necessity of direct access to combat zones. To provide corroborative evidence for witness testimony, high-resolution satellite photos can be used to show devastation, patterns of relocation, and military actions in civilian areas. Based on the data, it appears that the incorporation of this technical advancement improves the International Criminal Court's capacity to create a factual foundation for investigations, particularly in settings in which access to the environment is restricted.

2. Working together with non-governmental organisations (NGOs), both locally and internationally, plays a critical role in supporting the enforcement of international law over war crimes in the Palestinian-Israeli conflict, as reflected in the central theme of this thesis.

By working together with local non-governmental organisations (NGOs) and civil society organisations, ICC has been able to improve its investigative capabilities. The findings indicate that these organisations can arrange interviews, collect testimonials, and provide essential background information on situations. The ICC can harness existing networks within communities to boost its evidence-gathering operations by collaborating with non-governmental organisations (NGOs) that specialise in human rights documentation. An important factor that contributes significantly to the

development of complete cases that accurately portray the facts of the conflict is the successful integration of local knowledge and skills.

Worldwide Cooperation. In addition, the findings of the study highlight the significance of collaborating with different international organisations and nations committed to protecting human rights. The International Criminal Court's investigations can be strengthened by sharing significant resources and information that can be obtained through collaborative efforts with various bodies. Building diplomatic contact and encouraging cooperative participation are two ways in which the ICC may improve its access to essential evidence, which will ultimately lead to an increase in the efficiency of its operations. According to the findings, such partnerships have the potential to make it easier to collect testimony and data that, in the absence of such partnerships, would be unavailable in the circumstances of a complicated political landscape.

### 3. Training and Capacity Building for Local Actors to Develop Their Capabilities

The findings shed light on the significant role that efforts aimed at creating capacity and empowering local actors may play. Training local non-governmental organisations (NGOs) and community members on how to document human rights abuses has increased the quality and amount of evidence available for investigations by the ICC. According to the study's findings, providing local stakeholders with the ability to document their actions effectively enables them to develop a feeling of ownership in pursuit of justice, which in turn increases community participation in the process of gathering evidence.

Creating Reporting Mechanisms for Evaluation. According to the International Criminal Court, one of the most important factors in strengthening the ability to gather

witnesses is the introduction of reporting procedures that are easily accessible. Based on these findings, it can be concluded that activities such as mobile applications and community outreach programs have a major impact on raising awareness of the significance of reporting violations of human rights. Not only do these procedures make it easier for victims and witnesses to participate more actively, but they also ensure that their opinions are taken into consideration while the pursuit of justice is occurring.

#### 4. Strengthening Witness Protection Programs and Providing Enhanced Options for Witness Protection

According to these findings, it is vital to have comprehensive witness protection programs to encourage cooperation among witnesses. There has been an increase in the number of people who are prepared to submit testimony as a result of the establishment of safe surroundings, which include facilities for remaining anonymous and physical protection. It has been demonstrated that the construction of safe homes and secure communication routes for witnesses has helped reduce the worries of reprisal, which has resulted in an improvement in the quality of the evidence obtained.

Safeguards for Testimonies in the Legal System. In addition, the implementation of legislative protection that protects witnesses from prosecution for their testimony has emerged as a noteworthy conclusion. The removal of anxieties and promotion of increased cooperation among witnesses can be accomplished by the provision of assurances of immunity or amnesty in exchange for truthful testimony. The findings of this study indicate that these legislative safeguards are essential for establishing an atmosphere that is favourable for the collection of essential evidence.

## 6.2 Conclusion

This research elucidates the intricate interplay of legal, political, and social factors that significantly impact the International Criminal Court's endeavours to investigate war crime allegations within the Palestinian-Israeli conflict. Although the International Criminal Court has created a legal framework aimed at addressing these serious crimes, its effectiveness has been significantly impeded by jurisdictional limitations and the persistent absence of cooperation from key entities, particularly the Israeli government. The court's ability to uphold international law and deliver justice to victims is substantially obstructed by these barriers, posing considerable challenges. These findings underscore the necessity of employing innovative techniques for evidence collection, including digital tools, satellite imaging, and remote sensing technologies, to transcend physical barriers and acquire essential evidence in a violence-prone area. Utilising these technological advancements, the ICC enhances its ability to document occurrences of violence and human rights violations, therefore building a robust factual basis for investigations. Furthermore, partnerships with local non-governmental organisations (NGOs) and international institutions are crucial for enhancing the International Criminal Court's investigative capabilities. The ICC can use established networks among communities through these partnerships. This enables the ICC to approach witnesses who are challenging to reach and guarantees that testimonies are collected in a manner that considers the local context and sensitivities.

Furthermore, this research underscores the need to empower local stakeholders through the execution of targeted training programs. These initiatives can significantly improve both the quality and the amount of evidence available for International Criminal Court investigations. The ICC can foster a sense of ownership in the quest for justice among affected communities by equipping local non-governmental

organisations (NGOs) and community members with the requisite instruments to accurately document human rights violations. Implementing efficient witness protection programs is crucial, as these initiatives ensure the safety of those wanting to testify and promote collaboration with the judicial system by encouraging testimonies. The findings indicate that enhancing witness protection is essential for creating an environment conducive to the gathering of credible evidence. The collective findings underscore the pressing necessity for a comprehensive and multifaceted strategy to enhance the efficacy of the International Criminal Court in the Palestinian-Israeli conflict. ICC can pursue accountability and justice in a context characterised by persistent conflict and significant political obstacles. This can be achieved by tackling the complexities of jurisdictional matters, enhancing local engagement, and employing innovative strategies for evidence collection. This study enhances the understanding of the role of the International Criminal Court and underscores the persistent need for international community support to uphold justice and accountability during widespread violence and human rights violations.

### **6.3 Recommendations**

Building on the findings, this study provides suggestions to resolve the difficulties of enforcement identified in the research goals. The proposals are centred on enhancing the effectiveness of the ICC in the conflict between Israel and Palestine.

#### **6.3.1 Recommendations for the International Criminal Court**

1. The Improvement of Cooperation and Clarity Regarding Jurisdiction. The International Criminal Court must collaborate closely with international bodies, regional players, and states to define its legal authority to solve the persistent issues

that are created by jurisdictional restrictions in the Palestinian-Israeli conflict. This should entail interacting with the United Nations Security Council as well as governments from the Arab and European regions to acquire more specific mandates and assistance. In addition, there should be an increase in diplomatic measures to further promote the participation of non-member governments such as Israel, which has not yet acknowledged the jurisdiction of the ICC. To actively endeavour to enhance its impact, the ICC should continuously engage in communication with both Israeli and Palestinian authorities, emphasising the significance of responsibility for war crimes under international law.

2. The International Criminal Court's Employment of Technology for Evidence Collection should spend more on and utilise advanced technology to gather digital evidence in battle zones with limited physical access. Real-time surveillance and recording of war crimes can be achieved using satellite imagery, social media data, and digital forensics. By establishing partnerships with technological companies, global organisations, and research institutions, the International Criminal Court can create advanced tools for the remote gathering, verification, and preservation of evidence. This strategy is essential for investigating complex circumstances such as the Palestinian-Israeli conflict, when access to crime scenes is sometimes limited.

### 3. Clarify ICC Jurisdiction Regarding the Conflict

To resolve ongoing jurisdictional uncertainty, the ICC should pursue an interpretative declaration pursuant to Article 12(3) of the Rome Statute, elucidating its jurisdiction over non-State Parties with serious international crimes. The Assembly of States Parties (ASP) should advocate for the UN Security Council to establish a permanent

framework for referring politically contentious situations, such as Palestine-Israel, under Article 13(b).

#### 4. Enhance Digital Evidence Acquisition Proficiencies

The ICC ought to create a dedicated Digital Evidence and Satellite Imagery Unit inside the Office of the Prosecutor. This unit will collaborate with UNOSAT, Bellingcat, and additional open-source intelligence networks. Furthermore, the ICC ought to amend the Rules of Procedure and Evidence to incorporate stipulations for digital and remote-sensing data, guaranteeing its admission and dependability.

5. A comprehensive legal framework must be established to formalise evidence-sharing agreements with non-governmental organisations and local human rights entities. This can be accomplished via Memoranda of Understanding (MoUs) and regional ICC liaison offices in the Middle East to enable secure and consistent interaction with civil society stakeholders on the ground.

#### 6. Augment Witness Protection Protocols

The ICC ought to augment its Victims and Witnesses Unit by collaborating with third-party states and international organisations to provide improved safety, relocation, and psychological assistance. Amendments to the Court's regulations ought to facilitate anonymous digital testimony to safeguard vulnerable witnesses in high-risk regions such as Gaza.

7. Formulating Victim-Centric Strategies Consistent with international justice principles, the ICC should intensify its emphasis on victims and guarantee that their perspectives are acknowledged during the investigation and prosecution phases. The court must prioritise the rights and protection of victims by ensuring accessible

reporting procedures, legal counsel, and psychological assistance. Furthermore, the ICC must guarantee that victims' testimony and viewpoints inform the court of its overarching policy in conflict-related inquiries.

### **6.3.2 Recommendations for the International Community**

**Augmented diplomatic pressure** for collaboration with the International Criminal Court. The international community needed to enhance its diplomatic initiatives to ensure that all parties, including Israel, would cooperate with the ICC investigations into war crimes committed during the conflict between Israel and the Palestinian population. A method to do this is by aligning actions in international forums, such as the United Nations, where resolutions can be proposed to advocate adherence to ICC protocols. A cohesive global coalition may exert diplomatic pressure that significantly influences collaboration and the pursuit of justice.

**Enhancing the legal structures** of regional and international organisations to enhance the efficacy of international legal systems is essential to promote accountability in the Palestinian-Israeli conflict. The international community must offer support for initiatives designed to harmonise regional legal frameworks with international justice standards. These measures should also motivate Middle Eastern states to create frameworks that incorporate procedures for prosecuting war crimes. In addressing breaches, this support may encompass offering technical help, enhancing capacity, and facilitating collaboration between the ICC and regional entities. This would facilitate the integration of global and local perspectives.

**Provide the ICC with financial and logistical assistance.** The ICC need adequate financing and resources to execute its investigations efficiently. Countries ought to provide financial support for the operations of the ICC and logistical aid for the

deployment of investigative teams in inaccessible combat zones. This may entail supplying technology such as satellite imagery, forensic instruments, and secure communication networks to facilitate evidence collection in battle zones with restricted access. The provision of such help is crucial for overcoming the logistical challenges encountered when investigating war crimes in politically sensitive areas.

**Advocating Global Partnerships to Enhance Evidence Accumulation.** Establishing multinational cooperation would facilitate the evidence-gathering procedure for the Palestinian-Israeli conflict. Enhancing the quality of evidence for International Criminal Court investigations and ensuring its accessibility may be achieved through partnerships with non-governmental organisations (NGOs), civil society organisations, and human rights organisations on-site. Furthermore, this cooperation may facilitate the resolution of access barriers and the provision of real-time data. This is achievable through the use of technologies such as digital platforms and social media surveillance to gather information on war crimes as they transpire.

**By implementing global witness protection mechanisms,** the international community must implement a robust witness protection program to safeguard those who assist investigations by the International Criminal Court. The breadth of these activities must encompass the entire globe, offering options for protection and relocation to witnesses, victims, and activists for human rights who are at risk. The international community may enhance participation in the judicial process by safeguarding the safety of those willing to testify to or provide evidence. This would enhance the International Criminal Court's capacity to obtain credible witnesses to substantiate its investigation.

**Accountability should be advanced through worldwide campaigning.** To ensure that human rights violations and war crimes perpetrated during the Palestinian-Israeli conflict remain a priority for the international community, lobbying efforts must be spearheaded by the international community. This may be achieved through public campaigns, foreign diplomacy, and continuous dialogue within multilateral institutions, such as the United Nations, the European Union, and the African Union. The international community may influence both state and non-state actors to adhere to international law and collaborate with the ICC by prioritising responsibility and justice in the global discourse.

**Promoting alternative justice mechanisms** for establishing peace through truth missions and reconciliation procedures is an additional justice system that the international community must support alongside the ICC, which is essential for the investigation and punishment of war crimes. The mechanisms in the issue can tackle broader dimensions of the conflict, including the reparation of victims, community reconciliation, and incremental construction of peace. The international community may offer a more holistic approach to justice and conflict settlement in the region by coordinating these measures with the ICC.

### **6.3.3 Recommendations for Arab Alliances**

Arab coalitions, led by the Arab League, have to intensify their diplomatic initiatives to persuade Israel to collaborate with the International Criminal Court in its investigation of war crimes perpetrated during the conflict between Israel and the Palestinians. The likelihood of collaboration between Israel and other stakeholders can be enhanced by using unified diplomatic pressure alongside a more integrated regional stance. Arab states should advocate for multilateral resolutions in the United Nations

and other global platforms that underscore the need for responsibility and justice in conflict. These resolutions should augment the ICC.

The endeavours of the ICC ought to be augmented by the initiatives of Arab coalitions, which should prioritise the development of regional legal frameworks. This may involve the creation of regional mechanisms or courts that are capable of addressing human rights breaches and war crimes specific to the Palestinian context. Furthermore, Arab states must proactively promote efforts to gather evidence by collaborating with non-governmental organisations (NGOs) and local entities. Overcoming the problems posed by restricted access to battle zones is feasible if these groups receive training in documentation protocols and witness protection. This guarantees the collection and secure transmission of crucial evidence to the International Criminal Court.

Finally, Arab nations must create comprehensive witness protection programmes and provide humanitarian support to people harmed by violence. Individuals wanting to provide testimony before the ICC must be protected from retaliation. This can be achieved by creating safe havens in the area and implementing legal protective measures. Simultaneously, Arab nations should provide victims with comprehensive legal, medical, and psychological help, ensuring their access to support networks and the judicial system. By adopting this approach, Arab coalitions might improve the legal and humanitarian dimensions of justice in the region while significantly contributing to the efforts of the ICC and promoting enduring peace and reconciliation.

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