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Research Article

War Crimes and Legal Accountability in the 2023 Israel-Gaza Conflict

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ABSTRACT: This research focuses on the October 2023 conflict between Israel and Hamas, analyzing violations of international law committed by both parties under the 1949 Geneva Conventions. Using a qualitative document-based approach, the study investigates actions taken by Israel and Hamas during the first ten days of the conflict. It examines the *jus ad bellum* and *jus in bello* violations, such as Hamas's unprovoked attacks on Israeli civilians and Israel's disproportionate retaliatory strikes in Gaza. Both parties violated the Geneva Conventions: Hamas breached Article 51 by launching attacks without declaring war and targeting civilians. In contrast, Israel's retaliations violated the principle of proportionality by causing excessive civilian harm. Israel's blockade of Gaza also violated humanitarian law, as it denied civilians access to essential goods. The research identifies legal obligations under international law, noting that while Israel is a state party to the Geneva Conventions, Hamas, as a non-state actor, is bound by customary international law. The study concludes that both sides committed war crimes, requiring legal accountability through international mechanisms. The findings contribute to ongoing discussions about the challenges of enforcing international law in asymmetrical conflicts involving state and non-state actors.

KEYWORDS: International law, Justice of war, Israel-Palestine dispute, Use of force.

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I. INTRODUCTION

The conflict between Israel and Hamas has a long and turbulent history, with repeated episodes of violence. A major confrontation occurred in 1948,[1] and the conflict has reignited in recent years, particularly in 2021 and 2023.[2] In October 2023, an attack by Hamas on Israel sparked international controversy,[3] raising questions about the legality of actions taken by both sides and how the global community should respond. This conflict has divided international support, with some countries siding with Israel while others criticize its actions. The United States, for instance, defends Israel, claiming its actions are a form of self-defense,[4] whereas Ireland has shown greater support for the residents of Gaza under Hamas control, with Prime Minister Leo Varadkar criticizing Israeli military actions in Gaza, calling for a ceasefire and increased humanitarian aid for the region.[5]

Scholars have identified violations of international law, particularly against Palestinian rights, as key factors fueling Hamas's resistance. Hamas emerged as a militant faction advocating for Palestinian self-determination in response to Israeli occupation, leading to various conflicts, including Operation Cast Lead (2008) and Operation Pillar of Defense (2012).[6] Diplomatic efforts, such as the "2002 Arab Peace Initiative", offered a potential path toward peace but failed to resolve core issues such as territorial disputes, refugee status, and East Jerusalem.

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1 Liliana-Maria Tivadar, "The Gaza Strip and the Israel-Hamas Conflict: From 2008 until Nowadays" (2021) 58:58 Acta Musei Napocensis Historica; Zahi Zalloua, *Solidarity and the Palestinian Cause: Indigeneity, Blackness, and the Promise of Universality* (London: Bloomsbury Academic, 2023); Yoram Dinstein, *The International Law of Belligerent Occupation* (New York: Cambridge University Press, 2009) at 51.

2 "2021 Israel-Hamas Conflict", (2021), online: *Anti-Defamation League* <https://www.adl.org/resources/glossary-term/2021-israel-hamas-conflict-0>; Verelladevanka Adryamarthanino & Tri Indriawati, "Kronologi Serangan Hamas ke Israel pada Oktober 2023", (2023), online: *Kompas* <https://www.kompas.com/stori/read/2023/10/13/140000879/kronologi-serangan-hamas-ke-israel-pada-oktober-2023>.

3 Natalie Merzougui & Maria Rashed, "Apakah Israel sudah menindaklanjuti putusan Mahkamah Internasional yang memerintahkan cegah genosida di Gaza?", (2024), online: *BBC News Indonesia* <https://www.bbc.com/indonesia/articles/c9v8jwx132yo>.

4 "AS Desak PBB Dukung Israel Bela Diri, Tuntut Iran Setop Pasok Senjata ke Hamas", (2023), online: *VOA Indonesia* <https://www.voaindonesia.com/a/as-desak-pbb-dukung-israel-bela-diri-tuntut-iran-setop-pasok-senjata-ke-hamas-/7321437.html>.

5 Mariamne Everett, "As Israel bombs Gaza, Ireland's enduring support of Palestine gets stronger", (2023), online: *Al Jazeera* <https://www.aljazeera.com/news/2023/11/17/as-israel-bombs-gaza-irelands-enduring-support-of-palestine-gets-stronger>.

6 MT Samuel, "The Israel-Hamas War: Historical Context and International Law" (2023) 30:4 Middle East Policy at 1 & 6.

These unresolved matters have fueled cycles of violence, further exacerbated by Israel's criminalization of non-violent Palestinian resistance and the failure of the international system, which has deepened Palestinian frustration.[7] Legal debates over the use of force and the right to self-defense complicate the situation further, as Israel's actions are often justified under Article 51 of the UN Charter. At the same time, Hamas's tactics are viewed as asymmetric warfare.[8] These elements highlight this conflict's deep political, legal, and historical complexities.

Based on the explanations and previous research mentioned above, the discussion surrounding the Hamas-Israel conflict generally remains focused on its political and historical background, including territorial disputes, diplomatic efforts, and violations of international law before 2023. However, an in-depth evaluation of the most recent conflict in October 2023 has yet to be conducted, particularly regarding violations of international law by both parties under the 1949 Geneva Conventions. This research aims to fill that gap by analyzing the legality of actions by both Israel and Hamas, including alleged violations by both under the Geneva Conventions. Hamas is accused of violating *jus ad bellum* by launching an attack without a declaration of war, while Israel is accused of violating *jus in bello* through disproportionate retaliatory strikes against civilians.

As a country that has ratified the 1949 Geneva Conventions, Israel is obligated to comply with international humanitarian law, particularly regarding the protection of civilians.[9] On the other hand, although Hamas is not a sovereign state but rather an organization acting as a non-state actor involved in the use of armed force in Palestine, its actions are still bound by customary international law norms that regulate conduct in war.[10] Therefore, this research aims to evaluate these violations and examine how the actions of both parties align or deviate from the applicable principles of international law. Furthermore, the study seeks to clarify the interaction between legality and legitimacy in the use of armed force by Israel and Hamas. The primary focus of this research is to answer questions

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7 B Arneson, "The Silenced Voices of Nonviolent Resistance in Palestine", (2024), online: *World Peace Foundation* <https://worldpeacefoundation.org/blog/the-silenced-voices-of-nonviolent-resistance-in-palestine/>.

8 Eric A Heinze, "International Law, Self-Defense, and the Israel-Hamas Conflict" (2024) 54:1 The US Army War Collect Quarterly: Paramaters at 73.

9 Indrianti Alghina Habiba & Ardityo Deva Rafianto, "Violations of Humanitarian Law: Consistence of the Geneva Conventions in The Palestine–Israel War" (2023) 34:2 MANU: Jurnal Pusat Penataran Ilmu dan Bahasa at 26.

10 Renata Mantovani de Lima et al, "The Subtraction of International Humanitary Law: An Analysis through the Lens of the Israel-Hamas Armed Conflict" (2024) 15:2 Beijing Law Review at 1004.

related to international law violations committed by Hamas, violations committed by Israel under *jus in bello*, and how countries and international actors have responded to this conflict. Thus, this study aims to provide a deeper understanding of the legal violations and legitimacy underlying the military actions of both sides in the October 2023 conflict.

II. METHODOLOGY

This research employs a qualitative document-based approach to examine the armed conflict between Israel and Hamas during the first ten days of October 2023. Although the conflict was brief, it had a significant impact, particularly concerning violations of international law and its effects on civilians. The study analyzes the actions of both parties based on international law, utilizing primary sources such as the 1945 UN Charter, the 1949 Geneva Conventions, and the 1977 Additional Protocols to assess the legality of using armed force. The data collected includes reports from various online media, both written and visual, from diverse sources such as books, academic journals, and others. Data collection focused on events occurring between October 7 and 16, 2023, using the keyword "2023 Israel-Hamas Conflict" to identify factual reports regarding the use of armed force. Data analysis was conducted in three stages: data reduction, presentation of data in chronological form, and verification through inductive analysis based on international law. This technique allows for the identification of violations and the legitimacy of the actions taken by both parties.

III. INTERNATIONAL LEGALITY IN GOVERNING THE ISRAEL-NATION BRANDING

A. International Law

International legal scholars hold various perspectives on the nature and application of international law in armed conflicts. Riyanto views international law as a social responsibility that exists independently within a system of norms governing relations between states.[11] On the other hand, Zelin emphasizes that

[11] Sigit Riyanto, "Kedaulatan Negara dalam Kerangka Hukum Internasional Kontemporer" (2012) 1:3 Yustisia at 10 & 12.

international law constitutes a new regulatory framework distinct from national law, setting globally binding provisions. Knaack highlights the rapid evolution of international law, which is closely linked to global coordination and the enforcement of rules by member states.[12] Witzleb adds that international law has a contractual nature, aimed at preventing human suffering and injustice by offering a balance between legal certainty and flexibility, particularly in situations of social instability.[13] There is a consensus that international law is formed through agreements between states to achieve global stability.

However, in the context of the Hamas-Israel conflict, the complex nature of international law becomes more apparent. International law not only regulates interactions between states but also encompasses non-state actors such as Hamas.[14] The application of international law in this conflict involves various dimensions, such as *jus ad bellum* (the law governing the initiation of war) and *jus in bello* (the law governing the conduct of war). Israel, as a sovereign state, is bound by obligations to adhere to international humanitarian law under the 1949 Geneva Conventions, while Hamas, as a non-state actor, although not recognized as a state, is still bound by customary international law in armed conflicts.[15] This presents challenges in the equitable application of international law, as state and non-state actors are treated differently in certain respects.

For instance, in the case of attacks on civilians during the October 2023 conflict, Israel was accused of violating *jus in bello*, particularly about the principle of proportionality as outlined in Additional Protocol I of the 1977 Geneva Conventions. Under international law, Israel is required to distinguish between legitimate military targets and civilians and minimize harm to civilians. However, Israel's actions are often regarded as disproportionate due to the significant civilian casualties in Gaza.[16] This has sparked debates about the extent to which

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12 Wang Zelin, "Legal changes and issues related to Northwest Passage navigation following the entry into force of the Polar Code" (2022) Chinese Journal of Polar Research at 486-487.

13 *Ibid.*

14 Annyssa Bellal, "What Are 'Armed Non-State Actors'? A Legal and Semantic Approach" in Ezequiel Heffes, Marcos D Kotlik & Manuel J Ventura, eds, *International Humanitarian Law and Non-State Actors: Debates, Law and Practice* (The Hague: T.M.C. Asser Press, 2020) at 21.

15 Habiba & Rafianto, *supra* note 9; Lima et al, de Lima et al, *supra* note 10.

16 Aidatul Fitriyah, "Pakar Hukum Humaniter Internasional UNAIR Sebut Tindakan Israel Merupakan Crime Against Humanity", (2023), online: *Universitas Airlangga* <https://unair.ac.id/pakar-hukum-humaniter-internasional-unair-sebut-tindakan-israel-merupakan-crime-against-humanity/>.

Israel can employ military force without violating the principles of civilian protection under international humanitarian law.

Conversely, Hamas, as a non-state actor, also violates international law by conducting indiscriminate attacks that do not differentiate between military and civilian targets, which breaches the fundamental principles of the laws of war. Hamas' rocket attacks in October 2023, targeting Israeli civilian areas, are considered violations of *jus in bello* as they directly target civilians. This demonstrates that both state and non-state actors in this conflict are breaching international law, raising further questions about how the law can be effectively enforced on both sides.[17]

Foysal highlights two fundamental principles of international law relevant to this conflict: justice and accountability.[18] The existence of accountability within international law becomes a challenge in the case of Hamas-Israel, especially due to the differences in how the law is applied to states and non-state groups. Accountability for violations by non-state actors like Hamas is often more difficult to enforce compared to state actors like Israel, which is under the direct scrutiny of international institutions. For example, Israel can be prosecuted in the International Criminal Court (ICC) for alleged human rights violations and war crimes, but Hamas' status in the international order, not being recognized as a state, presents legal obstacles to equal accountability.[19]

Zaytseva distinguishes between two forms of legal justice applicable to this conflict: "*justitia*," which focuses on strict adherence to the law, and "*aequitas*," which tempers the law with compassion.[20] In the context of the Hamas-Israel conflict, the application of justice often depends on political and ethical perspectives, not solely on legal provisions. For instance, countries that support either Israel or Palestine do so based on moral and historical arguments, not just

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17 Shmuel P Reis & Hedy S Wald, "The Hamas Massacre of Oct 7, 2023, and Its Aftermath: Medical Crimes and the Lancet Commission Report on Medicine, Nazism, and the Holocaust" (2024) 13:1 Israel Journal of Health Policy Research at 3-4.

18 Quazi Omar Foysal, *A Tale of Two International Law Principles: Ensuring Justice an Accountability for the Rohingya* (London: Routledge, 2022) at 73.

19 Pnina Sharvit Baruch, "Misusing the Crime of Genocide in the Israel-Hamas Conflict", (2024), online: *ICC Forum* <https://iccforum.com/israel-and-hamas>.

20 *Ibid*; Arina Zaytseva, "Flesh and Blood vs. Rigor of Justice: The Concepts of Justitia and Aequitas in "Processus Satanae Contra Genus Humanum" (2022) 6:4 Filosofiya: Zhurnal Vysshey Shkoly Ekonomiki at 118-119.

the legality of military actions.[21] This complicates the application of international law on the ground, as the standards of justice applied are not always uniform. In the case of the Israeli-Palestinian conflict, the implementation of international law becomes complex, as it involves normative principles and political and ethical dynamics that influence legal interpretations.

B. Use of Force and The Justice of War

Article 2(4) of the UN Charter mandates that all states refrain from using force against the territorial integrity of other states, except under certain conditions, such as self-defense.[22] However, when armed force is employed, the principles of just war, governed by international law, come into effect, including the norms outlined in the 1949 Geneva Conventions and their additional protocols. The Geneva Conventions regulate the protection of civilians, wounded combatants, and detainees during armed conflicts, and establish limitations on the use of force applicable in such conflicts.[23]

In the context of the Israel-Hamas conflict, the Geneva Conventions play a crucial role in regulating the conduct of both parties, whether as a state or as a non-state actor.[24] For instance, Israel, as a state party that has ratified the Geneva Conventions, is obligated to adhere to the principles of *jus in bello* (laws of war), which include prohibitions on disproportionate attacks, protections for civilians, and the obligation to distinguish between legitimate military targets and non-combatants. Violations of these principles, such as targeting civilians or civilian infrastructure without a legitimate military justification, are considered war crimes under the Geneva Conventions.[25]

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21 Michal Ben-Josef Hirsch, "Historical Acknowledgment as an Early Conflict Negotiation Strategy: A Feasibility Study of Israel/Palestine" (2021) 37:2 Negotiation Journal at 173 & 175.

22 Ka Lok Yip, "To Call a Spade a Spade: Use of Force Depriving a People of Their Right to Self-Determination as a Violation of Jus Contra Bellum" (2024) 11:1–2 Journal on the Use of Force and International Law at 167.

23 Waldemar A Solf, "Protection of Civilians Against the Effects of Hostilities Under Customary International Law and Under Protocol" in *The Conduct of Hostilities in International Humanitarian Law* (London: Routledge, 2023) at 3.

24 Marbel Diderik, "The Examining Counter-Colonial Criminology's Impact on the Israel-Hamas War: An Analysis of Crimes Against Humanity and International Humanitarian Law" (2024) 2 The Annual Review of Criminal Justice Studies at 309 & 311.

25 David J Scheffer, "What International Law Has to Say About the Israel-Hamas War", (2023), online: *Council on Foreign Relations* <https://www.cfr.org/article/what-international-law-has-say-about-israel-hamas-war>; Ryan Goodman, Michael W Meier & Tess Bridgeman, "Expert Guidance: Law of Armed Conflict in the Israel-Hamas War", (2023), online: *Just Security* <https://www.justsecurity.org/89489/expert-guidance-law-of-armed-conflict-in-the-israel-hamas-war/>.

McMahan emphasizes that justice in war (*jus in bello*) gains critical attention when combined with the principles of the UN Charter and the Geneva Conventions.[26] For example, in the Israel-Hamas conflict, Israel's retaliatory strikes that result in significant civilian harm may be judged to violate Article 51 of Additional Protocol I of the 1977 Geneva Conventions, which requires military actions to minimize civilian casualties and avoid excessive damage to civilian infrastructure.[27] This principle of proportionality is a cornerstone of *jus in bello* and serves as a standard for evaluating whether using force is justified under international law.

On the other hand, Hamas, although not a sovereign state and therefore not directly bound by state obligations under the Geneva Conventions, is still governed by customary international law, which demands the protection of civilians during armed conflicts. Hamas' rocket attacks targeting Israeli civilian areas violate the fundamental principles of the Geneva Conventions, which prohibit attacks on civilians and civilian infrastructure that lack military value. Therefore, Hamas can also be considered to have violated *jus in bello*, as they fail to distinguish between legitimate military targets and non-combatants in their military operations.

Brian Orend explains the two main pillars of just war: *jus ad bellum* (the law concerning the initiation of war) and *jus in bello* (the law governing conduct during war).[28] In this context, Israel claims self-defense under *jus ad bellum*, based on Article 51 of the UN Charter, which permits the use of armed force if the state is under an armed attack.[29] However, while Israel may claim justification under *jus ad bellum* for initiating military action, subsequent disproportionate actions involving attacks on civilians may violate *jus in bello*, as regulated by the Geneva Conventions. Thus, even if a state has a legitimate reason to start a war, its actions during the war must remain subject to the limitations imposed by international law, including the protection of non-combatants.

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[26] Jeff McMahan, "Rethinking the 'Just War,' Part 1 and Part 2", *The New York Times* (2012) at 2-3.

[27] Anita Nwotite, "The 11 Days Gaza Airstrikes by Israel: Its Legality in View of the Protection of Children in Humanitarian Law" (2021) 2:3 Law and Social Justice Review at 50 & 52.

[28] Brian Orend, "Justice after War" (2002) 16:1 Ethics and International Affairs at 43-44.

[29] Khairisa Ferida, "Menlu Iran: Serangan ke Israel Adalah Pembelaan Diri Berdasarkan Pasal 51 Piagam PBB", (2024), online: *Liputan 6* <https://www.liputan6.com/global/read/5720052/menlu-iran-serangan-ke-israel-adalah-pembelaan-diri-berdasarkan-pasal-51-piagam-pbb>.

O'Meara emphasizes the importance of the principles of military necessity and proportionality in assessing self-defense claims under *jus ad bellum*.[30] Although Israel claims legitimate grounds to defend itself from Hamas attacks, military actions must not exceed the limits necessary to achieve military objectives.[31] This means that Israel's retaliatory strikes targeting civilian infrastructure and resulting in high civilian casualties may be deemed inconsistent with the principle of proportionality outlined in the Geneva Conventions.

Ultimately, the concept of just war, as governed by international law, depends on the application of the principles of justice in initiating war (*jus ad bellum*) and conduct during war (*jus in bello*), both of which are regulated by the Geneva Conventions and the UN Charter. The actions of both Israel and Hamas during this conflict must be evaluated according to applicable international legal standards to ensure that violations of the laws of war are accountable and that the protection of civilians remains a top priority in armed conflict.

C. Israel-Hamas Conflict

The conflict between Israel and Hamas has a long history, originating from tensions in the region of Palestine, which now includes Israel and the Palestinian territories, such as the Gaza Strip and the West Bank.[32] Hamas, founded in 1987 as a branch of Egypt's Muslim Brotherhood, emerged as a political and military force opposing the existence of Israel. It defines itself as a resistance movement striving to liberate Palestine from Israeli occupation. Hamas's role in the conflict significantly evolved after it seized control of the Gaza Strip in 2007.[33] It is distinct from the Palestinian Authority (PA), which governs the West Bank. While the PA, led by the more moderate Fatah political organization, adopts a less confrontational approach, Hamas pursues a more militant stance toward

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30 Chris O'Meara, "February 2021 American Airstrikes in Syria: Necessary and Proportionate Acts of Self-Defence or Unlawful Armed Reprisals?" (2022) 9:1 Journal on the Use of Force and International Law at 80-81.

31 Martin Sherman, Daniel Pipes & Efraim Inbar, "Is Disarming Hamas Israel's Best Policy?", (2023), online: *Middle East Forum* <https://www.meforum.org/middle-east-quarterly/is-disarming-hamas-israel-best-policy>.

32 Mirela Atanasiu, "Multilateral Conflicts of Palestine–History, Present and Trends" (2021) 79:2 Strategic Impact at 56 & 58.

33 Nasir Faeq & Diego Jahnata, "The Historical Antecedents of Hamas" (2020) 3:3 International Journal of Social Science Research and Review at 29 & 31.

Israel, frequently using violence, including rocket attacks and suicide bombings, as tactics against Israeli forces.[34]

Based on the explanation above, one of the key questions arises: can the Israel-Hamas conflict be classified as an international or internal armed conflict? Under International Humanitarian Law (IHL), an international armed conflict involves at least two sovereign states,[35] while a non-international or internal armed conflict occurs between a state and non-state actors within its borders.[36] At first glance, this conflict might appear as an internal one between Israel and the non-state group Hamas. However, several factors make it more appropriate to categorize this conflict as international.

First, Hamas has developed into a political and military actor that holds significant control over the Gaza Strip. Although Hamas is not recognized as a state, it operates a de facto government that governs Gaza, formulates domestic and international policies, and establishes relations with other countries, including Iran and Qatar, which provide financial and military support.[37] The involvement of foreign states in supporting Hamas strengthens the international dimension of this conflict.

Second, Israel is a sovereign state directly engaged in the conflict. The attacks launched by Hamas against Israeli territory, including rocket strikes and border infiltrations, have triggered military responses from the Israeli government, thereby broadening the scope of the conflict to involve other international actors.[38] Third, international intervention, including by the United Nations, underscores that this conflict cannot be viewed solely as a domestic issue. UN Security Council resolutions, such as Resolution 1860, which called for a ceasefire in Gaza, highlight the necessity of a resolution involving international actors.[39]

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34 Buğra Sari, "Hamas, the Islamic Wing of Palestinian Resistance: Its Roots, Characteristics, and Way of Politics" (2020) 25:97 Liberal Düşünce Dergisi at 150 & 152.

35 Gary D Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge: Cambridge University Press, 2021) at 206 & 289.

36 Yoram Dinstein, *Non-International Armed Conflicts in International Law* (Cambridge: Cambridge University Press, 2021) at 19 & 21.

37 Kali Robinson, "What Is Hamas?", (2024), online: *Council on Foreign Relations* <https://www.cfr.org/backgrounder/what-hamas>.

38 Omer Dostri, "Hamas's October 2023 Attack on Israel" (2023) Military Review at 4 & 6.

39 Glenn E Perry, "Israel and Palestine" in *Government and Politics of the Contemporary Middle East*, 3rd ed ed (Routledge, 2023) at 255.

Sanctions imposed on the parties involved and mediation efforts by countries such as Egypt and Qatar also demonstrate that the Israel-Hamas conflict has implications beyond the domestic borders of Israel and Palestine.

On the other hand, Hamas has employed various tactics in its struggle against Israel, including rocket attacks, digging underground tunnels, and suicide bombings. One of Hamas's main strategies is launching rocket attacks from the Gaza Strip into Israeli territory, which has triggered military responses from Israel. The Iron Dome, Israel's air defense system, has successfully intercepted many of these rocket attacks, but the strikes have still caused casualties and infrastructure damage in Israel.[40] Meanwhile, Israel has responded to Hamas's attacks with large-scale military operations targeting Hamas's military infrastructure in Gaza, including weapons factories, underground tunnels, and Hamas headquarters.[41] However, these Israeli military operations have caused significant civilian casualties, which have increased international criticism of Israel's actions and complicated diplomatic efforts to achieve peace.[42]

An important aspect of the Israel-Hamas war dynamics is the use of communication strategies by both sides. Hamas frequently uses international media to frame itself as the victim of Israeli aggression,[43] while Israel seeks to portray its military actions as legitimate efforts to defend itself against terrorist attacks.[44] This narrative war is as crucial as the physical conflict on the ground, as both sides aim to win sympathy and support from the international community.

Efforts to resolve the conflict between Israel and Hamas have been ongoing for decades, but no comprehensive solution has been reached. Several proposed approaches include diplomatic channels and international law. Pesik suggests a

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40 Sebastian SEIBT, "How Hamas's military strategy against Israel is evolving in southern Gaza", (2023), online: *France 24* <https://www.france24.com/en/middle-east/20231205-how-hamas-s-military-strategy-against-israel-is-evolving-in-southern-gaza>.

41 Rajendra Kumar Bera, "Israel Responds to Hamas' Attack" (2024) SSRN at 8 & 10.

42 Amir Khorram-Manesh et al, "Estimating the Number of Civilian Casualties in Modern Armed Conflicts–A Systematic Review" (2021) 9 Front Public Health at 8 & 9.

43 Moh Zawawi et al, "Framing of Hamas Attacks on Israel in Al-Jazeera and BBCCoverage | Request PDF" (2024) 8:1 Eralingua Jurnal Pendidikan Bahasa Asing dan Sastra at 81.

44 Mike Corder & Raf Casert, "Israel rejects genocide charges, claims 'legitimate' self defense at United Nations' top court", (2024), online: *PBS News* <https://www.pbs.org/newshour/world/israel-rejects-genocide-charges-claims-legitimate-self-defense-at-united-nations-top-court>.

normative approach to resolving the Israel-Hamas conflict, emphasizing two main actions: first, utilizing political and diplomatic channels for international dispute resolution, and second, enforcing international law based on the UN Charter. Pesik also highlights the importance of involving the UN Security Council in stopping the conflict, including imposing international sanctions on the parties involved. Measures such as trade embargos, economic sanctions, communication disruptions, and cutting diplomatic ties have been proposed as tools to pressure both sides back to the negotiating table.[45]

Meanwhile, Wirajaya argues that the best solution to this conflict lies in the implementation of UN Security Council Resolution 181, which calls for the partition of the territory between Israel and an Arab state. Although this resolution has not been fully implemented, Wirajaya believes that it represents a fair solution that could facilitate diplomatic reconciliation in the region. He also emphasizes the role of the UN as a peacekeeper in facilitating negotiations between Israel and Hamas.[46] However, thus far, diplomatic efforts have not succeeded in ending this prolonged conflict. One of the primary reasons is the deep ideological divide between Israel and Hamas. Israel demands full recognition of its right to exist as a Jewish state,[47] while Hamas refuses to recognize Israel and remains determined to continue its fight until the land of Palestine is fully "liberated".[48] These differences make it difficult to realize proposed solutions from both sides.

Additionally, beyond the involvement of the UN, several foreign countries also play important roles in this conflict. Iran is one of Hamas's key supporters, providing financial and military aid to the organization.[49] On the other hand, the United States is Israel's main ally, often offering significant diplomatic, military, and economic support to the Israeli government.[50] Countries like Egypt and

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45 Lady Afny Surya Pesik, "Penerapan Hukum Internasional dalam Menyelesaikan Sengketa Internasional Israel dan Palestina" (2018) 6:10 Lex Privatum at 74-75.

46 Armando Christofel Wirajaya, "Penyelesaian Sengketa Palestina dan Israel Menurut Hukum Internasional (Studi Kasus Perampasan Wilayah Palestina di Israel)" (2020) 8:4 Lex et Societatis at 46 & 48.

47 Diana Buttu, "Behind Israel's Demand for Recognition as a Jewish State" (2014) 43:3 Journal of Palestine Studies at 42 & 45.

48 Daniel Byman, "A War They Both Are Losing: Israel, Hamas and the Plight of Gaza" (2024) 66:3 Survival at 67.

49 Ali Abo Rezeg, "Understanding Iran-Hamas Relations from a Defensive Neo-Realist Approach" (2020) 4:2 Iran Çalışmaları Dergisi at 385 & 388.

50 James Petras, *The Power of Israel in the United States, Part 1: Zionist Power in America* (Los Angeles: SCB Distributors, 2011) at 2.

Qatar have also played crucial roles as mediators in the Israel-Hamas conflict.[51] Egypt has repeatedly hosted ceasefire talks between the two sides,[52] while Qatar has frequently provided humanitarian aid to Gaza's residents affected by the conflict.[53] The involvement of these nations illustrates that the Israel-Hamas conflict involves more than just the two primary actors, but also a complex network of international actors with vested interests in the region.

Thus, the armed conflict between Israel and Hamas is a clear example of how a local conflict can escalate into an international one involving various global actors. While this conflict is often viewed as an internal issue of Israel, its nature—engaging non-state actors like Hamas and the involvement of foreign countries—makes it more accurately classified as an international armed conflict. With its long historical background, military tactics involving rocket attacks and large-scale military operations, and diplomatic resolution efforts through the UN and other international actors, this conflict seems far from over. Diplomatic efforts involving the international community may offer a solution, but as long as the ideological differences between Israel and Hamas persist, lasting peace remains a difficult challenge to achieve.

IV. HAMAS' VIOLATIONS OF INTERNATIONAL LAW

While the legal justifications for using armed forces in 2023 remain contested, both parties were found to have violated international law. Regardless of the war's legality, the author asserts that both sides committed infractions. Hamas was demonstrably in breach of both *jus ad bellum* (law of aggression) and *jus in bello* (humanitarian law), while Israel demonstrably violated all principles of *jus in bello*.

A. Hamas's Violations of International Law

On Saturday, October 7, 2023, the military attack by Hamas constituted a violation of international law, encompassing the crime of aggression and war

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[51] Tamer Qarmout, "Predictable in Their Failure: An Analysis of Mediation Efforts to End the Palestinian Split" (2024) 31:3 International Peacekeeping at 288-289.

[52] "Hamas Dijadwalkan ke Mesir untuk Pembicaraan Gencatan Senjata", (2024), online: *VOA Indonesia* <https://www.voaindonesia.com/a/hamas-dijadwalkan-ke-mesir-untuk-pembicaraan-gencatan-senjata/7589113.html>.

[53] "Qatar gelontorkan bantuan kemanusiaan USD50 juta ke Gaza", (2023), online: *AA* <https://www.aa.com.tr/id/dunia/qatar-gelontorkan-bantuan-kemanusiaan-usd50-juta-ke-gaza/3082154>.

crimes. Hamas launched an unprovoked attack that involved air bombings and ground assaults in the border region of Israel,[54] violating the principles of *jus ad bellum*. The attack resulted in multiple serious breaches of international humanitarian law, particularly the rules outlined in the 1949 Geneva Conventions and commentary from the International Committee of the Red Cross (ICRC). The Geneva Conventions and Additional Protocol I clearly emphasize the protection of civilians in international armed conflicts. Article 51(2) of Additional Protocol I prohibits attacks against civilians or civilian objects.[55] In this context, Hamas's targeting of civilians, including the attack on the Supernova music festival that resulted in approximately 260 deaths, clearly violates these provisions.[56] The ICRC has reaffirmed that actions deliberately targeting civilians or using disproportionate force against them qualify as war crimes under international law.[57]

Additionally, the capture and hostage-taking of civilians by Hamas, including children and elderly individuals, [58] contradict Article 3 of the Geneva Conventions, which stipulates that "civilians shall be protected from all forms of violence to life and person," and Article 34 of the Fourth Geneva Convention, which prohibits the taking of hostages. The ICRC has emphasized that hostage-taking is a grave breach that cannot be justified under any circumstances.[59]

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54 "HRW: Hamas Lakukan 'Ratusan' Kejahatan Perang pada Serangan 7 Oktober", (2024), online: *VOA Indonesia* <https://www.voaindonesia.com/a/hrw-hamas-lakukan-ratusan-kejahatan-perang-pada-serangan-7-oktober/7701580.html>.

55 Solf, *supra* note 23.

56 Sean Seddon, Joshua Cheetham & Benedict Garman, "Israel-Palestina: Kronologi serangan terhadap festival musik di Israel, berdasarkan bukti video dan foto", (2023), online: *BBC News Indonesia* <https://www.bbc.com/indonesia/articles/cz7xyz64ejpo>.

57 "Frequently asked questions on the rules of war", (2023), online: *International Committee of the Red Cross* <https://www.icrc.org/en/document/ihl-rules-of-war-FAQ-Geneva-Conventions>.

58 Peter Saidel, Summer Said & Anat Peled, "Hamas Took More Than 200 Hostages From Israel. Here's What We Know.", (2025), online: *WSJ* <https://www.wsj.com/world/middle-east/hamas-hostages-israel-gaza-41432124>.

59 "Rule 96 -The Taking Hostages is Prohibited", online: *International Committee of the Red Cross* <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule96>.

Below is a detailed table outlining the specific violations committed by Hamas.

Table 1. Forms of Hamas's Violations

Date	**Events**	**Form of violations**	**Source**
October 7, 2023 (Saturday morning)	Attacks by air (5,000 rockets) and land on the Israel border area	*Jus ad bellum*: a. Passing through the territory of Israel b. Initiating use of armed force	https://www.aljazeera.com/news/2023/10/7/palestinian-group-Hamas-launches-surprise-attack-on-Israel-what-to-know
October 7, 2023	Attack carried out suddenly without any declaration	*Jus ad bellum:* No declaration of war	https://reliefweb.int/report/occupied-palestinian-territory/fact-sheet-Israel-and-palestine-conflict-9-october-2023
October 7, 2023	Attack on civilians at Supernova music festival (reportedly 260 killed)	*Jus in bello:* Attacks on non-military targets	https://www.bbc.com/news/world-middle-east-67047034
October 8, 2023	Israel military reports 1,100 casualties from Hamas attack, including civilians and foreigners	*Jus in bello:* Civilian casualties	https://www.theguardian.com/world/live/2023/oct/08/Israel-Hamas-war-live-updates-palestinian-attack-october-2023-gaza-conflict-hostages-latest-news

October 9, 2023	Detainment of dozens of people, including parents and children (around 199)	*Jus in bello:* Capturing civilians (including the elderly, and children)	https://www.aljazeera.com/news/liveblog/2023/10/9/Israel-Hamas-war-live-news-Israel-orders-complete-siege-of-gaza-strip
October 11, 2023	Firing hundreds of rockets into Ashkelon in "response to civilian displacement in Gaza	*Jus in bello:* Indiscriminate attacks (failure to distinguish between civilian and military objects)	https://www.youtube.com/watch?v=aQIWFW0RUUE&list=PL6XRrncXkMaU55GiCvv416NR2qBD_xbmf&index=16

Table 1 highlights three key aspects of the violations of *jus ad bellum* committed by Hamas. First, Hamas engaged in the crime of aggression through its aggressive attacks on Israeli territory without legitimate grounds for self-defense or an official declaration of war. This act contravenes Article 2(4) of the UN Charter, which explicitly prohibits the use of military force except in cases of self-defense or with a mandate from the UN Security Council.

Furthermore, violations of *jus in bello*, which encompasses the rules governing conduct during armed conflict, are also evident in Hamas's actions. For example, the attack on civilians at the Supernova music festival breaches the principle of distinction as outlined in Article 48 of Additional Protocol I to the Geneva Conventions, which requires combatants to always differentiate between military and non-military targets. The ICRC, in its commentary, also emphasizes that attacks on civilians or civilian objects are strictly prohibited, regardless of battlefield conditions. Additionally, the rocket attacks launched by Hamas on Ashkelon on October 11, 2023, in response to the evacuation of civilians from Gaza, violate the principle of proportionality as articulated in Article 51(5)(b) of Additional Protocol I, which prohibits attacks likely to cause civilian casualties or

damage to civilian objects that are disproportionate to the anticipated military advantage.

In conclusion, the explanation above reinforces the claim that Hamas's actions violate various provisions of the Geneva Conventions and international law. These violations encompass not only breaches of the rules governing just war (*jus ad bellum*) but also the lawful conduct of hostilities (*jus in bello*), such as the protection of civilians and the treatment of non-combatants. Following the principles of international law, Hamas's actions can be classified as crimes of aggression and war crimes, warranting international intervention and legal accountability before international courts.

Second, it is evident that Hamas also violated the principle of distinction in the law of war. Their attacks were not confined to legitimate military targets. Rockets were launched into civilian residential areas, and their ground forces targeted not only military bases but also densely populated areas. This principle of distinction is a fundamental element of international humanitarian law, enshrined in Article 48 of Additional Protocol I to the 1977 Geneva Conventions. This article mandates that parties to a conflict must distinguish between combatants and civilians, as well as between military and civilian objects, and that warfare must be limited to legitimate military targets.

In the case of Hamas's ground attacks in southern Israel's desert, which targeted the Supernova music festival and struck residential zones including civilian homes and vehicles, these actions violated Article 51(2) of Additional Protocol I. This provision prohibits attacks on civilians as individuals or groups and also prohibits indiscriminate attacks that fail to distinguish between military and non-military targets, or that intentionally target civilians or civilian objects. Therefore, Hamas's rocket attacks on civilian settlements and ground operations targeting civilians reflect a disregard for the principle of distinction outlined in the Geneva Conventions. This constitutes a serious violation of international humanitarian law and can be categorized as a war crime.

Third, Hamas violated the principle of distinction, a cornerstone of the laws of war. This violation is evident in the harm inflicted on groups protected from targeting during wartime. Hamas failed to distinguish between combatants

(military forces) and non-combatants (civilians and others who should not be attacked). Tragically, Israeli troops found the attack killed 1,100 people, including civilians and foreigners. Additionally, Hamas captured children and parents, using them as bargaining chips to threaten Israel. These actions against non-combatants constitute a clear breach of *jus in bello* (the justice of conduct of war).

B. Hamas's Violations of the Law of Aggression and Law of War

As demonstrated in part A, the attack launched by Hamas constitutes a crime of aggression, directly violating Article 2(4) of the UN Charter. This article clearly states: "*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations*". The only exceptions to this prohibition are self-defense under Article 51 and authorization by the UN Security Council under Chapter VII, neither of which are applicable in this scenario since Palestine was not military attacked by Israel, and not in an attempt to obtain a mandate from the UN Security Council. Furthermore, Hamas stands accused of violating *jus in bello* (international humanitarian law) by disregarding the principle of distinction. Hamas has violated several principles, namely the principle of interest and the principle of distinction. International humanitarian law restricts that the legitimate aim pursued by states in war is to weaken the military power of the enemy.[60] This principle, enshrined in Article 51(1) of Additional Protocol I 1977, mandates that combatants distinguish between military objectives (combatants) and civilians (non-combatants), directing attacks solely against the former. While the aim of war may be to achieve military objectives, this pursuit should not involve targeting civilians. This principle, known as distinction, is enshrined in Article 51(1) of Additional Protocol I 1977. This article specifically protects civilians from harm during military operations.

Hamas committed an offense by failing to provide a warning of the attack. International law mandates that all parties involved in conflict provide effective warning of attacks that could affect civilians. The only exception is if circumstances prevent it, such as when the success of the attack relies on

[60] Declaration Renouncing the Use in Time of War of certain Explosive Projectiles, Saint Petersburg, 29 November/11 December 1868, Considering 2.

surprise.[61] Even in this situation, where the goal is to gain a military advantage by targeting military assets, Hamas was obligated to avoid directing attacks at civilians. Article 57(3) PT I and Regulation 21 of Customary IHL require that parties aim for targets expected to cause the least possible harm to civilians and their property. Hamas's attack triggered a massive, ongoing counterattack. This resulted in large-scale civilian casualties and heavy losses for both sides. Therefore, the surprise attack was both a violation of international law and a failure in terms of its military objectives, as it caused significant harm without achieving its goals.

V. ISRAEL'S VIOLATION OF LAWS OF WAR

A. Types of International Law Violations by Israel

During the war between Israel and Hamas, various violations of law by Israel have drawn the attention of the international community, particularly in the context of international humanitarian law as governed by the 1949 Geneva Conventions and Additional Protocol I. This conflict is not merely a dispute between two parties but also a matter of how the law of war is either observed or breached. Based on international legal analysis, Israel is alleged to have committed several serious violations related to the principle of distinction, the principle of proportionality, the principle of humanity, and attacks on protected objects under international humanitarian law.

i. Violation of the Principle of Distinction

The principle of distinction is a fundamental cornerstone of international humanitarian law. Article 48 of Additional Protocol I to the 1977 Geneva Conventions explicitly establishes that parties to a conflict must distinguish between combatants and civilians, as well as between military objectives and civilian objects.[62] Any attack that directly targets civilians or civilian objects without military justification constitutes a violation of this principle. During the

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[61] Article 57 (2) (c) *Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 1977.

[62] "Article 48 - Basic Rule", online: *International Committee of the Red Cross* <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48>.

war, Israel conducted several attacks that failed to comply with this legal obligation. One incident that exemplifies such a violation is Israel's bombing of the Al Ahli Arab Hospital in Gaza, which resulted in the deaths of over 500 people, including patients, doctors, and medical staff.[63] In this case, the hospital is one of the civilian objects explicitly protected under Article 53 of the Fourth Geneva Convention, which prohibits attacks on civilian buildings and medical facilities that are not directly involved in military operations. The attack on this hospital constitutes a serious breach of Israel's obligation to distinguish between military and non-military targets.

ii. Violation of the Principle of Proportionality

The principle of proportionality, as set out in Article 51(5)(b) of Additional Protocol I to the Geneva Conventions, states that military actions must not cause excessive harm to civilians or civilian objects that are disproportionate to the anticipated military advantage. During the conflict, Israel has been accused of conducting several attacks that violated this principle, particularly in the context of bombing densely populated civilian areas. One example of a disproportionate attack is Israel's large-scale airstrike on October 11, 2023, in Gaza, which destroyed more than 107 buildings and killed over 70 civilians, including children.[64] This attack not only destroyed civilian infrastructure but also caused a substantial loss of civilian life, far outweighing any military advantage that could have been gained from the strike. According to the ICRC, the principle of proportionality requires conflicting parties to always consider the impact of their attacks on civilians and to take necessary measures to minimize civilian harm. Strikes that cause excessive civilian casualties without strong military justification constitute a serious breach of this principle.

Furthermore, the total siege imposed by Israel on the Gaza Strip in October 2023, which involved cutting off access to food, water, electricity, and other

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[63] Mutiara Roudhatul Jannah, "Hancur Dibom Israel, Berikut Profil Rumah Sakit Al Ahli di Gaza Palestina", (2023), online: *Tempo* <https://www.tempo.co/internasional/hancur-dibom-israel-berikut-profil-rumah-sakit-al-ahli-di-gaza-palestina-129758>.

[64] "Israel bombs homes in southern Gaza, kills more than 70 people", (2023), online: *Al Jazeera* <https://www.aljazeera.com/news/2023/10/17/israel-bombs-homes-in-southern-gaza-kills-more-than-70-people>.

necessities,[65] also represents a violation of the principle of proportionality. This siege caused immense suffering to the civilian population of Gaza, the majority of whom were not involved in the fighting. Article 54 of Additional Protocol I prohibits the use of starvation as a method of warfare, and Israel's actions in this regard demonstrate a disregard for the balance between military objectives and humanitarian concerns. A siege that imposes severe consequences on civilians without clear military justification violates Israel's obligations under international law.

iii. Violation of the Principle of Humanity

The principle of humanity lies at the heart of the laws of war, aiming to protect individuals who are not participating in hostilities. During the conflict, Israel has been accused of violating this principle by targeting civilians and vital civilian infrastructure essential for the survival of the Gaza population. The total siege imposed by Israel on Gaza on October 9, 2023,[66] as previously mentioned, constitutes a serious violation of Article 55 of the Fourth Geneva Convention, which obliges parties to a conflict to ensure the provision of food and medical supplies to the civilian population in territories under their control. In its commentary, the ICRC emphasized that denying access to humanitarian aid is unjustifiable under any circumstances and constitutes a serious violation of international humanitarian law.

Moreover, Israel's disproportionate use of armed force and indiscriminate attacks in Gaza have led to thousands of civilian casualties. As of October 15, 2023, the death toll from Israeli attacks had reached more than 2,808, with approximately 10,859 wounded, including women and children.[67] These attacks on civilians violate Article 51(2) of Additional Protocol I, which prohibits direct attacks on civilians or acts that fail to distinguish between combatants and non-combatants.

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[65] "Siege and Starvation: How Israel Obstructs Aid to Gaza", (2024), online: *Refugees International* <https://www.refugeesinternational.org/reports-briefs/siege-and-starvation-how-israel-obstructs-aid-to-gaza/>.

[66] "PBB: Pengepungan Total terhadap Gaza Langgar Hukum Internasional", (2023), online: *VOA Indonesia* <https://www.voaindonesia.com/a/pbb-pengepungan-total-terhadap-gaza-langgar-hukum-internasional/7304294.html>.

[67] Usaid Siddiqui et al, "Israel-Hamas war updates: Up to 250 captives held in Gaza, Hamas says", (2023), online: *Al Jazeera* <https://www.aljazeera.com/news/liveblog/2023/10/15/israel-hamas-war-live-gaza-hospitals-fuel-to-last-24-more-hours-un-says>.

iv. Attack on Protected Objects

In armed conflict, certain civilian objects and critical infrastructure receive special protection under international humanitarian law, particularly civilian buildings such as hospitals, schools, and places of worship. Article 53 of the Fourth Geneva Convention prohibits the destruction of civilian property not directly linked to military operations. However, in this conflict, Israel is alleged to have violated this provision by attacking several protected objects. One of the most notable examples is the bombing of Al Ahli Arab Hospital in Gaza, which resulted in the deaths of more than 500 people. Hospitals are facilities granted special protection under international humanitarian law, and an attack on a hospital without clear evidence of military involvement constitutes a serious violation.[68] The ICRC, in its commentary, emphasized that attacks on medical facilities are war crimes unless such facilities are being used for military purposes, and even in such cases, an attack can only occur after adequate warning is given to the opposing party.

In addition to hospitals, the Islamic University of Gaza and the Al Aqsa Mosque were also targeted during this conflict.[69] Universities and places of worship are two types of civilian infrastructure protected under Article 27 of the Fourth Geneva Convention, which guarantees the protection of cultural and religious sites even in the context of war. Attacks on a mosque considered a sacred place by Muslims, not only violate humanitarian law but also represent an assault on the cultural heritage and religious identity of the Palestinian people.

Based on the explanations regarding various incidents during the war between Israel and Hamas, it can be stated that Israel has violated several key principles of international humanitarian law as governed by the Geneva Conventions and Additional Protocol I. These violations include the principle of distinction, the principle of proportionality, the principle of humanity, as well as attacks on protected objects such as hospitals, schools, and places of worship. These breaches not only demonstrate non-compliance with the laws of war but can also be categorized as war crimes requiring legal accountability at the international level. The international community, including the International Committee of the

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[68] Jannah, *supra* note 63.

[69] Abdelraouf Arnout, "Israeli army says it struck Islamic University of Gaza", (2023), online: *AA* <https://www.aa.com.tr/en/middle-east/israeli-army-says-it-struck-islamic-university-of-gaza/3015542>.

Red Cross (ICRC), has emphasized that these violations of international humanitarian law must be addressed through proper legal mechanisms, including international courts. The protection of civilians and civilian objects must remain a top priority in any conflict, and violations of these principles must be condemned and held accountable under international law.

B. Israel's Violation of Humanitarian Law

Israel's military actions demonstrate a consistent disregard for the principles of war justice. Before the attacks, Israel made no effort to minimize civilian casualties. Their total blockade strategy indiscriminately impacts not only the Hamas group but also civilians and other non-combatant parties. This blockade blocks essential aid, hindering access to necessities in Palestine. Though intended to cripple Hamas troops, this blockade is illegal. Article 54 (1) Additional Protocol I and Rule 53 of IHL Customs explicitly prohibit starving civilians as a wartime tactic. Furthermore, Additional Protocol I (Article 37) condemns Israel's tactics of deception. While aimed at enemy forces, their use of mock operations and civilian camouflage has resulted in civilian deaths.[70] The total blockade and population transfer are direct evidence of Israel violating international humanitarian law.

Israel's actions also violate the principle of distinction, a cornerstone of international humanitarian law. Article 48 of Additional Protocol I (1977) and Rules 1 and 7 of Customary IHL mandate clear distinctions between civilian objects and military targets, and between combatants and non-combatants. International Humanitarian Law defines civilians as anyone not belonging to a party's armed forces or participating in a *levée en masse* (a general civilian uprising)[71]. Evidence indicates the civilians Israel targeted did not fall under the *levée en masse*[72] exception permitted for combat under Article 2 of the Hague Regulations and Article 4 (A) (6) of Geneva Convention III. Importantly, if Israel is ever unsure

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[70] Rule 57 of *Customary International Humanitarian Law*, 2005; *Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 1977, *supra* note 61.

[71] Rule 5 of *Customary International Humanitarian Law*, *supra* note 70; *Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 1977, *supra* note 61.

[72] *Levée en masse,* A body of civilians who spontaneously take up arms against an advancing enemy. They are permitted to participate in hostilities and are protected by the Geneva Conventions. Oxford Reference. https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100102189.

of a target's civilian status, the law requires them to presume the individuals are civilians.[73]

Israel's actions also disregard the principle of limitation, which requires clear distinctions between military and civilian targets. Article 14 of Additional Protocol II explicitly prohibits attacks on essential civilian infrastructure like places of worship, homes, and schools. Israel's bombing of hospitals directly violates Article 19 (1) of the 1949 Geneva Conventions. Attacks on all medical units, civilian or military, are prohibited per Articles 8 (e) and (k) of Additional Protocol I. Additionally, while the 1949 Geneva Conventions lack specific language on hospital zones, customary IHL and the Rome Statute (Article 8 (2)(b)(ix)) consider attacking such zones a serious violation of the laws and customs of war. Attacks on places of worship, as committed by Israel, violate Article 16 of Additional Protocol II. If Israel cannot definitively determine whether a mosque serves military purposes, international humanitarian law mandates they presume it a civilian object.[74]

Israel's actions demonstrate a clear violation of the principle of proportionality, meaning the harm inflicted on civilians and civilian objects is excessive compared to the military advantage gained. Even if an attack cannot completely avoid civilian casualties, Israel is still legally obligated to minimize them. Article 57 of Additional Protocol I and Rules 15-21 of Customary IHL require Israel to take precautions to prevent civilian harm. These precautions include choosing appropriate methods and targets that minimize incidental civilian loss. [75] However, the methods, tools, and targets employed by Israel, while potentially having high military value, also justify greater civilian losses in their view. Additionally, they argue that attacks on certain "dual-use" objects (used for both military[76] and civilian purposes) are justified under Article 51 (5) (b) of Additional Protocol I, as long as the military advantage outweighs the civilian harm. While Israel attempts to justify their actions using these arguments, their overall

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[73] *Customary International Humanitarian Law*, *supra* note 70; *Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 1977, *supra* note 61.

[74] Article 52 (3) of *Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 1977, *supra* note 61.

[75] Article 57 (2) (a) (ii) *Ibid.*

[76] Pursuant to Article 52 (2) PT I, and Rule 8 of Customary IHL, military targets are objects which by their nature, location, purpose or use make an effective contribution to military action and whose total destruction, control or neutralization provides a military advantage.

approach still violates the principle of proportionality due to the excessive civilian harm caused.

VI. LEGITIMATION OF THE USE OF ARMED POWER

A. Foreign Support for Israel

The war between Hamas and Israel sparked diverse reactions from the international community. Three main groups emerged: those supporting Israel and Palestine, those siding with Palestine, and those adopting a neutral stance. The first group, comprising supporters of Israel, includes the United States. Following the attack by Palestine, the US strongly condemned the action and swiftly pledged full support for Israel. This was confirmed by a statement from US National Security Advisor Jake Sullivan, who declared that Washington, alongside its partners, was taking measures to deter any potential opportunists seeking to exploit the situation. Sullivan specifically stated:

> "In fact, President Biden saw Prime Minister Netanyahu just weeks before this attack to discuss the security challenges facing the state of Israel, and we've continued to support them to as significant or greater an extent than any previous administration."[77]

This was reinforced by Senator Josh Hawley, who urged the US government to redirect aid from Ukraine to Israel. He stated,

> "Israel is facing existential threat. Any funding for Ukraine should be redirected to Israel immediately."[78]

The second group comprises countries supporting Palestine, including Saudi Arabia, Ireland, and Iran. Saudi Arabia voiced support for both Palestine's independence and efforts to restore peace and stability in the region. Crown Prince Mohammed bin Salman directly conveyed to Palestine President Mahmoud Abbas that the kingdom would continue its support for Palestine.[79]

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[77] Summer Concepcion, "National security adviser defends saying Middle East region was 'quieter' days before Hamas attack", (2023), online: *NBC News* <https://www.nbcnews.com/politics/national-security/jake-sullivan-defends-saying-middle-east-region-was-quieter-days-hamas-rcna120490>.

[78] Josh Rogin, "The wars in Israel and Ukraine are linked, along with the aid", *The Washington Post* (2023), online: <https://www.washingtonpost.com/opinions/2023/10/10/biden-republicans-israel-gaza-ukraine/>.

[79] Novi Christiatuti, "Putra Mahkota Arab Saudi Tegaskan Dukungan untuk Palestina", (Oktober 2023), online: *detiknews* <https://news.detik.com/internasional/d-6974215/putra-mahkota-arab-saudi-tegaskan-dukungan-untuk-

Ireland, on the other hand, rejected the European Union's decision to halt aid to Palestine. They requested clarification from the European Commission regarding the legal basis for this suspension of aid. A spokesperson for the Irish Department of Foreign Affairs commented:

> "Our understanding is that there is no legal basis for a unilateral decision of this kind by an individual commissioner and we do not support a suspension of aid."[80]

Iran is a country that opposes Israel's actions. Iran condemns Israel and accuses it of committing genocide against Palestinian residents in Gaza. Iran's Supreme Leader, Ayatollah Khamenei, has warned Israel to stop its attacks in the Gaza region.

> "If the crimes of the Zionist [Israeli] regime continue, Muslims and resistance forces will become impatient, and no one can stop them," Khamenei said. "The bombardment of Gaza must stop immediately." [81]

Egypt says it has increased diplomatic efforts to deliver humanitarian aid to Gaza. President Abdel Fattah el-Sisi told U.S. Secretary of State Antony Blinken that the bombings carried out by Israel were disproportionate and constituted collective punishment. These countries disagree on Israel's use of armed force, even in instances of retaliation.

Apart from countries, Palestine also seeks support from other international legal entities. Several parties acknowledged that Hamas's use of armed force was a response to the conditions of Palestinians living under Israeli control. Israel's land, air, and sea blockade of Palestine since 2007 has raised concerns within the international community. Addameer, a prisoner's rights NGO, found that nearly 5,200 Palestinian citizens are held in Israeli prisons. This includes 33 women, 170 minors, and more than 1,200 people under administrative detention.[82] Human Rights Watch considers Israel's cut-off of electricity to Gaza's 2.2 million

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palestina>; Sarah Khalil, "How did Arab states react to Hamas attack on Israel?", (2023), online: *The New Arab* <https://www.newarab.com/news/how-did-arab-states-react-hamas-attack-israel>.

80 "EU backtracks on previous suspension of Palestinian development aid", (2023), online: *Al Jazeera* <https://www.aljazeera.com/news/2023/10/9/eu-suspends-development-aid-payments-to-palestinians-after-hamas-attack>.

81 "Iran's Khamenei says 'no one' can stop resistance if Israel continues Gaza offensive", (2023), online: *The Times of Israel* <https://www.timesofisrael.com/irans-khamenei-says-no-one-can-stop-resistance-if-israel-continues-gaza-offensive/>.

82 "Hamas says it has enough Israeli captives to free all Palestinian prisoners", (2023), online: *Al Jazeera* <https://www.aljazeera.com/news/2023/10/7/hamas-says-it-has-enough-israeli-captives-to-free-all-palestinian-prisoners>.

residents, along with other punitive measures against the civilian population, to be unlawful collective punishment and a war crime.[83] Civil society demonstrations in support of Palestine took place in 79 cities following the Israeli attacks.[84] As a result, Palestine receives support from various countries and the wider international community.

Positioned neutrally in this conflict, UN Secretary-General António Guterres (A.G.) urgently wants to see a swift end to the hostilities. He has called for both sides to cease attacks and release all hostages. Guterres further emphasized the importance of respecting international humanitarian law and expressed his distress over Israel's imposition of a full blockade on Gaza. He delivered several statements:

> "I am deeply distressed by today's announcement that Israel will initiate a complete siege of the Gaza Strip, nothing allowed in – no electricity, food, or fuel,"[85]
>
> "The humanitarian situation in Gaza was extremely dire before these hostilities; now it will only deteriorate exponentially."[86]

Despite his neutral position, UN Secretary-General António Guterres acknowledges that Hamas's attack was not without provocation, given the conditions of Palestine residents under Israel occupation for 56 years and the violence they have endured.[87] Egypt and Turkey also initially adopted a neutral stance during the first 10 days of the conflict. Egyptian President Abdel Fattah el-Sisi[88] and Turkish President Recep Tayyip Erdogan urged both Hamas and Israel to end hostilities immediately and prioritize the protection of civilians.[89]

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83 "Israel/Palestine: Devastating Civilian Toll as Parties Flout Legal Obligations", (2023), online: <https://www.hrw.org/news/2023/10/09/israel/palestine-devastating-civilian-toll-parties-flout-legal-obligations>.

84 Marium Ali, "Mapping protests in solidarity with Palestine against Is-rael's assault", (2023), online: *Al Jazeera* <https://www.aljazeera.com/news/2023/10/16/mapping-protests-held-in-solidarity-with-palestine>.

85 Jasper Ward, Michelle Nichols & Jasper Ward, "UN chief 'deeply distressed' by planned Israeli siege of Gaza", *Reuters* (2023), online: <https://www.reuters.com/world/middle-east/un-chief-deeply-distressed-by-planned-israeli-siege-gaza-2023-10-09/>.

86 Michael Hernandez, "UN chief 'deeply distressed' by Israel's decision to impose full Gaza siege", (2023), online: *AA* <https://www.aa.com.tr/en/middle-east/un-chief-deeply-distressed-by-israels-decision-to-impose-full-gaza-siege-/3013165>.

87 Rhea Mogul et al, "October 26, 2023 Israel-Hamas war news", (2023), online: *CNN* <https://www.cnn.com/middleeast/live-news/israel-hamas-war-gaza-news-10-26-23/index.html> at 202.

88 Hatem Maher and Ahmed Tolba, "Egypt's Sisi says Israeli reaction to Hamas attack is collective punishment", *Reuters* (2023).

89 Tuvan Gumrukcu & Burcu Karakas, "Turkey's Erdogan calls on Israel to stop its attacks on Gaza 'amounting to genocide'", *Reuters* (2023), online: <https://www.reuters.com/world/middle-east/turkeys-erdogan-calls-israel-stop-attacks-gaza-amounting-genocide-2023-10-20/>.

Media interviews indicate the leaders agreed that civilians should not face further risk or loss of life. Erdogan went a step further, offering to mediate between Israel and Hamas. This demonstrates that global responses to this conflict are not unified.

B. Legitimacy and the International Community's Response

Although Hamas's actions may be illegal under the law of war (*jus ad bellum*), they are argued to be legitimate due to the widespread support they receive from the international community. This support is seen as evidence of Hamas's purported justification and their concern for the situation in Palestine, reflecting a sense of global responsibility. Some scholars, like Consalini, argue that states' responses to such situations can be viewed as fulfilling a social responsibility independent of established legal norms. [90] Consalini proposes a new perspective on international law that balances predictability with flexibility in times of social instability.[91] He emphasizes the importance of considering the social context, including prevailing notions of justice, when interpreting legal principles. Similarly, Zelin defines "justice" (*aequitas*) as a combination of truth and mercy,[92] From this perspective, international solidarity, which can be seen as an expression of global mercy, can contribute to achieving justice. Therefore, the widespread support for Palestine is seen as an indication of the international community's endorsement of Hamas's actions based on their perceived adherence to a broader sense of justice. However, even Zelin recognizes international law as a crucial unifying force, regardless of individual interpretations.[93]

While Israel's actions may be considered legal under the law of war (*jus ad bellum*), they are nonetheless criticized for being illegitimate due to the disregard for civilian protection. Even if Hamas is proven to have launched an attack, international law does not grant Israel the right to retaliate by employing similar tactics that endanger civilians. The principle of reciprocity,[94] where an action is mirrored by the other side, is explicitly forbidden under international

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[90] Matteo Corsalini, *Business, Religion and the Law: Church and Business Autonomy in The Secular Economy*, 1st ed ed (Routledge, 2022).

[91] *Ibid.*

[92] Zelin, *supra* note 12.

[93] *Ibid.*

[94] Rule 140 of *Customary International Humanitarian Law*, *supra* note 70; *Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 1977, *supra* note 61.

humanitarian law. Similarly, targeting essential civilian infrastructure for reprisal purposes is strictly prohibited.[95] International humanitarian law, specifically Articles 28 and 33 of Geneva Convention IV, Article 51(6) of Additional Protocol I, and Rules 145 and 146 of Customary IHL, clearly bans attacks on civilians as a form of retaliation. Therefore, regardless of any justification for reprisal, Israel's actions violate international law by targeting civilians and civilian objects.

C. Analyzing Justice in the Aftermath of the Hamas and Israel War

In the armed conflict between Israel and Hamas, both Israel's and Hamas' actions have raised numerous questions regarding their legality under international law. While Israel often claims that its actions are legitimate based on *jus ad bellum*—the right to self-defense recognized in Article 51 of the UN Charter—its conduct during the war (*jus in bello*) is frequently considered to violate the principles of the laws of war.[96] Hamas' actions are also widely deemed illegal, both from the perspective of *jus ad bellum* and *jus in bello*, as they routinely violate international legal norms by attacking civilians.[97] Neither party can legitimately claim to wage a "just war" in this context, as both fail to adhere to the governing legal and ethical principles.

The International Court of Justice (ICJ), as the highest judicial body for settling disputes between states, plays a significant role in interpreting international law in this conflict. The ICJ's rulings in various cases have provided an essential framework for assessing the actions of both Israel and Hamas, particularly concerning violations of human rights and international humanitarian law. One significant ruling is the ICJ's 2004 Advisory Opinion on Israel's construction of the separation wall in the occupied Palestinian territory.[98]

In that decision, the ICJ declared that Israel's construction of the separation wall violated the Fourth Geneva Convention, which regulates the protection of

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[95] Article 33 of *Geneva Convention IV Relative to the Protection of Civillian Persons in Time of War of 12 August 1949*; *Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 1977, *supra* note 61; *Customary International Humanitarian Law*, *supra* note 70.

[96] Reza Nasri, "Article 51: Israel's false claim", *open Democracy* (2024), online: <https://www.opendemocracy.net/en/article-51-israels-false-claim/>.

[97] note 54.

[98] Dorothea Anthony, "Wall Case: ICJ Advisory Opinion on the Israeli Separation Wall" in *Kevin W Gray, ed, Global Encyclopedia of Territorial Rights* (Cham: Springer International Publishing, 2020) at 1.

civilians during conflict. The ICJ also affirmed that Israel, as an occupying power, must respect the fundamental rights of civilians in the territories it occupies and that actions causing unnecessary civilian suffering are contrary to international law. This ruling is relevant to Israel's actions during the armed conflict with Hamas, where Israeli military strikes often result in a high number of civilian casualties, which may be considered violations of international law.

Additionally, the ICJ's ruling in the Democratic Republic of Congo v. Uganda case (2005) provides a crucial precedent in international armed conflict.[99] In that ruling, the ICJ emphasized that military actions, even if carried out on the grounds of self-defense, must comply with the principle of proportionality. Actions that cause excessive harm or casualties, particularly among civilians, are deemed to violate international law. This principle is relevant to the Israel-Hamas conflict, where Israeli attacks may be considered disproportionate to the military threat, particularly in the bombing of densely populated areas like Gaza.

In addition to Israel, Hamas' actions also violate international law. The rocket attacks launched by Hamas directly target Israeli civilians,[100] which contravenes the Principle of Distinction stipulated in Article 48 of the 1977 Additional Protocol I to the Geneva Conventions. This principle requires parties involved in conflict to distinguish between combatants and civilians, as well as between military and civilian targets. Indiscriminate attacks by Hamas, such as the bombing of civilian settlements in Israel, constitute war crimes under international law. Although the ICJ has not specifically addressed Hamas' actions, its rulings emphasize the importance of adhering to the principles of international humanitarian law in all forms of armed conflict, including those involving non-state actors like Hamas. Moreover, the ICJ's decisions in related cases have clarified that actions targeting civilians, whether directly or indirectly, cannot be justified under international law, regardless of claims of self-defense or resistance against occupation.

While Israel may be considered legitimate under the laws of war in initiating the conflict (*jus ad bellum*), its conduct during the war (*jus in bello*) is widely deemed

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[99] Manuel J Ventura, "Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda) (Reparations Judgment) (I.C.J.)" (2023) 62:3 International Legal Materials ay 408 & 410.

[100] Dostri, *supra* note 38.

illegal due to violations of international law and disregard for the protection of civilians. The ICJ's rulings affirm that international humanitarian law must be respected even in the context of self-defense, providing a crucial basis for assessing the legality of Israel's actions. Attacks that fail to distinguish between combatants and civilians, as well as actions causing disproportionate harm, violate fundamental principles of international law, as outlined in the Geneva Conventions and the UN Charter.

Additionally, Hamas' actions are considered illegal under both *jus ad bellum* and *jus in bello*. Although Hamas claims that its attacks on Israel are part of a "legitimate resistance" against occupation, its actions that directly target Israeli civilians cannot be justified under international law. There is no legal justification for Hamas to violate the principles of distinction and proportionality enshrined in the laws of war. The concept of justice in war aligns with the views of Jeff McMahan,[101] who argues that a war cannot be considered just if it violates the UN Charter and the Geneva Conventions. These principles represent a set of universally accepted values, including justice and compassion, which must be upheld to ensure that conflicts remain morally defensible. International law, which functions as a binding treaty, adopts these principles and aims to prevent harm to humanity.

In the case of the Israel-Hamas conflict, it appears that this war has caused immense suffering, contradicting the concept of justice in the war itself. Although both sides may claim justification from their respective perspectives, neither Israel nor Hamas can be deemed legitimate under international law or principles of justice and compassion. The principles of international law, as affirmed by ICJ rulings, emphasize that military actions that fail to adhere to the principles of distinction, proportionality, and civilian protection cannot be justified.

Balancing normative and non-legal perspectives is crucial when assessing justice in conflicts such as the war between Israel and Hamas. Referring to Foysal's views on international law, we must ensure justice and accountability in the use of armed force. This means considering its impact on victims and targets, particularly civilians. To ensure true justice, we cannot rely solely on legal norms

[101] Jeff McMahan, *Rethinking the Just War* (Logos: Russian Federation, 2019).

and the laws of war. Instead, we must integrate the concept of *aequitas*—a compassionate truth that acknowledges civilian suffering. Therefore, the actions of both Israel and Hamas cannot be justified by normative standards alone.

VII. CONCLUSION

The conflict between Israel and Hamas in October 2023 demonstrates violations of international law by both parties. Hamas, as a non-state actor, violated both *jus ad bellum* and *jus in bello* by launching attacks without an official declaration of war and targeting civilians, which contravenes the principles of the 1949 Geneva Conventions. Their attacks on a music festival and civilian settlements violate the principle of distinction between combatants and non-combatants, a foundational element of the laws of war. These actions can be classified as war crimes. On the other hand, Israel also breached *jus in bello* principles through disproportionate retaliatory attacks, resulting in significant civilian casualties. Attacks on hospitals and civilian infrastructure without strong military justification violate international humanitarian law, particularly Additional Protocol I to the 1977 Geneva Conventions. Israel's total siege on Gaza, including cutting off access to food and essential supplies, is considered a serious violation of humanitarian principles.

The international community, though divided in its support of different sides, has emphasized the importance of upholding international law in this conflict. While some countries support Israel's claim of self-defense, many have criticized actions deemed excessive. This highlights the significant challenges in enforcing accountability at the international level, particularly against non-state actors like Hamas. Ultimately, this study affirms that both Israel and Hamas are considered to have violated international law, and their military actions cannot be fully justified under the principles of justice in war. Civilian protection must be prioritized, and violations of the laws of war require clear legal intervention and accountability through international mechanisms.

This article effectively highlights new dimensions of international law. It treats both warring parties equally, recognizing their validity and violations simultaneously. However, the article only focuses on Hamas and Israel during

the first 10 days of the conflict. As the war escalates and involves more countries, further research is needed. Future research can build upon the existing foundation of international law. As the Israel-Hamas war involves more than two parties, it becomes crucial to analyze the legality of humanitarian intervention by individual states without UN Security Council recommendations. This is highly relevant, given the potential veto power of the United States in the Council, which could block such actions.

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