

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 5

2024

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Israel-Hamas Conflict: Application and Limitations of International Laws and Treaties

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ABSTRACT

This research paper analyses the applicability of international law in the ongoing conflict between Israel and Hamas who is the current government in Gaza and at the same time also explores the historical root of conflict. The study explains the key principles of international law such as Geneva Conventions, Rome Statute and UN Resolutions to evaluate applicability and effectiveness in mitigating the consequences of the conflict. By scrutinising the agreements and resolutions between Israel and Palestine we will check the extent to which the law has been violated or observed from both the sides. The research paper studies the challenges and difficulties which comes in the way of enforcing international law in such a contentious armed conflict. It also analyses the developing and changing stances of international institutions, developed countries like U.S.A. and a mechanism which can be adopted in promoting peace as well as formulating such laws and norms which makes both the countries binding to it. The analysis will lead to important insights into the ongoing conflict about Israel-Palestine.

Keywords: *Israel – Hamas, International humanitarian law, terrorism, Oslo Accord, Human Rights.*

I. INTRODUCTION

On 7th October, 2023 Hamas (an Islamic Fundamentalist or Islamist Movement) launched a surprise attack on Israel. They attacked the territory of Israel from land, sea and air. The attack took place on a holiday celebrated by Jewish People, 50 years after the 1973 Yom Kippur War which was done by Egypt-Syria. The intelligence failure by Mossad (Israeli Intelligence Agency) will be a subject of question for Israeli Officials. This attack led to the death of 1,400 (estimate) citizens of Israel and around 240 people were taken as hostage. Hamas gunmen attacked the Israel's towns of Sderot, Be'eri and Ofakim (Southern Israel). In retaliation, Prime Minister Benjamin Netanyahu launches military operation and retaliatory airstrikes against Hamas with a complete siege of the coastal areas situated between Israel and Egypt. Afterwards

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Israel launches a ground operation in Gaza which began with an assault in the north, promising to free its every hostage and eradicate Hamas. As a result, more than 29,000 Palestinians have been killed. South Africa argues at the International Court of Justice that Israel is liable for carrying the act of genocide against the Palestinians. It has also been argued that Israel's occupation of land is illegal. Israel rejects such statement as unfair and biased against it. During the 1967 Middle East conflict, Israel gained the areas of the West Bank, East Jerusalem and the Gaza Strip. Whereas the Palestinians demand that all the areas to be an independent state. However, Israel regards the West Bank be a disputable territory whose destiny will be determined through discussions. Israel's annexation of east Jerusalem is not internationally recognised. According to Palestinian Foreign Minister Riyad Maliki, the Israeli occupation is illegal and needs to end immediately.

The Balfour Declaration was declared on 2nd November, 1917. It pledged British assistance in establishing a home belonging to the people from Jewish community in Palestine, a commitment interpreted by British and Zionist authorities as endorsing the formation of a Jewish state encompassing the entirety of Palestine. Once the Balfour declaration was announced, it became obligatory for the British to initiate preparedness of an incoming Jewish Population for Self-government rather than focusing on the already existing Arab Population. Britain faced the Arab Revolt in 1936. However, it was crushed by Britain in 1939. Britain again faced violent revolt from Jews too in the year 1945. In February 1947, Britain put the question of Palestine in-front of United Nations which is an international Organization built to maintain peace and order in the world. U.N Special Committee on Palestine favoured the partition of Palestine comprising 55% of Jews and 42% of Arabs and Jerusalem would be declared as an international zone. The Jews accepted partition but the Arabs rejected it. This led to the first war between Arab and Israel where Israel conquered over approximately 78% of the territory outlined in UNSCOP's plan. Jerusalem was not under international jurisdiction; Israel governed its western part, while Transjordan, later known as Jordan, retained control over the eastern section. The remaining 22% was divided, with Egypt occupying the Gaza Strip, and Jordan possessing and subsequently incorporating the West Bank. The conflict led to around 650-700,000 Palestinians being displaced, primarily due to Israeli expulsions, military actions, and massacres, causing widespread panic and fear among the population. Since then, Israel and the group of Arab countries has been fighting against each other leading to many human rights violations, refugee crisis and displacement of mass population. The war has also lead to the breach of many international law, Conventions and Agreements. Palestinian Liberation Organization (PLO) was created with the help of Egypt in 1964. It wanted to use PLO in order

to control Palestinian nationalists. The PLO formed and adopted the Palestinian National Charter in the year 1968. PLO also carried out terrorist attacks on Israel in order to get international support for the Palestinian cause. They carried out an attack in Munich in which Israeli Athletes were killed. In retaliation, when the war ended Israel started constructing settlements in the various disputed territories. This suffered backlash from the U.N and the international community as they claimed that those settlements are illegal under various international laws. During the summer of 1993 in Washington D.C where two negotiations took place Oslo I (1993) and Oslo II (1995) preliminary discussions between Israelis and Palestinians resulted in a significant breakthrough. Subsequently, Israel and the PLO signed the Declaration of Principles (DOP). The PLO acknowledged Israel's right to exist peacefully and without fear of any act of terror, and supported UNSC Resolution 242. The declaration gave autonomy for Palestinians living in the West Bank and Gaza Strip. The declaration also demands immediate withdrawal of Israel from the West Bank and the Gaza Strip. However, Oslo negotiations persisted from 1993 to 2001 without resulting in a resolution for the two-state conflict.

Hamas, an Islamic Fundamentalist, aimed to bolster the influence of Islam within Palestinian society, refused to acknowledge Israel's existence, and addressed the religious, social welfare, and educational requirements of numerous Palestinians. After the second Intifada, Hamas cooperated on many terrorist attacks. Israel regained control of territories it had previously evacuated during the Oslo years. Hamas secured majority seats in the Palestinian parliament in 2006. Hamas ruled over the Palestinians in Gaza and is a liberation movement as well. Hamas and Israel engaged in significant military conflicts in 2008-09, 2012, and 2014, as well as several smaller skirmishes. Furthermore, there are many questions which arises whenever statehood of Palestine comes into picture. These problems are going to be discussed in this paper.

II. DATA ANALYSIS

1 Is there a connection between the Oslo Accords and the ongoing Israel-Hamas conflict in the context of international law?

In order to analyse the nexus between the Oslo accords and the Present Israel-Hamas Conflict, we have to first ascertain the nature of the parties that entered into the agreement between Israel and the Palestinian Liberation Organisation. The recognition of the agreement between Palestinian Liberation Organisation and Israel by the globe, its implementation and its enforceability thus become important to understand in this context. The Palestinian Liberation Organisation was found in 1964 and it established itself by adopting the Palestinian National

Charter in 1968. Israel refused to recognise Palestinian liberation Organization, however, although 114 nations recognized the Palestinian state, most saw it as a legal aspiration rather than a reality, aiming to affirm the international legitimacy of the Palestinian cause.² It was a body which was made in order to represent the Palestinian people on the international platform and also to govern the Palestinian people. The Charter said that “*The charter identifies the Palestinian people as Arab nationals who were living in Palestine before 1947, regardless of whether they were displaced or remained. It also states that anyone born to a Palestinian father after that date, whether within or outside of Palestine, is considered Palestinian.*”³ Self-determination is one of the rights that PLO wanted to give it to its citizens. However, the United States Of America and Israel refused to recognise the existence of Palestine as a state. Israel and the Palestinian Liberation Organization signed the formal agreement in Washington in the year 1993. This agreement between Israel and the Palestinian Liberation Organization is called as Oslo Accords. To prove that there is a nexus between the failure of Oslo Accords and the present Israel-Hamas conflict, we will first analyse the clauses of the Agreement. They are as follows:

1. A Palestinian self-governing council will be established in the West Bank and Gaza for up to five years.
1. Elections for the Council will occur within nine months of the DOP taking effect, with jurisdiction over the West Bank and Gaza Strip, except for issues reserved for permanent settlement talks.
2. The five-year transition begins with Israeli withdrawal from Jericho and Gaza, transferring authority to the Palestinian Council in areas like education, health, and taxation, with further Israeli redeployment to occur by Council election eve.
3. A Palestinian police force will ensure public order and security in the West Bank and Gaza, while Israel remains responsible for external defence and the security of Israelis in these areas.
4. The interim Council will negotiate a permanent settlement based on UN Resolutions 242⁴ and 338⁵, with talks starting by the third year of the interim period.
5. Permanent status negotiations will address unresolved issues, including Jerusalem,

² Omar M. Dajani, Stalled Between Seasons: The International Legal Status of Palestine during the Interim Period, 26 Denv. J. Intl'l L. & Pol'y. 27, 60-61 (2020).

³ *The Avalon Project: The Palestinian national charter*, LILLIAN GOLDMAN LAW LIBRARY (July 17, 2024, 10:20 AM), https://avalon.law.yale.edu/20th_century/plocov.asp#art5.

⁴ S.C. Res. 242, ¶ 1 (November 22, 1967).

⁵ S.C. Res. 338, ¶ 1 (October 22, 1973).

refugees, settlements, borders, and relations with neighbouring countries.

These are the clauses which was agreed by the two parties, however upon closely examining it can be found that they are either one sided or arbitrary in nature as it has been dictated by the dominating party i.e. the United States and Israel. These clauses make it very evident that the PLO has made greater compromises and it has rather accepted the terms which were given to them by Israel. Moreover, the PLO accepted in the said agreement that they will not commit any acts of terrorism and in doing so they lost the power in the armed struggle and indirectly accepted the fact that they were using terrorist tactics. Furthermore, Palestinians considered eastern part of Jerusalem as their capital. However, while signing the Declaration of Principles the Israeli Prime Minister made it clear that Jerusalem would remain an undivided part of Israel. Many pressing issues that required urgent resolution were left unaddressed. Israel gave no guarantee or assurance about how and who will implement such measures so that the long standing dispute could be solved.⁶ The Oslo Accords were primarily made to provide an amicable environment where both the parties could compromise and settle disputes forever. Also under the UN Resolutions 242 and 338, Israel was supposed to withdraw from the areas that it captured territories during the 1967 war. Nevertheless, the territories were not properly defined and hence it became an issue between Israel and Palestine, Israel built a barrier around the West Bank, despite resistance from the International Court of Justice (ICJ) and the International Criminal Court (ICC).⁷ Due to the delay that was caused by not implementing the Oslo Accords on time, a new Palestinian force took birth which did not believe in peaceful measures to resolve the dispute. Also, the United States of America has supported Israel since the beginning and has often supported Israel indirectly to prevent Palestine in gaining International recognition.⁸

Hamas won the Palestinian Authority parliamentary elections in the year 2006. This victory shocked many nations as it raised serious questions on the future of Israel and Palestine relations. Hamas, which often adopted violent measures for its purpose, rejected the Palestine – Israel Peace process and demanded complete withdrawal of Israeli forces from the Palestinian territories. Following the outbreak of the second intifada in September 2000, the PA's ability to uphold legitimacy and make key decisions on law, order, and the peace process steadily diminished. People understood that PA was not able to meet basic necessities. Israel, on the

⁶ Iffat Malik, ANALYSIS OF THE OSLO ACCORDS, 21 ISSI 134, 137-140 (2001).

⁷ Centre for Preventive Action, *Israeli-Palestine Conflict*, Global Conflict Tracker (Sept. 10, 2024, 11:10 AM), <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>.

⁸ John Quigley, *The Israel-PLO Interim Agreements: Are They Treaties*, 30 Cornell Int'l L.J. 717, 723-724 (1997). [hereinafter "Quigley"]

other hand, showed no intention to follow the agreements of the Oslo Accords. These unfulfilled demands caused Palestinian citizens to lose confidence in the peace process. The Quartet refuses to recognize Hamas unless it renounces the use of violence to achieve its goals. However, Hamas can be recognized as a national liberation movement with limited international legal status.⁹ The Constitution of Hamas is Quran and according to it the Islamic laws stand superior to International law. Many countries dispute this. The peace process could still be restarted and a long ongoing conflict can come to an end if Islamic laws can be used to bring Hamas to the negotiating table as happened in the case of Afghanistan where the Taliban Government operates under the Islamic law.¹⁰ Better implementation strategy and definite period of resolving the dispute should be adopted to bring an end to the long and ongoing conflict. Furthermore, killing of civilians on either side has led to the violation of International Humanitarian law in the region. On the above analysis about the legitimacy of Palestine as a state, the PLO and Hamas it becomes clear that the conflict still persists due to the lack of implementation of the Oslo Accords. The peace process was uneven and biased, favouring stronger nations who gained significant power, while the PLO had to make concessions, highlighting its one-sided nature. Although the present conflict occurred due to a terrorist attack by Hamas which took place on 7th October, 2023 added fuel to the fire in the long ongoing conflict thereby creating a nexus between the Oslo Accords and the present Israel-Hamas conflict.

Professor Quigley argues that a law-based approach favours Palestinians, while limited legal involvement benefits Israel. He advocates for stronger UN and international intervention over U.S.-led bilateralism. The Oslo Accord was signed under the guidance of the United States and Soviet Union and It was expected that the two states would use their influence to ensure both parties' compliance. He further advocates the use of universal international norms to resolve the dispute. Whereas, Professor Bisharat who is a writer on Palestinian law advocates for a Human Rights based approach. He emphasized the role of independent judiciary for the democracy to grow.¹¹ While the perpetrators of the crime should be administered by the application of International Humanitarian law, the victims and the innocent civilians should be protected based on human rights approach. Both sides should prioritize minimizing damage while safeguarding human rights in the region. It's essential to maintain a perfect balance between the two.

2 What are the challenges that come in way of implementing International Law in this

⁹ Amy Chiang, An International and Islamic Perspective of Hamas, 83 Chi.-Kent. L. Rev. 1021, 1031-1032 (2008).

¹⁰ *Taliban are back - what next for Afghanistan?* BBC News (August 31, 2021), <https://www.bbc.com/news/world-asia-49192495>

¹¹ Hiram E. Chodosh, Reflections on Reform: Considering Legal Foundations for Peace and Prosperity in the Middle East, 31 Case W. Res. J. Int'l L. 427, 430-435 (1999).

situation?

In the previous questions, we have observed which international laws have been breached by Israel and Hamas. ICJ which is an international court and recognised by many countries was built through United Nations Charter. The International Criminal Court which has the authority to look into the matters of war crimes is also there. But it is observed that many times, that its enforceability becomes a major issue in implementing any law or holding someone liable for any act. This also gets affected by influential countries who play significant role in formulating laws and diplomatic relations. In this section we are going to observe major problems which comes in way of implementing international Law in the conflict between Israel and Palestine. Hamas took over as a government in Gaza in the year 2007. Israel has imposed severe restrictions on Gaza since then. Both the countries tried to formalise their relations through the Oslo Accords signed in 1990s. It was signed to establish a temporary Palestinian administration in Gaza and the West Bank. The question about Jerusalem was not decided in this accord. These problems of statehood and its recognition from the other nations is a major problem since in order to enforce a law on a particular nation or upholding its rights, it becomes important to acknowledge its existence. There should be a legal authority which enforces law and penalise someone if a particular nation breaks the law. As the thinkers of Realist approach argue. The power of legal rules to work depends on the fear of punishment when they're broken. At the international level, if enforcing these rules is up to individual countries, then how efficient the law works basically depends on how much power each country has to punish others and how much they care to do so. So, if governments don't see negotiated outcomes as beneficial, they won't feel bound or convinced by legal rules. The fear of punishment is pivotal for the enforcement of international law.

The first major problem which hinders the smooth functioning of law is Indeterminacy. The concept of "determinacy" in a rule refers to how clearly it communicates its message, allowing one to understand the essential meaning of the law beyond its language. Determinacy facilitates clarity for countries or individual to whom the law is directed, allowing them to understand more accurately what is required. This clarity is a crucial initial stage towards compliance.¹² Indeterminacy makes a rule so flexible that it becomes easier for a party to find reasons to not comply with it. The Vienna Convention does not specify which rules qualify as jus cogens norms. Different state delegations proposed norms for incorporation into the Vienna Conference, such as the right to self-determination, human rights standards, regulations

¹² Omar M. Dajani, Shadow or Shade? The Roles of International Law in Palestinian-Israeli Peace Talks, 32 *Yale J Int'l L* 62, 110-113 (2007).

regarding humanitarian conduct in war and complete ban against genocide. However, none of these regulations garnered unanimous support from all delegations attending the conference. Even though Article 2(4) of the U.N Charter prohibits the use of force in accordance with international law, Article 51 of the Charter allows the use of force as a means of self-defense. As per the International Law Commission (ILC), the most commonly referenced contenders for the status of jus cogens encompass the entitlement to self - defence. Hamas who is governing the Gaza Strip has been declared as a terrorist organization by the U.S in October 1997. Moreover countries like Israel, Paraguay, Japan, United Kingdom, Canada, Australia and The European Union have also designated Hamas as a terrorist organisation. Therefore, it is also a point of contention if Hamas is a state actor or a non-state actor. The debate between state and non-state actors arises from the wordings of article 51 of the United Nations Charter as it states only armed conflict and it does not explain the actor doing it. There are 3 principles regarding defence in international law i.e. imminence, proportionate and necessity. The ICJ gave contradicting opinions regarding the proportionality of the self-defence. In the Nicaragua v. United States the court acknowledged that the Charter of the United Nations lacks a precise provision stipulating that self-defence should only consists of actions proportional to the armed aggression and essential for its repulsion. On the other hand, in the case of Islamic Republic of Iran v. United States the court held that United States is additionally required to demonstrate that its actions were both essential and proportionate in response to the attack it faced, and the targeted platforms were actually military objectives subject to attack within the framework of self-defence. The principle of proportionality does not mandate that the weapons employed in self-defence must mirror those utilized in the initial attack.¹³ The divergent perspectives evident in distinct cases, the evolving interpretation of law over time, and the intentional flexibility left by legislators collectively contribute to a state of indeterminacy, posing challenges in the enforcement of laws or in arriving at unanimous decisions.

Secondly, there is a failure on the part of the international organizations, international courts and foreign relations. 5 permanent members of the UNSC consists of U.S.A , a close ally of Israel which is also a leading country in the world. The permanent members are given the power to veto any resolution and preventing it to come into force. On October 18, the United States cast its vote against 12 other states, resulting in the defeat of the Security Council's initial resolution for a humanitarian ceasefire. The UN Secretary-General invoked Article 99, which is seldom utilized, to urge for a ceasefire at the Security Council, only to face defeat once more

¹³ V. Upeniece, Conditions for the lawful exercise of the right of self – defence in International Law, 40(1) SHS Web Conf. 1, 2-3 (2018).

due to the veto from the United States. Since only the Security Council holds the power to authorize intervention for conflict resolution, a single member state holds the capability to assess when the UN can intervene to prevent war crimes, crimes against humanity or genocide. However, the U.S has employed its veto authority on nearly 30 occasions to shield Israel from previous UN efforts aimed at halting its aggressions as evidenced by its actions repeatedly over the decade preceding the Camp David summit. As a result, following President Clinton's robust critique of Palestinian negotiators at Camp David, Palestinians began to rely more on legal norms as guiding principles in negotiations, rather than insisting on their agreement prior to advancing further talks.. After that the Palestine side started basing their arguments or demands on political and practical factors. Israel's lack of interest in reaching a consensus also arises out of two reasons: Israel's national security doctrine entails a cautious approach regarding the potential for a peace accord with the Palestinians to completely eradicate security threats from surrounding areas. There's also a hesitation to compromise Israel's capacity to independently defend itself, aiming to prevent sole reliance on external entities for its security. This led to questioning the efficacy of the legal rules. Furthermore, Israel's lack of participation in the ICC grants it immunity from prosecution unless there is a referencel from the Security Council or another state for the court to investigate crimes committed by an Israeli national within that state's territory. Therefore, lack of enforcement agency, differing opinions and interpretation of laws makes it difficult for the law to function. The stronger side Israel commands superiority since it has more territories, international support.

Thirdly, the disputed issue which comes in between the enforcing of the Oslo Accords or any treaty with Palestine is that Israel has often refused to recognise the Palestinian Liberation Organisation, therefore it becomes important to analyse the outcome of agreement between a state and a non-state entity. At first, we analyse the relationship between a state and its component. There can be instance where a state might try to restrict the law into its domestic sphere while the component would like to raise it to an international platform. For example, Tatarstan ,which was a constituent part of the Russia, in 1994 tried to raise its relation with Russia on the international platform. However, Russia wanted to restrict it to the one which is administered by the Russian law. Hence, such kind of agreement acknowledges Tatarstan as a state which is capable of engaging in international relations with other countries but will be prohibited by Russian law if such relation violates the Constitution and international responsibilities of Russia. There is another issue which often arises upon application of international law on the PLO and its recognition by Israel. For understanding this situation we take the agreement between Portugal and the Front for the Liberation of Mozambique

(FRELIMO) in 1974. Where FRELIMO was a non-state party and due to the agreement it gained statehood. Moreover, the United Nations Security Council has also treated the PLO as a state by allowing it to attend its session. Thus, there have been instances where an agreement which is enforceable is concluded between a state and a non-state party.¹⁴

3 What are the changes needed in existing laws to make both the parties (Israel and Hamas) accountable for their actions?

We have explored the breaches of international law in the ongoing conflict between Israel and Hamas (which rules Gaza Strip). We also analysed the challenges that are faced in implementing such laws. This inquiry will thus address the measures that have already been implemented and those that still need to be taken to arrive at a resolution for the longstanding conflict. The UN Security Council issued a formal demand on 25th March, 2024 for an immediate ceasefire between Israel and Hamas, as well as for the immediate and unconditional release of all Israel's hostages. This is an effective and immediate solution to the conflict as it would prevent indiscriminate killing of civilians and will also offset the danger of refugee crisis and famine. Further, in order to prevent any future conflict between the parties, there are certain areas which need to be clearly defined and should be accepted unanimously by every member of the United Nations. This will control any belligerent state's action and will also impose penalties in accordance with international law if any breach or wrong takes place. Subsequent endeavors aimed at attaining a negotiated peace between Palestinians and Israelis must be guided by an understanding of the opportunities presented by legal frameworks, as well as the limitations that have hindered its efficacy in previous instances. Law possesses the capacity to facilitate negotiations through various mechanisms. It can influence the scope of negotiation by setting limits on potential outcomes and establishing defaults, aiding each party in determining its reservation point and evaluating its opponent's credibility. Moreover, it can bridge gaps in agreements, reducing the necessity for detailed negotiations on every aspect of future relations. Firstly, there is a need to give clarity to the rules. Rules and laws should be framed in such a manner that it is uniformly and unanimously accepted by all the member states of the U.N. The development of international laws is pivotal and must be in sync with the changing global landscape with the evolving concepts of state sovereignty, global security which is a slow process. Furthermore, there is a necessity for the laws to be flexible in such a manner that it could be supported by even reluctant governments and ensures that it could include every possible problem, concern or threat. At this point, there has to be a collaborative effort by states

¹⁴ QUIGLEY, *supra* note 6, at 719.

and international institutions to establish a uniform and specific laws which concerns the relevance and consequences of already existing norms in the context of Israel- Palestine situation. There should be a collaborative effort to increase the perceived authority. This could additionally help in imposing sanctions on the parties for not adhering to the norms. For example : according to resolution 242 of UNSC “Israel is required to withdraw from territories occupied in the recent conflict.“ The choice of words used here is debatable, since it does not write “withdraw from the territories“ or “withdraw from all territories“. This leaves a gap in the wording of the resolution which gives Israel the right to either withdraw completely or withdraw partially. Resolution 242 has led to many legal debates. It has been argued by few legal scholars that the missing word “all” and “the” were deliberately left from the provisions so that Israel could control few territories captured in the Arab – Israel war and control the sovereignty. According to R. Lapidoth the language of the resolution 242 is constructed in a way that it is unambiguous and clearly gives authority to Israel. While on the other hand scholars like McHugo denies such claims and argues that it was done intentionally to ensure the freedom to navigate in international waterways within the region. ¹⁵

Secondly, the international courts ICJ and ICC have to take solid and concrete steps to end this dispute. The International court has not passed any judgement regarding fourth Geneva Convention and the dispute related to settlements. It has constrained itself to encourage peace and find a negotiated solution according to the international law. However the court’s advisory opinion on the dispute will have a significant influence when the influential members of the international community come to a consensus regarding their fundamental implications concerning permanent status issues. United states which has been a close ally of Israel can take initiative of formulating reasonable terms in accordance with the international laws, respecting each state’s sovereignty, ensuring justice for all innocent victims who perished in the terrorist attack, ensuring that Israel respects people rights in Gaza Strip and provide them with shelter, safety in accordance with article 49 of the fourth Geneva Convention. Also there should be amendment in the jurisdiction of the ICC which prosecutes persons indulged in committing war crimes as enshrined in article 5 of the Rome statute of the ICC. Israel is not a party to the Rome statute, therefore, ICC lacks the jurisdiction to prosecute any of its national or any crime committed on its territory. Nevertheless, Israel can become ratify the Statute and accept its jurisdiction. However, the current military operation being carried out in Gaza tells a different story. It is clear that Israel has taken the authority of the situation and is going to eliminate

¹⁵ Susan M. Akram & S. Michael Lynk, *The Arab-Israeli Conflict and International Law*, 73-74 (BU Law, Working Paper No. 13-11, 2013).

members of Hamas which is also resulting in civilian casualties. In the year 2021, Israel stated that it would not help in any inquiry conducted by International Criminal Court regarding war crimes in occupying territories since ICC lacks any legal basis or jurisdiction. Because Israel is not a party to the Rome Statute, it becomes problematic to hold it liable for any war crimes. Israel also refused on the basis that it does not recognise Palestine as a sovereign state, although Palestine was given a non – member observer status at the U.N.¹⁶ Israel maintain a strict control over Gaza Strip imposing blockade. Also the laws Of International Criminal Court has to be ammended in such manner that it deals with the death which has been caused as a result of an act of Self-defence. Otherwise, the states could evade laws of the Rome Statue by citing the reason that they were acting in self-defence which is evident in the present Gaza strip where many civilians lost their lives during Israel’s military operation against Hamas.

III. CONCLUSION

The paper examined every international law applicable to the conflict. Both the Israeli Defence Forces and Hamas, the governing organisation in Palestine, have unequivocally engaged in human rights abuses. The assault on Israeli territory conducted by Hamas members on October 7, 2023, and the subsequent retaliation by Israel defence forces, have resulted in the loss of numerous civilian lives. Both parties (Israel and Palestine) signed Oslo accords with the intention of mitigating or eliminating the suffering of displaced civilians. Numerous academics argue that the Oslo agreements were intentionally crafted to enable Israel's exploitation of the West Bank and Gaza. Many questions were unanswered regarding Jewish settlements and the status of East Jerusalem. Since its formation under the Oslo accords, the interim government has persisted and grown more corrupt. Israeli control over the region persists with the imposition of additional restrictions and a blockade. A collaborative and unanimous effort from all nations is urgently required to prevent Israel and Hamas from committing further war crimes. Moreover, in order to administer justice to blameless civilians stranded in the disputed territories, a tribunal may be established. Both parties should negotiate terms for an extended period to bring an end to the conflict and make it peaceful for citizens to live. State of Palestine have to establish a sovereign state with a legally and internationally recognised authority. Hamas as an organization should be entirely dissolved because many countries refrain to negotiate with the government who is directly involved in acts of terrorism. Country like U.S and international organisations should formulate such terms which is agreeable by both the states without leaving

¹⁶ AP, President Abbas raises Palestinian flag for first time at UN, THE HINDU (November 26, 2021, 10:22 PM), <https://www.thehindu.com/news/international/President-Abbas-raises-Palestinian-flag-for-first-time-at-UN/article60226831.ece#>

any ambiguity. Recently, U.S has abstained from voting in U.N.S.C which resulted in approving for resolution calling for an urgent ceasefire in Gaza. As a result, Israel cancelled a planned visit to Washington to discuss its military ground operation in Rafah, where over a million Palestinians have sought refuge. The US has warned that a full-scale attack might give rise to a humanitarian crisis. It is evident that neither Israel nor Hamas is ready for peace negotiations and they are rejecting each other's demand completely. The situation therefore becomes very critical and sensitive since it will impact the life of many people residing in the affected territory and can result into mass death of many innocent lives. It will also lead to a disastrous refugee crisis which could take years to resolve. It is yet to be seen how both the parties manage this sensitive situation and discovers a solution to provide shelter to the displaced civilians from Gaza. The conflict should end as quickly as possible before it takes form a large scale conflict involving many countries.
