

Implications and Analysis of the Crime of Aggression against Gaza: Breach of International Criminal Law amid the Israel-Hamas Conflict

By

Muhammad Derfish Ilyas

The University of the Cumberlands, Kentucky, USA

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Abstract

The stimulus to carry out this research is to analyze the breach of International Criminal Law by the Israeli military and political establishments amid the ongoing Israel-Hamas conflict. The conflict between Israel and Hamas in Gaza has led to allegations of war crimes and breaches of International Criminal Law. The International Criminal Court (ICC) has jurisdiction over potential war crimes carried out by Israeli militants in the Gaza Strip. The ICC's Office of the Prosecutor has an ongoing investigation with jurisdiction over Israel that goes back to 2014 and any crimes committed on the territory of Palestine. Human Rights Watch and other rights organizations have also found that Israeli authorities are committing crimes against humanity, apartheid, and persecution against millions of Palestinians (Human Rights Watch, 2023). The international community, including Israel's allies, has been called upon to take concrete measures to protect Gaza's civilian population from unlawful attacks and to refrain from any statement or action that would legitimize Israel's crimes and violations in Gaza. This study used two methods: literature review and discourse analysis to evaluate the breach of International Criminal Laws by the Israeli authorities during the ongoing conflict between Israel and Hamas.

The discourse analysis study used ATLAS software, which is qualitative analysis software. The research analyzed 155 published documents, including research papers, reports, thesis, media reports, and other publishable material using the ATLAS tool. Auto coding is done using the auto coding option. Themes emerged from ATLAS, which are exhibited in the results. Findings indicate that violations of the Geneva Conventions, Rome statutes, and violations of humanitarian laws are three major themes that emerged from discourse analysis. The study also reflects Israel's attacks on healthcare facilities in terms of International Criminal Law. By

analyzing clauses of International Criminal Law and conflict-related stressors, this study emphasizes the crucial need for global engagement to refrain Israel from mitigating these violations of International Criminal Law. The findings of this study can assist social policymakers and international community leaders in highlighting this issue and calling for targeted strategies to abstain Israeli authorities from breaching International Criminal Law.

Keywords: *International Criminal Law, Israel, Hamas, Palestine, Gaza, Conflict*

Introduction

Discussions surrounding the Israeli-Palestinian conflict involve complex geopolitical, historical, and legal dimensions. There are varying perspectives on whether Israel has violated International Criminal Law in its actions within Palestinian territories. Ben-Meir (2023) argues that Israel's occupation of Palestinian territories, construction of settlements, military operations, and other activities may contravene international law, specifically International Humanitarian Law, and human rights law (Human Rights Watch, 2023). The construction of settlements in the West Bank is a point of contention. According to Mahaseth (2022), the fourth Geneva Convention, transferring an occupying power's civilian population into the territories it occupies is prohibited. Many international bodies and organizations consider Israel's settlements in the West Bank illegal under this convention (Geneva Convention, 2023).

Concerns have also been raised regarding military actions and the use of force in densely populated Palestinian areas, particularly during conflicts (United Nations, 2023). As per Lehrs et al. (2023), allegations of disproportionate force leading to civilian casualties and damage to civilian infrastructure have raised questions about compliance with the principles of distinction and proportionality, fundamental aspects of International Humanitarian Law. However, it's essential to note that perspectives on this topic widely differ. Pratiwi (2022) mentioned that Israel asserts that its actions are mainly defensive responses to security threats and that it abides by international law while acknowledging complexities within the conflict. International law, particularly as it pertains to conflicts and occupations, is subject to interpretation, and determining violations often involves a nuanced legal analysis.

Legal bodies such as the International Criminal Court (ICC) have investigated alleged war crimes by both Israeli forces and Palestinian groups. As per Bracka (2021), the legal interpretations and applications in these cases are intricate and often contentious due to the conflict's political sensitivity and historical context.

Background

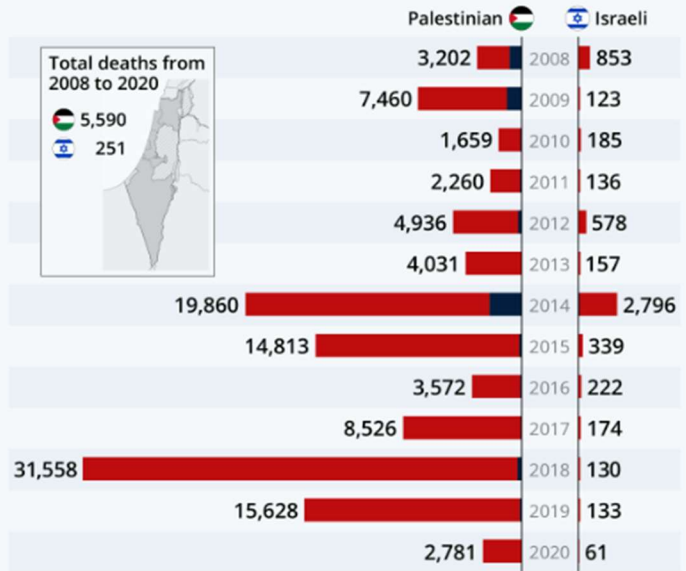
The conflict traces its roots back to the mid-20th century, with the establishment of the State of Israel in 1948 and subsequent wars involving neighboring Arab states (United Nations, 2023). Chen (2023) stated territorial disputes, especially concerning East Jerusalem, the West Bank, and

the Gaza Strip, have been central to the conflict. As per Arifuddin (2022), the rise of Hamas as a political and militant force in Gaza further complicated the situation. In recent years, the Israel-Hamas conflict has witnessed periodic escalations marked by intense and deadly exchanges of hostilities. Ishamali (2023) mentioned that military operations, airstrikes, and rocket attacks have resulted in significant civilian casualties and extensive damage to infrastructure, drawing international attention and condemnation. Imtiaz (2022) stated that accusations of the crime of aggression have been directed at Israel for its military actions in Gaza. This includes concerns over disproportionate use of force, targeting of civilian areas, and potential violations of International Humanitarian Law. Various international organizations, human rights bodies, and advocacy groups have documented instances that they argue may constitute crimes of aggression (Human Rights Watch, 2023). The crime of aggression is defined under international law, with the Rome Statute of the International Criminal Court (ICC) providing key provisions (Mahwati, 2022). The statute identifies acts of aggression and establishes the ICC's jurisdiction over such crimes. However, it's noteworthy that Israel is not a party to the Rome Statute, complicating the path to potential prosecution at the ICC (Pratiwi, 2022). The below stats indicate the highest number of Palestinian deaths from 2008 to 2020.

The Human Cost Of The Israeli-Palestinian Conflict

Israeli & Palestinian deaths/injuries documented by the UN

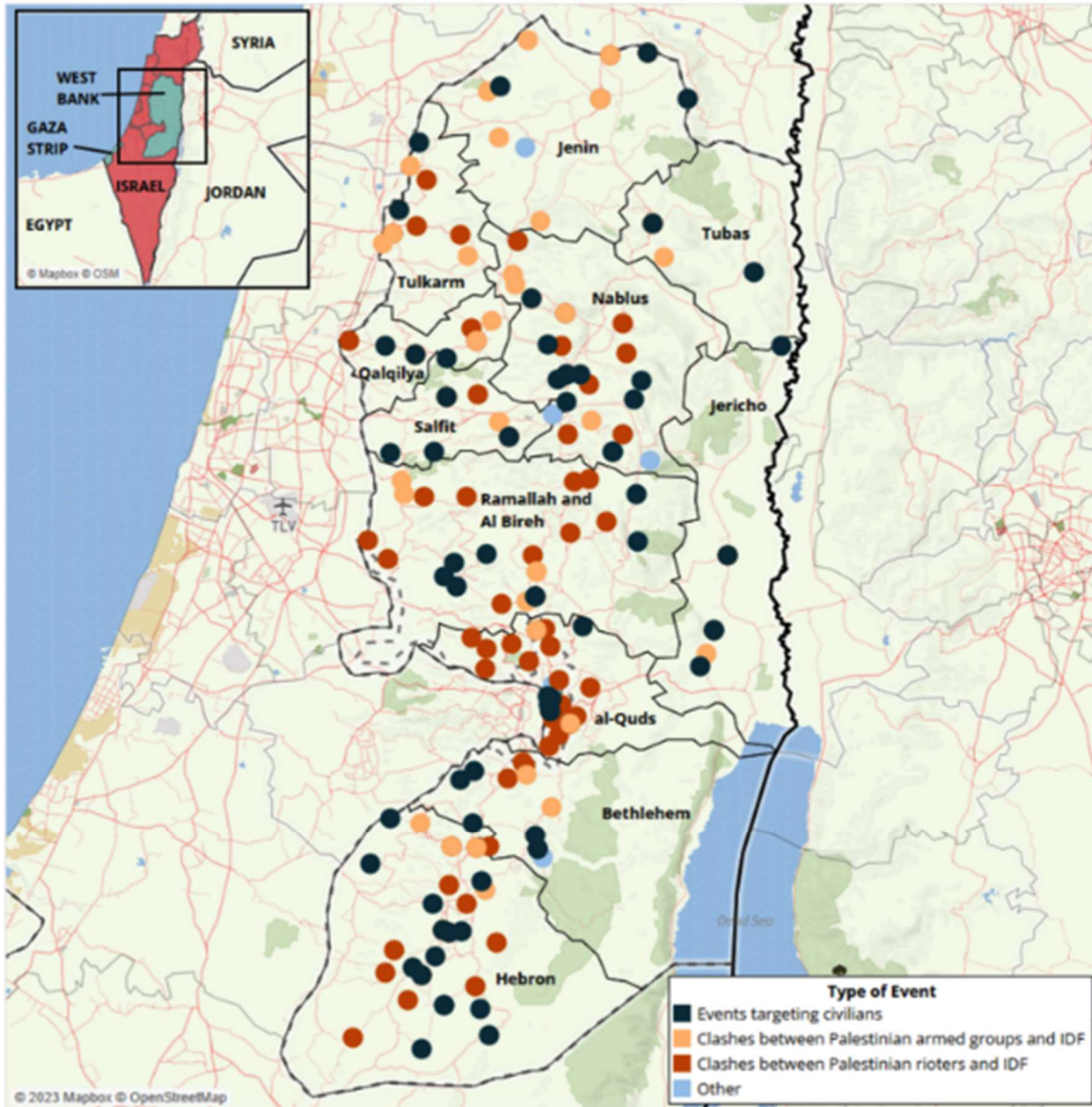
■ Deaths ■ Injuries



Source: United Nations



The above stats show that the highest number of deaths of Palestinian people was 31,558 during the year 2018 (Statista, 2023). Similarly, below is a map that exhibits the clashes between Israeli forces and Hamas forces. Similarly, this map also indicates events targeting civilians and clashes between Palestinian rioters and IDF.



The most significant points are orange and red. The orange color is clashes between Palestinian armed groups and IDF, whereas the red color is clashes between Palestinian rioters and IDF.

Problem statement

The ongoing Israel-Hamas conflict has raised serious allegations of the breach of International Criminal Law by the Israeli military and political establishments. Sabiha (2022) opined that the conflict, characterized by historical tensions and territorial disputes, has led to accusations of war crimes and violations of International Humanitarian Law. According to Spitka (2023), the International Criminal Court (ICC) has initiated investigations into potential war crimes

committed by Israeli militants in the Gaza Strip, with jurisdiction dating back to 2014. The Office of the Prosecutor of the ICC has urged an expedited investigation, emphasizing the importance of accountability for crimes committed on the territory of Palestine (Arifuddin, 2022).

Furthermore, Ishamali (2023) found that human rights organizations, including Human Rights Watch, have asserted that Israeli authorities are committing crimes against humanity, specifically apartheid and persecution against millions of Palestinians (Human Rights Watch, 2023). Similarly, as per Mahaseth (2022), the international community, including Israel's allies, has been called upon to take concrete measures to protect Gaza's civilian population from unlawful attacks and to refrain from statements or actions that would legitimize Israel's alleged crimes and violations in Gaza.

This study aims to analyze the breach of International Criminal Law by the Israeli authorities during the ongoing Israel-Hamas conflict. By using a combination of literature review and discourse analysis, the research evaluates Israel's actions in terms of International Criminal Law, focusing on allegations of war crimes, crimes against humanity, and potential violations of the Rome Statute. The study also examines Israel's attacks on healthcare facilities, considering the implications of such actions in the context of International Criminal Law.

Through carefully examining international legal frameworks and conflict-related stressors, this research emphasizes the urgent need for international engagement to address and prevent further violations of International Criminal Law by Israeli authorities (Bracka, 2021). The findings of this study can serve as a foundation for social policymakers and international community leaders to understand the gravity of the situation and develop targeted strategies to deter Israel from breaching International Criminal Law in the ongoing conflict (Sindhu and Naveed, 2021)

Research questions

- How do military actions of the Israeli authorities in Gaza, amid the Israel-Hamas conflict, align with the principles and standards set by International Criminal Law, particularly regarding the prohibition of crimes against humanity and war crimes?
- How Israeli forces breached international laws (humanitarian laws, Rome Statutes, Geneva Conventions) during Israel-Hamas war 2023.

Significance of the study

This study carries significance in shedding light on the alleged breaches of International Criminal Law amid the Israel-Hamas conflict. By critically analyzing the actions of the Israeli authorities, particularly in relation to war crimes, crimes against humanity, and attacks on healthcare facilities, the research contributes valuable insights to the ongoing discourse on accountability and justice. The findings can inform human rights advocacy efforts, empowering organizations and policymakers to address potential violations, promote international legal scrutiny, and work towards safeguarding the rights and protections afforded to civilians in conflict zones (Human Rights Watch, 2023). Ultimately, this study serves as a crucial resource for fostering a deeper understanding of the conflict's complexities and advocating for measures that uphold international humanitarian standards.

Literature review

The implications of the alleged crime of aggression against Gaza within the Israel-Hamas conflict have been extensively scrutinized in the literature. A study by Bracka (2021) provides a foundational understanding of the gravity of crimes under international law. Sabel's (2022) work serves as a backdrop to the discussion, emphasizing the obligations of states and individuals to adhere to International Criminal Law.

In examining the Israel-Hamas conflict, Masudi (2022), in "International Law: A South African Perspective," explores the legal implications of Israel's actions, suggesting that the conflict may involve violations of International Humanitarian Law. The study delves into the complexities of distinguishing between self-defense and acts of aggression, shedding light on the challenges faced in categorizing actions within the legal framework.

In contrast, a study by Ben-Naftali (2023) focuses on documenting specific instances of alleged crimes against civilians during Israel's military operations. This study contends that Israel's actions, including indiscriminate airstrikes and attacks on civilian infrastructure, may constitute war crimes and crimes against humanity.

Applicable principles of criminal in the Israel-Hamas conflict

The ongoing conflict between Israel and Hamas has raised significant legal questions regarding the applicable principles of criminal law. Several studies and legal analyses have provided insights into the matter.

One study by Munin (2022) highlighted the law of armed conflict (LOAC), also known as International Humanitarian Law, that applies to the Israel-Hamas war. It emphasized that the law is well settled and clear in some aspects while less so in others. The study by Devlaminck (2023) also discussed the jurisdiction of the International Criminal Court (ICC) in the situation, noting that Palestine deposited an instrument of accession with the ICC in 2015. Still, the jurisdictional basis of a criminal tribunal must be founded on the steadiness of the state, which neither the Palestinian Authority nor the "entity" of Palestine currently qualifies as (United Nations, 2023).

Another legal analysis conducted by Rémond-Tiedrez (2021) focused on assessing potential violations of the core rules of international law, including willful killings, taking of hostages, outrages upon personal dignity, and intentionally directing attacks against civilians and civilian objects. It noted that the conduct of armed groups from Gaza may amount to crimes against humanity, war crimes, and genocide (United Nations, 2023). A separate report by Abbassi (2023) discussed the allegations of war crimes leveled at both Israel and Hamas. It emphasized that the principles of distinction, precaution, and proportionality equally apply to Hamas, and there is no universal agreement on what law applies to the conflict.

The debate over the jurisdiction of the ICC to investigate war crimes in Gaza was also addressed in a separate discussion. Browne (2023) noted that the jurisdictional basis of a criminal tribunal must be founded on the steadiness of the state, and neither the Palestinian Authority nor the "entity" of Palestine currently qualifies as a state.

In comparing these findings, it is evident that there are differing perspectives on the applicable principles of criminal law in the Israel-Hamas conflict. While research by Singh (2021) emphasizes the straightforward application of International Humanitarian Law and the potential for war crimes and crimes against humanity, others highlight the lack of universal agreement on the applicable law and the challenges related to the jurisdiction of the ICC (United Nations,

2023). These differing perspectives underscore the complexity of the conflict's legal issues and the need for careful consideration of the facts and legal principles involved.

Crime of Aggression

Investigating breaches of International Criminal Law and prosecuting the perpetrators involves various international and domestic legal mechanisms. According to Khalaileh (2022), the International Criminal Court (ICC) is a permanent international court established to investigate, prosecute, and try individuals accused of committing the most serious crimes of concern to the international community. As per Althunibat (2023), the ICC's role is complementary to that of national courts, and it can only intervene where a state is unable or unwilling to carry out the investigation and prosecute the perpetrators genuinely. Several studies have explored the effectiveness of the ICC and the challenges it faces in investigating and prosecuting breaches of International Criminal Law. Erdoğan (2021) examined the effectiveness of the ICC by studying three variables: the number of state parties, the cooperation regime, and the Court's objective of securing suspects in its ongoing investigations and prosecutions. Another study by Barmejo (2021) conducted a literature review on accepting international criminal justice, exploring aspects such as who accepts, what is accepted, when acceptance occurs, and what acceptance entails. It also investigated the range of reactions to the performance of international courts and tribunals, the role of politics and politicization, and the dynamics of acceptance (United Nations, 2023).

In comparing the findings of these studies, it is evident that there are differing perspectives on the effectiveness and challenges of the ICC and other international criminal justice mechanisms. While a study by Arsenault (2021) emphasizes the importance of the ICC in addressing breaches of International Criminal Law, others highlight the limitations and challenges faced by the Court and its reliance on cooperation from state parties and the international community. These differing perspectives underscore the complexity of International Criminal Law's legal issues and the need for continued research and analysis.

Rome statute of the International Criminal Court

The Rome Statute is the treaty that established the International Criminal Court (ICC). ICC is a permanent international court that prosecutes individuals for the most serious crimes of

international concern, such as genocide, war crimes, and crimes against humanity (Hassan, 2021). Adopted on July 17, 1998, the statute entered into force on July 1, 2002. It comprises a preamble and 13 parts, and it is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes. As per Adem (2019), the ICC is not a substitute for national courts, and the statute emphasizes the complementarity of the Court with national jurisdictions. The statute also outlines the structure and jurisdiction of the ICC, as well as the rights of suspects and the participation of victims in the court proceedings.

According to Mohammed Alashqar (2023), the Rome Statute, which established the ICC, has been the subject of numerous books and articles, providing insights into the Court's jurisdiction, procedures, and the international criminal procedure investigation phase. Some studies by Abbasi (2023) and Spitka (2023) have focused on the investigation phase, examining the existing law and practice of different **international(ized)** criminal courts and tribunals with regard to the conduct of investigations. Many of the world's major powers are not members, including China, the United States, Russia, India and Egypt. The ICC recognizes Palestine as a member state, while Israel rejects the Court's jurisdiction and does not formally engage with it (United Nations, 2023).

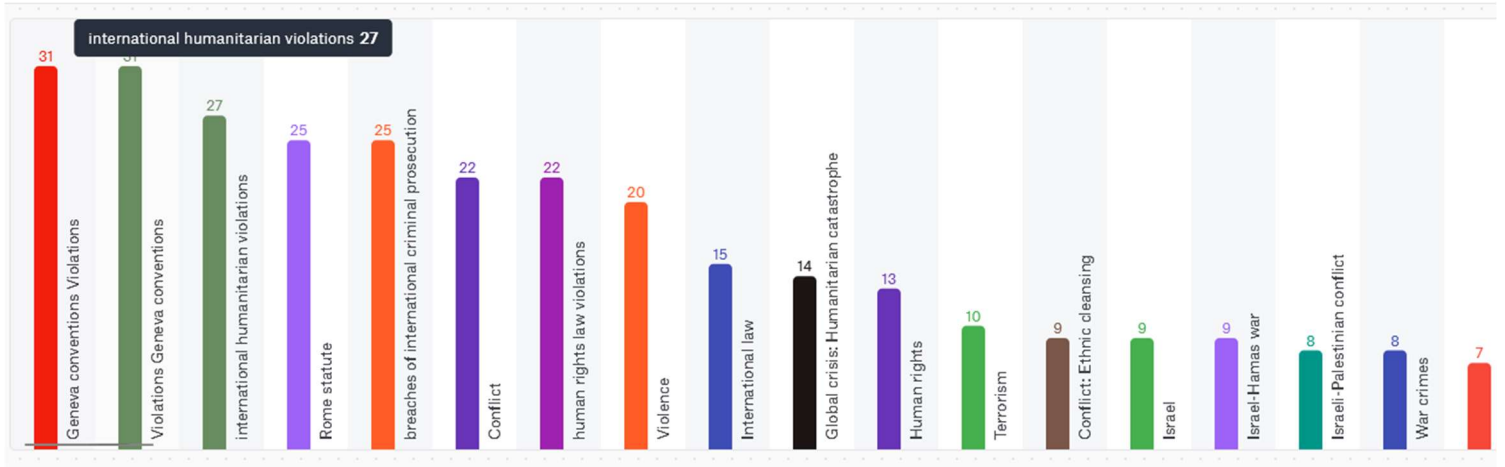
Methodology

This study employs a mixed-methods approach, combining a literature review and discourse analysis to comprehensively evaluate the breach of International Criminal Law by the Israeli military and political establishments during the Israel-Hamas conflict. The research design is structured to provide a robust analysis of the alleged war crimes and violations of International Criminal Law, particularly focusing on actions undertaken by Israeli authorities in the Gaza Strip.

The literature review encompasses a wide range of published materials, including research papers, reports, theses, media reports, and other relevant publications addressing the Israel-Hamas conflict and the alleged breaches of International Criminal Law. The study utilizes the ATLAS.ti qualitative analysis software for discourse analysis. A total of 155 published documents meeting the inclusion criteria are subjected to analysis using ATLAS.ti. These documents are coded automatically using the auto-coding option within the software. The analysis focuses on identifying themes and patterns related to violations of International Criminal Law by Israeli authorities during the conflict. ATLAS.ti is employed for auto-coding to streamline the analysis process. The auto-coding option within ATLAS.ti is utilized to categorize and organize data based on predefined codes related to International Criminal Law, war crimes, and conflict-related stressors. The study identifies and analyzes themes that emerged from the discourse analysis, emphasizing violations of the Geneva Conventions, breaches of the Rome Statutes, and violations of humanitarian laws.

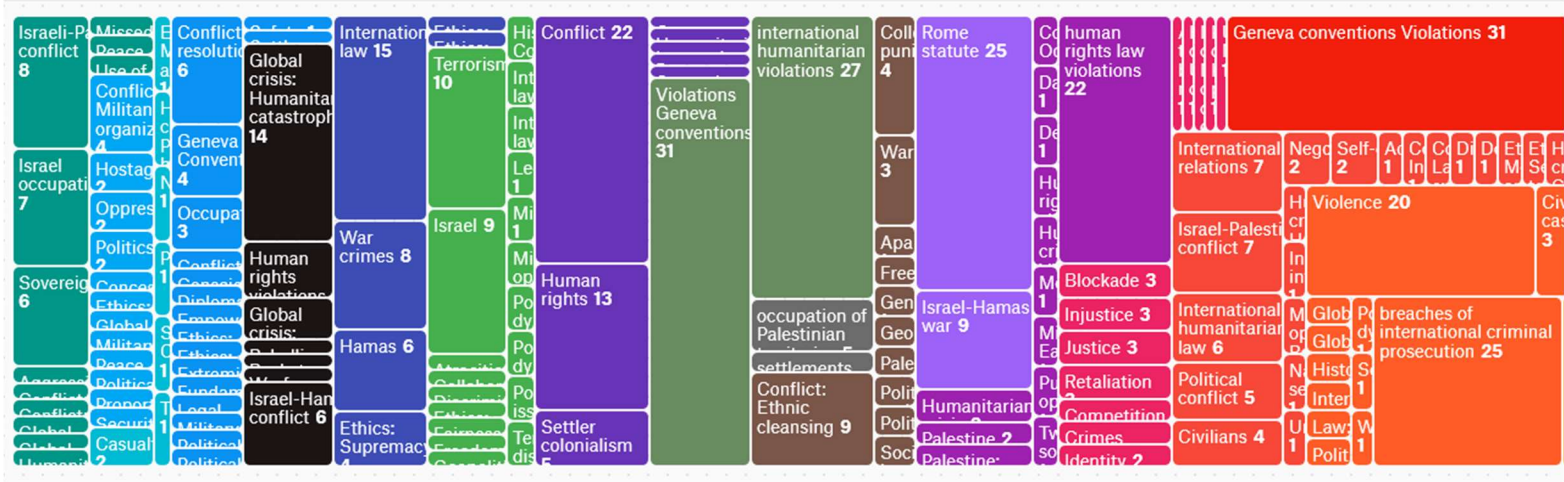
Discussion

This section involves a discussion of results received from ATLAS tool. The discussion also relates to the findings and results of previous studies.



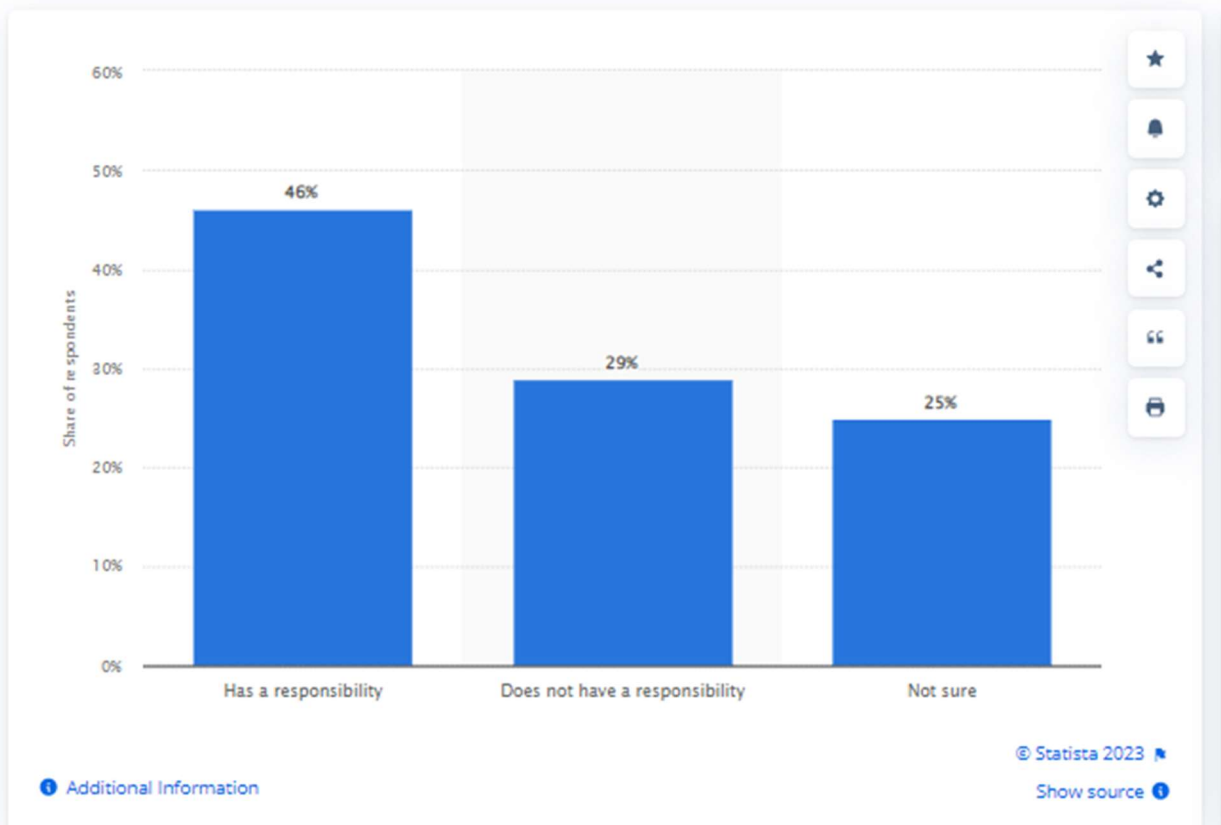
The above results indicate that the top theme results are Geneva Convention violence. Several sources provide insights into violations of the Geneva Conventions in the context of the conflict between Israel and Gaza (Geneva Convention, 2023). A United Nations report by Noah Hefetz (2023) examines the question of the observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank, including Jerusalem. Tucker (2023) also investigates the allegations of annexationist policies by Israel, land expropriations, forced transfers of Palestinians, policies of collective punishment, ill-treatment and torture of detainees, and violations of the right to access an effective remedy for acts violating fundamental rights. Human Rights Watch addresses questions and answers relating to International Humanitarian Law (the laws of war) governing current hostilities between Israel and Hamas and other Palestinian armed groups in Gaza (Human Rights Watch, 2023). Alasttal (2023) found that it focuses on International Humanitarian Law governing the conduct of hostilities and aims to facilitate analysis of the conduct of all parties involved in the conflict to deter violations of the laws of war and encourage accountability for abuses. As per Amaso (2023), Amnesty International discusses Israel's policy of settling its civilians in occupied Palestinian territory and displacing the local population, which contravenes fundamental rules of international law (Amnesty International, 2023). It also highlights Israel's failure to adequately investigate and enforce the law for acts of violence against Palestinians, together with the multiple legal, financial, and procedural barriers faced by Palestinians in accessing the court system (United Nations, 2023).

The results below indicate that the top themes are the applicability of laws, breaches of international laws, and violations of humanitarian laws.



Several studies by Falk (2023) and Amaso (2023) have examined the issue of jurisdiction, admissibility, and applicable law in Gaza. According to Adhikary (2022), the Palestinian Authority has recognized the jurisdiction of the International Criminal Court (ICC) to prosecute and judge the authors and accomplices of acts committed on the territory of Palestine. However, the jurisdictional basis of a criminal tribunal must also be founded on the steadiness of the state, and neither the Palestinian Authority nor the "entity" of Palestine currently qualifies as a state. Asseburg (2022), the ICC has decided that its territorial jurisdiction in the situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank. The ongoing closure of the Gaza Strip restricts Palestinians' right to freely move and choose their residence, which is a violation of international law. The study by Waxman (2022) has also examined whether Israel's de facto and de jure annexation measures, continued settlement, and protracted occupation of the Palestinian territory render the occupation illegal under international law.

Do you think the United States does or does not have a responsibility about the fighting between Israeli forces and Hamas?

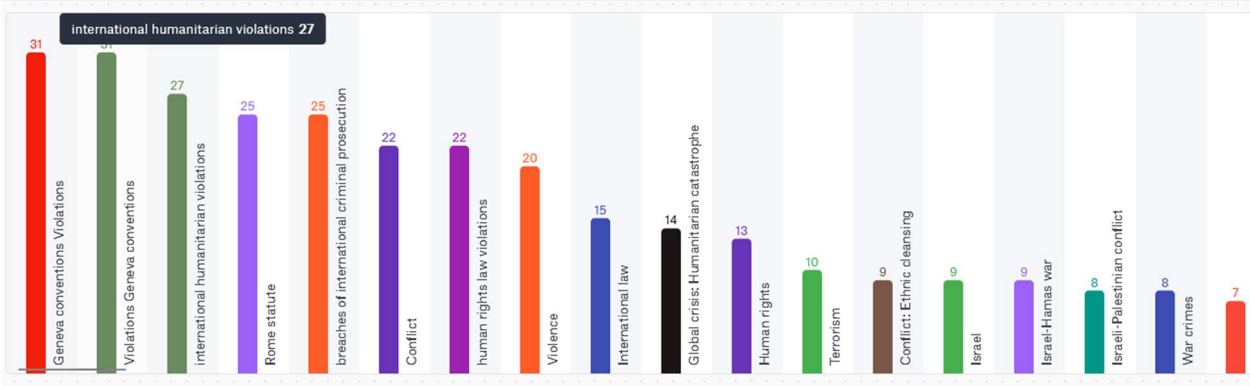


A survey conducted by Statista (2023) indicates that 46% of the respondents believe that the USA also has **responsibility in the fight between Israel forces and Hamas**. The USA clearly and explicitly supports Israel and its forces. A legal analysis by eminent researcher Hernandez (2022) focuses on assessing potential violations of the core rules of International Humanitarian Law applicable in all types of armed conflict and whether certain incidents could potentially constitute international crimes (Ilyas, 2023). It notes that the conduct by armed groups from Gaza may amount to the commission of war crimes under Article 8 of the Rome Statute of the International Criminal Court (David, 2023).

The coding results from the ATLAS tool also illustrate those violations of humanitarian laws, the applicability of criminal laws, human rights violations, and Rome statutes violations. Another source by Krauzman (2022) discusses the jurisdiction debate regarding whether the Prosecutor of the International Criminal Court has the authority to open an investigation into alleged crimes

committed by all parties in Gaza. It highlights the decision by Pre-Trial Chamber I of the International Criminal Court that the Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank.

Margalit (2020) narrated that Amnesty International has also documented evidence of war crimes, as Israeli attacks have resulted in civilian casualties in Gaza. The organization has called for an urgent expedited investigation by the Office of the Prosecutor of the International Criminal Court into evidence of war crimes and other crimes under international law by all parties (Amnesty International, 2023).



Coding results also indicate that international humanitarian violations are also the highest theme that emerged in results. Similarly, various sources, such as Shahshahani (2023), provide insights into the violations of International Humanitarian Law by Israel in the context of the conflict with Gaza and Palestine (Ilyas, 2023). An interview with Professor Ben Saul discusses the application of International Humanitarian Law to both parties in the conflict and the violations likely to be committed (Ben-Meir, 2023). It highlights the obligation of parties to ensure respect for the law and hold their own forces accountable for any violations. It also notes Israel's poor record of holding its forces accountable for violations of International Humanitarian Law. As per Dugard (2023), Amnesty International has documented evidence of war crimes as Israeli attacks have resulted in civilian casualties in Gaza (Amnesty International, 2023). The organization has called for an urgent expedited investigation by the Office of the Prosecutor of the International Criminal Court into evidence of war crimes and other crimes under international law by all parties (Jha, 2022).

Applicable trial, penalties, and enforcement

The recent conflict between Israel and Gaza has raised concerns about potential violations of International Humanitarian Law. The conduct of armed groups from Gaza may amount to the commission of war crimes under Article 8 of the Rome Statute of the International Criminal Court, including willful killings, taking of hostages, outrages upon personal dignity, and intentionally directing attacks against civilians and civilian objects (Karnavas, 2023). The Office of the Prosecutor of the International Criminal Court currently has an investigation into the situation of the State of Palestine, and it is vital that this investigation is urgently expedited to examine alleged war crimes and crimes against humanity by all parties (United Nations, 2023).

In the context of Israeli settlements in occupied Palestinian territory, Amnesty International has highlighted violations of the right to access an effective remedy for acts violating fundamental rights, as well as Israel's failure to adequately investigate and enforce the law for acts of violence against Palestinians (García Iommi, 2023). According to Mohammed Alashqar (2023), the organization has called for the dismantlement of Israel's system of apartheid against Palestinians and for the International Criminal Court's ongoing investigation into the situation of Palestine to receive full support and all necessary resources. The conflict between Israel and Palestinian militants is subject to a complex international system of justice that has emerged since World War II. Internationally accepted rules of armed conflict, governed by the 1949 Geneva Conventions and supplemented by rulings at international war crimes tribunals, apply to all participants in the war, including government forces and organized non-state armed groups (Geneva Convention, 2023). Possible war crimes cited by Human Rights Watch include the deliberate targeting of civilians, indiscriminate rocket attacks, and the taking of civilians as hostages by Palestinian armed groups, as well as Israeli counterstrikes in Gaza that have resulted in an enormous and rising civilian death toll.

Conclusion

In conclusion, the recent conflict between Israel and Gaza has raised serious concerns about potential violations of International Humanitarian Law. The Office of the Prosecutor of the International Criminal Court has an ongoing investigation into the situation of the State of Palestine, and it is essential that this investigation is urgently expedited to examine alleged war crimes and crimes against humanity by all parties. All parties involved in the conflict must

adhere to the rules of armed conflict and ensure accountability for any violations of International Humanitarian Law.

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