

Examining Counter-Colonial Criminology's Impact on  
the Israel-Hamas War:  
An Analysis of the Legal Framework of International  
Humanitarian Law.

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## **Introduction**

On the morning of October 7th, 2023, Hamas launched a series of unprecedented attacks on Israel. With thousands of rockets launched and hundreds of militants breaching the Israeli border, the scene reveals an absolute bloodbath. Hamas invaded the streets of several border towns, raped, sexually abused, mutilated, and murdered Israeli civilians. With its offensive, it also took hundreds of people hostage (Schifrin et al., 2023). At least 1,200 people were killed, and around 5,400 had injuries due to the attack (Statista Research Department, 2024). Those killed included children, elderly civilians, and 364 young people who were attending a music festival. Hamas and its militants took around 250 people into Gaza, using them as hostages (BBC News, 2024).

Following the surprise attack, Prime Minister Netanyahu of Israel declared war on Hamas. “The enemy will pay an unprecedented price,” promising that Israel would “return fire of a magnitude that the enemy has not known,” is what he said in a televised address (Federman & Adwam, 2023). What followed was a campaign of destruction from the Israeli side. Eighty-five percent of Gaza’s population, which is 1.9 million people, have been internally displaced, with the majority now living in Rafah, the South of Gaza (Hardman, 2023). The intense Israeli bombardment and hostilities between Israeli military forces and Palestinian armed groups are resulting in an immense number of civilian casualties and the destruction of civilian infrastructure, including hospitals, residential areas, and places of education and worship. On April 7th, 2024, the death toll

was at least 33,137 people, including more than 13,000 children and 8,400 women. There is also a reported number of 75,815 injured people, and at least 8,000 people are missing (AJLabs, 2024).

Whereas following the Hamas-led attack, the initial response of Western countries was to Support Israel fully, this has changed over time. The US, a longstanding ally of Israel, has vetoed three cease-fire proposals from the United Nations Security Council (Al Jazeera, 2024) but has abstained from voting on the latest one. The US has been a lobbyist for the release of hostages but also has supplied a lot of weapons to Israel to defeat Hamas. With presidential elections coming up, the democratic voters have not been pleased with Biden's stance on Israel and have, in general, a much more pro-Palestine standpoint. The growing turmoil among democrats and the immense amount of civilian casualties that Israel is making to defeat Hamas is creating a rift between Biden and Netanyahu (Tharoor, 2024). The European Union was, from the start, more divided in its unconditional support towards Israel.

One of the EU member states, Germany, feels responsibility for Jewish lives. Due to its own dark history, it feels the historical and moral obligation and responsibility to stay on the side of Israel.

On the other hand, Ireland recognizes itself as suffering under an occupier. Almost immediately after the attack, attention was paid to the context in which the attack happened (Zwart & Launspach, 2023). Overall, there remains a considerable concern regarding the

question of proportionality and the humanitarian crisis happening right in front of us.

The contrast between how countries in the Global South and Western nations view this conflict is significant. These countries in Asia, Africa, and Latin America have generally much greater solidarity with Palestinians. For example, the Ministry of Foreign Affairs in Qatar holds Israel solely responsible for the ongoing escalation due to its ongoing violations of the human rights of the Palestinian people. China and Russia call for an independent Palestinian side along the 1967 borders (Waldo et al., 2023). Brazillian President Lula da Silva has accused Israel of committing genocide against Palestinians in the Gaza Strip (Meyerfeld, 2024).

Overall, the signs of polarization are all over the world. It underscores the delicate and complex nature of the global dynamics in this conflict. Foreign policies and international institutions are put to the test. The Western narrative around the War seems to change as the humanitarian crisis worsens. The immense number of casualties, the national trauma on both sides, the hostages being held for over six months, the looming starvation of especially children, the lack of humanitarian aid, and damaged infrastructure. Everything and no sight of a sustainable ceasefire in the Gaza Strip.

As the introductory section draws close, the forthcoming discussion will first address the history between Israel and Palestine. This is so we can establish a historical framework to discuss counter-colonial concepts. Secondly, I will discuss where the war is currently

standing. However, the Hamas-Israel conflict continues to unfold with ongoing developments and implications for the future. Therefore, recent activities that might not be relevant today can be very much so in the future. The third topic of this paper will be an analysis of international war and humanitarian law. Grounded in a profound belief in the core principles of democracy and human rights, I find this part a foundational part of this research. Respect for human dignity, the rule of law, and the notion that all men and women are created equal regardless of race and have the same rights are hugely important to me. The fourth topic of this research is the role of international institutions and the media.

### **1. History of Israel and Palestine**

The Israel-Palestine conflict has deep historical roots. The Israeli-Palestinian “territorial arena” witnessed continuous transformations during the twentieth century. It started with the breakup of the Ottoman Empire, the creation of the Kingdom of Trans-Jordan by the British Mandate in 1921, the partition of Palestine, and the creation of Israel and the West Bank/Gaza in 1947-9 (Yacobi & Newman, 2008). For centuries, Palestine was an Ottoman province with no clear boundaries. Muslims were the majority, living alongside small Christian and Jewish communities. The relationship among Muslims, Christians, and Jews began to shift at the beginning of the 20th century as a group of revolutionaries, including the founders of the future state of Israel, immigrated from Russia and Europe. They believed that the only answer to the global affliction of antisemitism was Zionism – the vision of a Jewish home in the land of the Hebrew Bible (Bazelon, 2024).

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The allied powers of the West defeated the Ottomans during WW1, granting Britain the mandate to govern Palestine and Iraq, a form of colonialism and occupation of a Western country on non-Western soil. In 1920, the British mandate for Palestine was established, a national home for the Jewish people (The Avalon Project : The Palestine Mandate, n.d.). The British mandate was crucial in laying the framework for creating the state of Israel. The mandate recognized Zionist organizations as representative of the Jewish population and a self-governing institution. According to the Balfour Declaration of the British in 1917, they would “view with favor” establishing a national home for Jews in Palestine (The Editors of Encyclopaedia Britannica, 2024). What followed were years full of violence, especially from Palestinians against the Jews; the primary source of tension was the mandate policies that allowed for increasing numbers of immigration and land purchases in Palestine.

As the World headed to World War 2, the British government issued a White Paper in 1939. It severely restricted Jewish immigration into Palestine for the next five years (Cohen, 1973). The Holocaust justified the creation of Israel. The whole purpose of Zionism was to establish a place for Jews, who are now refugees who were prosecuted away from Europe. In the years after WW2, there was a lot of violence in the region. Zionists were extremely violent against the British, and therefore, the British were planning on leaving Palestine (Palestine | History, People, Conflict, & Religion, n.d.). The British asked the United Nations to look at their partition plan with two states, one Jewish and one Palestinian. In November 1947, the UN General Assembly passed this

resolution, with Jerusalem under UN Administration—the boundaries of this partition allocated to the Jews about 50 percent of Palestine. The Arab world rejected the resolution, arguing it was unfair and violated the UN Charter. However, the West did like this idea of the creation of a Jewish state. It can be argued that Europe owed Israel their own state, and it was morally right to give it to them. The Jews were not safe in Europe; the Holocaust, an absolute massacre committed by Europeans themselves, showed that Jews needed their own country. The United Nations scheduled the partition to take effect in September 1948. The British government, during the intervening period, announced its decision to withdraw from Palestine on May 14, 1948, to allow Jews and Arabs to go native in the Holy Land. On that same day, the Jewish settlers and militias launched a series of attacks on Palestinian villages, proclaiming Israel as an independent country and forcing thousands of people to flee their homes (Rowley & Taylor, 2006). Plan Dalet was a military plan that mentioned the expelling of the Palestinian population in towns and villages to defend its borders. It included the isolation and occupation of several areas, including Tel Aviv, and the disruption of food and other vital services to Palestinian areas (Jewish Virtual Library, n.d.).

With Israel's declaration of a state, the war between Arabs, Egypt, Lebanon, Iraq and Israel started. A war termed by Israelis as the War of Independence and by Palestinians as Al Nakba, meaning catastrophe. Units of the Haganah and Irgun formed the core of a hostile, mobilized Israeli army with the intent to seize the whole of Palestine. The combined Arab forces invaded Palestine to drive the Israelis into the Mediterranean Sea. By the end of 1948, the Israeli army had established military hegemony in Palestine (Johnson,

1987, p. 527). Under this occupation, Israel expanded its borders to encompass 80 percent of Palestine. Samaria and the northern part of Judeo (later referred to as the West Bank) were in Jordanian hands, while Egypt controlled the Gaza Strip. According to the United Nations, Al Nakba refers to the mass displacement and dispossession of Palestinians during the 1948-9 war. The result of the war was a permanent displacement of over 750,000 Palestinians (United Nations, 2023). The 1949 armistice boundaries essentially held, although the Arab nations consistently withheld recognition from the Jewish state. On June 5, Israel preempted the war, striking targets in Egypt, Jordan, and Syria. Within six days, Israel had once again seized the West Bank, captured all of Jerusalem, and occupied the Golan Heights.

At this stage, all parties accepted a United Nations Security Council ceasefire (United Nations, n.d.).

The first Intifada was a Palestinian mass resistance movement that lasted from the 9th of December 1989 until the 13th of September 1993. After an Israeli jeep ran over four Palestinian men outside of Jabalya refugee camp in Gaza, grassroots protests of twenty years of Israeli occupation and subjugation of Palestinians broke out in refugee camps. They spread across the Occupied Palestinian Territory (OPT). Illegal Jewish settler-colonialists launched regular attacks against Palestinians (Hussain, 2017). By the end of the Intifada, 1500 Palestinians were killed and 130,000 were injured (PBS, 2019). On the Israeli side, 185 people were killed. The hugely disproportionate violence and casualties on the Palestinians' side provoked widespread international condemnation, which led to UN draft resolutions 607 and 608 (Hussain, 2017). The First



Intifada ended with the signing of the Oslo Accords. Representatives of the Palestinian Liberation Organization (PLO) and Israel made the agreement that Israel would withdraw from territories it occupied during the Six-Day War in 1967. It also provided the Palestinian Liberation Organization with self-government, which was intended to establish an independent Palestinian state (Newman, 2002). Hamas rejected the Oslo Accords and, to scuttle peace talks initiated a series of suicide attacks against Israeli targets. Meanwhile, Israel continued to build settlements in occupied territories, which violated the recently signed Oslo Accords (Araj & Brym, 2024).

The second Intifada, starting in 2000, is characterized by a sharp increase in Palestinian suicide bombings against Israel (Diez & Pace, 2011). The action of far-right Israeli Prime Minister Sharon, visiting the holy site for Muslims, the Al Aksa Mosque (Goldenberg, 2000), was provocative and led to a lot of violence. The construction of the fence between the Gaza Strip and Israel is the most tangible expression of this volatile period. Israeli settlement activity in the West Bank continued, and tight controls were placed on the movement of Palestinian goods and people. On 25 January 2006, the Islamic Resistance Movement (Hamas) won the Palestinian Authority's election. For the first time since taking over the reins of the Palestinian Liberation Organization (PLO) in 1968, the nationalist Fatah movement was replaced as the dominant force in Palestinian politics (Usher, 2006). The two parties, Hamas, who favored armed resistance, and Fatah, who preferred to negotiate, could not work together. In 2007, that led to an armed conflict that would end with Hamas in charge of Gaza while Fatah held the West Bank (Hawaleshka, 2023).

Now that the history behind this conflict is familiar, we will examine the current conflict within the region. The primary aim is to scrutinize the ongoing conflict through counter-colonial concepts. This examination will encompass an assessment of the ramifications of military occupation in the West Bank, the possibility of genocide, and the legitimization of actions by both Hamas and Israel. The focal point of this research paper will predominantly revolve around examining human rights violations, emphasizing the role of International Humanitarian Law (IHL).

## **2. Theoretical Framework**

To understand criminal actions, modern criminology has often looked exclusively upon the actions of lawbreaking individuals while turning a blind eye to mass terrorism imposed upon innocent people by slavery, colonialism, and their continuing legacies. Counter-colonial criminology is a transdisciplinary theory that balances the political implications of criminology as a modality of knowledge and power (Pfohl, 2015). It can be argued that the relationship between Israel and Palestine is a form of settler colonialism. Zionism is an ideology and political movement that subjects Palestine and Palestinians to a structural and violent form of dispossession and land appropriation in the pursuit of a Jewish state (Salamanca et al., 2012). Both colonialism and settler colonialism include the permanent movement and reproduction of communities and the dominance of an exogenous agency over the native inhabitants (Veracini, 2010).

Due to its complicated past with Western countries, Israel has been

granted unlimited support in all its actions towards Palestinians. The creation of the State of Israel is a double result of the genocide committed against the Jews by Nazis in Germany and European Colonialism. For Jews, the Holocaust is an argument to justify its territorial expansion and suppression of Palestinians. The argument that they are not safe comes from their history as Europeans. It is now a justification for aggression, murder, and torture as a legitimate act of self-defense against Palestinians (Stannard, 1996). There is, justifiably, a lot of historical guilt towards Jewish people. The murder of millions during the Holocaust and the prosecution of Jews out of Europe brings a lot of shame to it. However, these ongoing reparations have been over the backs of Palestinians. The history of Israelis humiliating Palestinians, displacing them so that they are living in refugee camps for the sake of illegal Israeli settlements, seems not to be on the forefront of Breaking the UN Convention or Oslo Accords has never received severe backlash from Western countries.

The building of a fence underscores the persistent power imbalance of a colonial power following the era of colonial domination. It highlights the concept of imperialistic control and underscores the impact of legal structures (Domínguez & Luoma, 2020). Unilaterally building a fence and altering territorial boundaries reflects imperialistic tendencies, wherein the dominant power asserts control of geopolitical landscapes. At the time, it had the support of the Bush Administration (Diez & Pace, 2011). Borders serve to differentiate the “deserving” from the “undeserving” within the state to maintain the clear boundaries of an idealized moral community (Garland, 2002). The Zionist movement and its policy have resulted in the displacement of 1.5 million people who lost

their homes and live in refugee camps in Gaza (UNRWA, n.d.). It is, however, interesting to see that the same amount of historical guilt is not felt when it comes to slavery, apartheid, or Europe's colonial past towards non-white people. There is an argument for European Colonialism. Israel is created because of the British mandate in Palestine. Colonialism is born out of an idea of moral superiority by Western Countries. They have the moral right to divide and claim Arab/African countries. From inferior importance, the native residents also have hopes and wishes.

In the process of colonialism, there is a tendency to see people as different or other than ourselves. The main consequence of othering is that a person becomes interpreted and constructed as problematically different (Al-Hindi, 2023). A result of othering is to exclude individuals or social groups who do not fit into the desired norm. Moral superiority leads to justifiable domination over the other group (Agozino, 2025; p. 347). Dehumanization and othering of Palestinian people can be seen as an essential step for the Zionist movement in Israel. The idea that Muslims are a violent threat and, per definition, terrorists is an idea that lives in both the Western and the Israeli world. There is a fear that Muslims will take over the world through Jihad (Clifford, 1980), making Muslim hate or violence against Muslims justifiable. Following the 9/11 attack, threat perception from Western countries converged, launching the War on Terror (Pogodda, 2012, p.541). Far-Right ideologies, which in Europe and America are becoming increasingly more popular, glorify violence against the common enemy: Muslims. Members of the Israeli Parliament, Netanyahu, and Smotrich deny the existence of a Palestinian nation, history, or language (Kellman, 2023). This

is a typical example of the narrative a settler occupier has. Not only the violent dispossession of indigenous/native people from their land but also the structurally erasing of their historical narrative. It normalizes settler occupation and the exploitation of land and resources (Cox, 2017). Zionist leaders such as Theodore Herzl and Zeev Jabotinsky, respectively, advocated ‘the Jewish nation as a wall of defense for Europe in Asia, an outpost of civilization against barbarism’ ‘in defiance of the will of the native population’ (Tariq & Jarbawi, 2017). Settler colonialism creates a form of oppression and racism.

Palestinians have been seen as inferior to Jews for decades. According to Amnesty International (Amnesty International, n.d.), there has been ruthless military interference in the daily lives of citizens of the Occupied Palestinian Territories (OPT). Israel has primary control over borders, airspace, the movement of people and goods, security, and the registry of the entire population, which in turn dictates matters such as legal status (Shakir, 2023). There is daily humiliation, fear, and oppression for Palestinians who live there. Israel has a policy of constructing and expanding illegal settlements on occupied Palestinian land. This is one of the leading forces behind the mass human rights violations in occupied territory. The United Nations Special Rapporteur on Human Rights determined that the “political system of entrenched rule” in the occupied West Bank and Gaza Strip “satisfied the prevailing evidentiary standard for the existence of apartheid” (Amnesty International, 2022). This is one of the highest organizations in the world, saying there are incredible human rights violations, but nothing has been done about it.

Where there is oppression, there is a struggle to be free and liberate oneself from the oppressor. Whereas Western countries see Hamas as a terrorist organization, countries such as Egypt or Iran see Hamas as a liberation movement. There is no true freedom or democracy in Palestine; people are living under surveillance in hostile conditions. Agozino (University of Auckland, 2019) introduced liberation criminology. This approach is based on the idea that, as long as there is oppression, there will be a form of resistance and a struggle for freedom. Oppression, violent disinhibition, and the mediation of ideological indoctrination (Trujilio & Moyano, 2018) legitimize the use of violence in the case of asymmetric power and oppression. The charter published by Hamas (1988) called for the destruction of Israel and the establishment of an Islamic society in historic Palestine. Nationalistic organizations such as Hamas often emerge in the context of those liberation struggles. Oppression of a community or nation can lead to the formation of groups that resort to violent means to achieve political or ideological goals (Lobato et al., 2018). In an interview with *The New York Times* (Hubberart & Abi-Habib, 2023), Khalil al-Hayya, a member of Hamas's top leadership, said they orchestrated the attack "to put the Palestinian table". There are several reasons why Hamas has decided to attack now. For example, Israeli settlers attacking Palestinians in the West Bank and the normalization of ties with Saudi Arabia (Nissenbaum, 2022). While Western and primarily American diplomacy has shifted away from the Middle East towards China, there has never been a genuinely calm situation in Israel and Gaza.

For years, there has been violence from both Hamas and Israel. or

example, in 2021, when Hamas launched a war to protest Israeli efforts to evict Palestinians from their homes in East Jerusalem and police raids in the Aqsa Mosque. For Hamas, Israel's occupation of the West Bank during the 1967 Six-Day War was a historical wrong that had to be righted with force. The situation for Palestinians had to be dramatically turned around; they had to take a stance toward their occupier, Israel.

As we transition from the theoretical underpinnings of counter-colonial criminology, the impact of historic guilt towards Israel, the power imbalance created by settler colonialism, human rights violations, and the result of oppression, the focus shifts towards the current Israel-Hamas War. There are many questions surrounding the possibility of war crimes and crimes against humanity. Transnational criminal law plays a significant role in assessing these violations. The offenses covered by transnational criminal law include terrorism. International criminal law, for example, war crimes, crimes against humanity, and genocide, are all defined by international instruments and can be held to trial at the International Criminal Court in The Hague. National courts must cooperate with international investigations and prosecution (Scott & Sim, 2023). The discussion now goes back to the current reality of the Israel-Hamas War. The following sections will examine specific events, policies, and actions unfolding in the war. Crimes against humanity, violations of international humanitarian law, and the humanitarian situation will be the focus point.

### **3. International Humanitarian Law**

In international law, crimes against humanity can be regarded as an umbrella category of international crimes. International crimes also include genocide, war crimes, and acts of aggression. Crimes against humanity refer to specific crimes committed as part of a widespread or systematic attack directed against the civilian population. Crimes against humanity can also be committed during peacetime and, contrary to genocide, are not necessarily committed against a specific national, ethnic, racial, or religious group. War crimes include torture, mutilation, hostage-taking, and acts of terrorism. They must be committed during times of war.

Internationally accepted rules of armed conflict emerged from the 1949 Geneva Conventions (Deutsch & Van Den Berg, 2023). The Geneva Conventions and their additional protocols are the core of international humanitarian law, which regulates the conduct of armed conflicts (ICRC, 2010). The Geneva Conventions are aimed at protecting people who do not actively participate in the hostilities (civilians, medics, aid workers) and those who can no longer fight. The first three conventions are mainly focused on military personnel on land (1), sea (2), and prisoners of war (3). The Fourth Geneva Convention is there to protect civilians, including those in occupied territories. The Rome Statute of the International Criminal Court (1988) includes regulations against (a) genocide, (b) crimes against humanity, (c) war crimes, and (d) crimes of aggression. The jurisdiction of this court is limited to the most severe crimes concerning the international community as a whole. In the following part, we look at several events that occurred during the Israel-Hamas War to see if one or both breached regulations regarding international war and humanitarian law.



## ***Hamas***

There is a continuous debate regarding the question of whether Hamas, as a nonstate actor, can be held accountable by international human rights standards. For this research, the assumption is made that it is possible to bring them to trial. Hamas, when launching its attack on Israeli civilians, committed a crime against humanity and war crimes. The widespread attack, including the usage of indiscriminate rockets, murder, torture, and sexual violence, is a crime against humanity (Article 7, Rome Statute of the International Criminal Court). In the following section, we look at 2 cases by Hamas: the taking of hostages and sexual violence against women.

### ***Captive Taking***

Captive-taking is a general word to describe the crimes of kidnapping, hostage-taking, and barricaded captive-taking events (Daniels & Page, 2012). Two main captive-taker motives have been described as instrumental and expressive. The primitive motive in instrumental captive-taking is a gain of government concessions. Hostage-taking is a serious crime because it deprives individuals of their freedom.

In its attack on October 7th, Hamas took approximately 240 hostages, including approximately 33 children. The hostages were seized, abused, and captured from their homes in town along the Israeli border, as well as from military bases and a large outdoor festival (Vinograd & Kershner, 2023). Following negotiations in the

initial stages of the war involving Qatar, Israel, and Hamas, there has been a release of around 100 hostages, mainly women, the elderly, and children. Half a year later, individuals remained in captivity, which is still around 130. Unclear if they are dead or alive (Williams & Al-Mughrabi, 2024). The psychological and physical wounds that hostages will endure for the rest of their lives are immense. According to Borger (2024), there is evidence that Hamas has continued its campaign of abuse and rape towards the hostages while they remained in captivity. The UN special envoy on sexual violence has convincing information that some women and children hostages held by Hamas had been subjected to ongoing rape and sexualized torture. For Hamas, the hostages are an essential part of their operation. It puts pressure on Israel, which now has to negotiate with Hamas. The hostages are a form of insurance for Hamas, and they send a message of the lack of power Israel has in this conflict. Israel is left with immense national trauma.

Taking hostages is prohibited under international law, as outlined by the Geneva Convention. Common Article 4 (vol. II, Ch 32, § 2046) explicitly prohibits the taking of hostages, and such prohibition is further reinforced by the Fourth Geneva Convention (Article 34, (ibid., § 2047) and Article 147 (ibid., § 2048) and is considered a grave breach. Moreover, the Statute of the International Criminal Court (ICC Statute, Article 8(2)(a) (viii) and (c)(iii) (ibid., § 2054), explicitly classifies the “taking of hostages” as a war crime in both international and non-international armed conflicts.

### ***Sexual Violence Against Women***

Sexual violence, especially in wartime, is an extreme atrocity. Unfortunately, in many contexts, sexual violence is a deliberate tactic of warfare. Sexual violence, including rape, when widespread and systematic, is recognized as a crime against humanity and a war crime. In June 2008, the UN Security Council adopted the landmark Resolution 1820, confirming that sexual violence during conflicts is a threat to international peace and security. Sexual violence includes sexual insults, unallowed touching of parts of the body, unwanted showing and sending of sexual and pornographic images, forced participation in sexual and/or pornographic activity, rape, sexual torture, female genital cutting, sexual exploitation/enslavement, and forced prostitution (CARA, n.d.).

On December 28, 2023, The New York Times (Gettleman et al.; 2023) published an article showing a pattern of rape, mutilation, and extreme brutality against women in the attacks on Israel. Relying on video footage, photographs, GPS data, and interviews of witnesses, the NYT could reproduce the sexual violence against women. Women were seen raped, there were signs of abuse in genital areas, women were being shot in their vaginas, and breasts being sliced off are only a few of the horrendous examples of sexual mutilation that occurred during the attack. Sexual violence is the ultimate horror show that demonstrates the power of equality between men and women. Besides the physical violence that is done to the women, the mental repercussions are also severe. It comes with negative feelings such as embarrassment, guilt, problems with trust (in men), and self-esteem. There is an incredible amount of social stigma around sexual violence, and it is incredibly traumatic.

It is both a health and a social concern with patriarchal, misogynist, and gender-shaming undertones (Kalra & Bhugra, 2013).

Rape and other forms of sexual violence are prohibited under international humanitarian law (IHL) in international and non-international armed conflict. The Statute of the International Criminal Court includes rape and some other forms of sexual violence in the list of war crimes. It is the list of acts that constitute crimes against humanity when committed as part of a widespread or systematic attack directed at any civilian population. Rape and other forms of sexual violence may also constitute other international crimes when committed under specific circumstances, for instance, the crime of torture or a constitutive act of genocide (International Committee of the Red Cross, 2022).

The legislative nature of sexual violations and torture is included in the Rome Statute of the International Criminal Court of 1998. Under Article 7(1)(f) and Article 7(1)(g). These laws encompass (f) torture and (g), among others, rape, enforced prostitution, or any other form of sexual violence of comparable gravity. Article 7(1)(k) states that other inhumane acts of a similar character intentionally causing great suffering or serious injury to the body or mental or physical health are prohibited.

Based on evidence reviewed by the New York Times, it can be established that during the terrorist attack on October 7th, there have once again been grave breaches of international humanitarian rights by Hamas. The violation of women's self-determination,

rape, and sexual exploitation has to be investigated, as well as the conditions all of the hostages were in. This is obviously besides the murder and abuse of thousands of Israelis during the October 7th attack itself.

### ***Israel***

#### ***Targeting of Health Infrastructure, including Hospital and Medical Personnel***

The World Health Organization reported nearly 600 verified attacks on health infrastructure in Gaza as of January 5th, 2024 (World Health Organization, 2024). This has resulted in not only hundreds of deaths of civilians and healthcare workers but also a severe depletion of essential services, a lack of medical supplies, and an overwhelmingly under-resourced health system (World Health Organization, 2024). On April 1st, 2024, the Israeli military withdrew from Al-Shifa Hospital, leaving an absolute rampage scene behind. Israel justified the attack by saying it was targeting Hamas militants who were using the hospital for their military campaign (Al Jazeera, 2024b).

Several relevant international frameworks exist in the realm of the targeting of health infrastructure. The Fourth Geneva Convention - Relative to the Protection of Civilian Persons in Time of War (1949) specifically addresses the protection of civilian hospitals. Article 18 (GHC, IV) stipulates that civilian hospitals (...) may in no circumstances be the object of attack and shall at all times be respected and protected by the parties of the conflict. Israel justifies the attacks by the presence of Hamas. However, Canadian lawyer Carolynn Edgerton, who worked for the ICC, stressed that the

jurisprudence balances the principles between military necessities and humanity. “Attacking hospitals and other medical units is prohibited under the First Geneva Convention, and that protection extends to the wounded and sick, staff of medical establishments, and ambulances. That protection does not end unless those establishments are used by a party in the conflict to commit an act harmful to the enemy” (Deutsch & van den Berg, 2023b). This is also mentioned by Article 19 (GHV, IV), which mentions that there is no protection when it is used as something other than a hospital. However, the presence of small arms and ammunition taken from such combatants shall not be considered a harmful act to the enemy. Therefore, even when Hamas militants are present inside a hospital, it is not necessarily a justifiable attack in international law. If it is proven to violate humanitarian law, it violates the articles described above and Article 51(GHV, IV). This article stipulates that an attack on the civilian population, who should enjoy general protection against dangers arising from the military, should not be an object of attack. According to article 51.5 (b), an attack on militants may be expected to cause incidental loss of civilian life, injuries, or damage to civilian objects, but it can't be excessive. Any determination that a medical establishment has become a military target can be made. However, the foreseeable collateral damage can be seen as excessive to the military advantage, following the principles of proportionality of collateral damage. Attacks on health infrastructure, including attacks on ambulances, should be investigated as war crimes.

## **Genocide**

On 29 December 2023, South Africa filed a case against Israel at the International Court of Justice, accusing Israel of committing genocide. The case has been supported by countries such as Brazil, Egypt, and Turkey. In South Africa's complaint at the International Court of Justice, they describe the following: "The acts and omissions by Israel...are genocidal in character, as they are committed with the requisite specific intent... to destroy Palestinians in Gaza as part of the broader Palestinian national, racial and ethnical group". South Africa states "Israel, since 7 October 2023 in particular, has failed to prevent genocide and has failed the direct and public incitement to genocide"(International Court of Justice, 2023).

After public hearings on Thursday 11 and Friday 12 January, the international court has indicated several provisional measures, all within the scope of the Convention on the Prevention and Punishment of the Crime of Genocide (ICJ, 2024):

1. Take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention.
2. Take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip.

The UN Convention on the Prevention and Punishment of the Crime of Genocide defines genocide ( Article II) as "any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such; (a) killing members of the group, (b) causing serious bodily or mental

harm to members of the group, (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group. Genocide cannot be justified under any circumstances, including purported self-defense (Schabas, 1997). To establish if Israel is committing genocide, we have to look at two factors: the acts committed and (2) the intent of Israel. Specific intent, which is the hardest to determine, can be established by statements from high commanders in military and politics, official documents, or inferred from patterns of conduct.

When we go over the conditions to establish genocide, we can conclude that Israel shows signs that it is committing genocide. First, in 6 months, Israel has killed over 30,000 Palestinians, of whom 70% are women and children. There is no proof that the remaining 30% of deaths are active Hamas combatants. In the first month, it dropped the equivalent of two nuclear bombs on Gaza to destroy residential areas, universities, mosques, and so on. (Euro-Med Human Rights Monitor, 2023). These “dumb bombs” as it turned out, have been enabled by using Artificial Intelligence (Reiff, 2023). It also includes deliberate starvation imposed on Palestinians. According to a study by the Integrated Food Security Phase Classification (IPC), half of Gaza is experiencing catastrophic food insecurity, putting 1.1 million people at severe risk (Bowen, 2024).

The second part, causing serious bodily or mental harm to members of the group, is also met. Physically, 30000 people are



dead, many more are injured and are now deprived of food. Mentally, the scenes people must have seen, bodies that are lying dead on the road, people being trapped under the rubble, and families, including children murdered, are creating an immense amount of trauma for the rest of their lives.

Third, deliberately inflicting on the group conditions of life include starvation, dehydration, forcible transfers, reducing essential medical services, deprivation of housing, etc. Health and telecommunication infrastructure, including roads, homes, and educational facilities, are being destroyed. At the start of Israel's campaign in Gaza, Defense Minister Yoav Gallant announced a "complete siege (...) no electricity, no food, no water, no fuel", and "we are fighting human animals" (No Comment TV, 2023). This shows the intent to inflict harmful conditions on human life in Gaza deliberately.

As mentioned before, the intent to kill a part or an entire population is the most challenging requirement of genocide. Proof of indirect intent can include the scale and systematic targeting of victims based on their affiliation with the group. Direct evidence is, for example, words of state authorities, including dehumanizing language in combination with the acts mentioned above. The United Nations Report on the possibility of Genocide (2024) there was stated the following quotes from high-placed officials: Prime Minister Benjamin Netanyahu referred to Palestinians as "Amalek"<sup>152</sup> (IsraeliPM, 2023) and "monsters"(Christmas Message From PM Netanyahu, 2023). The Amalek reference is to a biblical passage in which God commands Saul, "Now go and smite Amalek, and utterly destroy all that they have, and spare them not;

but slay both man and woman, infant and suckling, ox and sheep, camel and ass” (The Holy Bible, n.d.). Minister of Heritage Amihai Eliyahu called for striking Gaza with “nuclear bombs” (Times of Israel, 2023). This shows the way Israeli officials dehumanize Palestinians.

Given the conditions that are met above, there is enough evidence that Israel is committing a Genocide on Palestinians in Gaza. Genocide cannot be justified, even when it is in self-defense. The scale on which Israel is busy doing an absolute destructive rampage campaign through Gaza is devastating. Thousands of Palestinians have been killed, thousands have been traumatized and hurt, and millions are deprived of food. Following the statements of high-ranked officials such as Netanyahu, Eliyahu, and many more, it can be determined that Israel intends to destroy at least a part, if not the whole, of Palestinians in the Gaza Strip.

### ***Conclusion International Law***

Both actors are stating their willingness to destroy either Israel or Palestine/Hamas despite the incredible toll on human life. When we look at the framework of international law, documents, pictures, and videos, as well as interviews, we can witness live the starvation of millions of Palestinians, the terrorist attack of Hamas and its allies, and Israel’s genocidal campaign that followed.

Hamas, a non-state actor, a terrorist organization labeled by several countries, including the UK, the US, and the EU, has violated international humanitarian law in at least three instances.

The over 200 hostages that have been taken, as well as the horrific scenes of sexually abused women, are prohibited by international law. The indiscriminate firing of rockets and the killing of over 1,200 civilians with it is another serious breach of international humanitarian and war law. Using civilians as human shields is also a breach of international law. When we look at Israel, you can say the same. Indiscriminate bombing of Palestinians is a war crime; the genocidal campaign that Israel is committing in Gaza is a war crime. The deliberate targeting of hospitals in 99% of the cases is prohibited by international law. Besides that, you can argue that the lack of aid that is coming into Gaza is a deliberate action from Israel and, therefore, also a violation of international law.

#### **4. Role of International Institutions**

In this conflict, the role of international organizations such as UNWRA, World Central Kitchen, Red Cross, the United Nations, and countries such as Qatar, Egypt, and the US are crucial. Both in the way diplomatic endeavors unfold and humanitarian assistance is provided. Qatar and Egypt have been putting in tremendous effort to provide opportunities for a cease-fire. There have been a lot of talks regarding the negotiations concerning the hostages and humanitarian aid that has to come into Gaza. First, we will look into US foreign policy and its position towards Israel to see what Biden has done “right” and the possible vulnerabilities in his policy. Over the past few years, Americans have shifted their focus from foreign policy to Russia and China. The US administration signaled to move away from the Middle East and devote more attention to China's increasing tensions and power play (Vakil, 2024). In the initial days after the Hamas attack, the Biden

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administration moved two carrier strike groups and a nuclear-powered submarine to the Middle East. Biden stood firmly behind Netanyahu and declared full-blown solidarity with Israel. Biden's was to ensure that a broader escalation in the Middle East, with Iran or its proxies, would not happen. The US would give Israel the time, space, and support to do what it needed to do against Hamas (Simon & Miller, 2023). Now, six months into the war, the US has isolated itself in its stance with Israel. Hamas has not been defeated yet. 32,000+ Palestinians have been killed, and even more are starving from hunger. After the US vetoed the UN resolution three times, it decided to withhold from voting the 4th time. Whereas the world is calling for an immediate cease-fire, humanitarian aid, and a release of the hostages, the US is still delivering millions worth of heavy military equipment to Israel. In a way, it is cynical that the murder of 7 non-Palestinian World Kitchen aid workers has caused Biden to take more action than thousands of Palestinians over the past months. The attack showed the contradictions in Biden's policy towards Israel.

The Administration has air-dropped aid into Gaza but also provided Israel with the bombs, rockets, and F-15 jets to go after Hamas. Hamas is mainly centered in Rafah, but for Biden, an invasion of Rafah is the "red line." With elections coming up this year, Biden seems to have changed his tone to adhere to its democratic voters. The two-state solution that Biden advocated seems further away than ever. With both parties vowing for the destruction of one another, it looks pretty unrealistic. US credibility is declining, and it does not have decisive power in the Middle East. Not to mention the deteriorating relationship between

the US and the countries in the Global South. The United States has to take a firmer stance against Israel. Understandably, the initial focus went on Hamas' assault on Israel. However, the humanitarian situation, which, due to its supplies of weapons, America might be partly responsible for, is too alarming not to take more action.

Regarding humanitarian aid, several international organizations, such as the UNRWA and the Red Cross, provide humanitarian assistance both inside the conflict region of Gaza and outside at the crosspoint and border with Egypt. Both institutions repeatedly call for a cease-fire to provide medical aid and relieve humanitarian assistance. Since the situation is not safe for healthcare or aid workers, many organizations that were able to help Palestinians in Gaza are putting their aid on hold. Healthcare and aid workers have repeatedly been attacked by the Israeli military while doing their job. The attack on Western aid workers of World Central Kitchen caused a lot of turmoil around Western countries, demanding a full-blown investigation.

### *Media*

The last part of this research is the role of the media in covering the Israel-Hamas War. Because the media plays such a key role in shaping how we view the situation, this plays a huge role. There are conscious or unconscious decisions that media and journalists make that affect how the aggressor or victim is portrayed. It can make or break how we see Israeli or Palestinian suffering. The harsh truth is that Western coverage of the War is extremely pro-Israel. In talk shows and media, there is the narrative that all men

in Gaza are members of Hamas or any other terrorist group and, therefore, are the enemy. The suffering of Israelis has gotten much more attention than the suffering of Palestinians. The history between Israel and Palestine, the role of Great Britain, and the role of settler colonialism is not or little covered. It creates a false narrative because the whole story is not told.

Western people are preconditioned to disregard Palestinian humanity due to Islamophobia and colonialism and because they are simply non-white people. Seeing humans as less than others contributes to dehumanization and makes it justifiable or more accessible to kill them. For example, Palestinians “die” while Israelis are “killed”(The New Humanitarian, 2023). This subtle difference in wording is hugely significant. People who are pro-Palestine are being depicted as antisemitic. Anti-semitism is racism and is in no situation justifiable. But being pro-human rights for Palestinians does not mean someone is antisemitic. They can exist next to each other. As a society, we must condemn the horrific attack on Israel, but we must not forget the humanitarian catastrophe that Palestinians are going through.

### **Conclusion**

In conclusion, this essay provides an extensive analysis of the Israel-Hamas War, synthesizing historical dimensions such as the war in 1947-9, which created the creation of Israel and the West Bank/Gaza Strip, and the Six Day War in 1967. What is known is a very long history of tensions within the region, which eventually erupted on Oct. 7. 2023. Besides a part of the history, the

contemporary events of the war are still unfolding, and analysis provided a nuanced understanding of the struggle that has been going on for decades. In this research, I have examined specific incidents by Israel and Hamas. The assault on Israeli civilians, hostages, and sexual violence by Hamas. On the Israeli side, the attack on health infrastructure, including hospitals, and the genocide that Israel is committing. All of this is within the scope of international humanitarian law. It raises an incredible amount of questions regarding war crimes and crimes against humanity.

The abduction of approximately 240 hostages by Hamas represents a violation of established international legal norms, as stipulated by the Geneva Conventions and the Rome Statute of the International Criminal Court. Sexual violence against women is a war crime as well. These acts underscore the urgency for international accountability.

On the other hand, the 600 verified attacks on health infrastructure, particularly the strike near the Al Shifa hospitals, illuminate potential violations of the Fourth Geneva Convention. It challenges the principles of proportionality and the mandate of international law. The intent to destroy a whole ethnic group and thereby commit genocide has been the most vigorous violation of human rights law. The use of “dumb bombs,” the killing of 33000+ Palestinians, and the potential assault on Rafah are things Israel can be sued for.

We have to look critically at the role of the US and its unconditional support of Israel, which brings questions about its complicity in war crimes. Its diplomatic efforts in getting all of the

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hostages home, as well as a sustainable ceasefire, have so far been insufficient. The role that the US once played on the world stage is not the role the US has now. In terms of post-Gaza period, the only diplomatic option would be a two-state solution with an Israeli and Palestinian State. However, with Netanyahu's extreme right, nationalistic government, this seems impossible to achieve.

An immense humanitarian crisis is unfolding in Gaza. Children are dying from hunger, and civilian infrastructure, including hospitals and houses, is destroyed. The West seems to be paralyzed in its actions towards Israel. Historical guilt, rooted in the Holocaust, is making the debate sensitive. The Israeli government, traumatized by the terrorist attack, has made its goal to erase Hamas from the earth. In their eyes, the "collateral damage" does not matter, as it serves its purpose to eradicate Hamas. But this approach might work counterintuitive. As the anger grows among Palestinians, it is a growing site for new members of Hamas. For Palestinians, who have been living under an occupier for decades, the war has turned out to be a humanitarian disaster. Thousands and thousands of people died over six months—women who, due to famine, were not able to breastfeed their children anymore. Children who have lost their entire families due to the indiscriminate bombings.

As I've written this research paper, I realize it can create much discussion and polarization. It is an incredibly sensitive topic all over the globe due to its history and how the war is unfolding. I urge everyone to read about the history of the region and to look at the stories of both Israelis and Palestinians. See the immense destruction on both sides with your own eyes and make your own



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informed opinion. I condemn, in the strongest words possible, the terrorist attack on Israeli citizens. However, I also have eyes for the situation of apartheid, dehumanization, oppression, and tight control Palestinians have been living in for decades.

With no ceasefire in sight, we cannot forget that every human that has been killed, either on the Israeli or Palestinian side, was someone with hopes and dreams. Someone with ambitions and friends and family who cared about them. I hope that even in dark times like this, there is hope. Hope for a better future for both Palestinians and Israelis. Israeli citizens don't ever have to fear that terrorist from Gaza will destroy their lives. That citizens in Gaza and the West Bank finally have the self-determination they have been striving for. Violence should not be the only option to bring the Palestinian issue back on the table. I hope that every mosque, house, and hospital can be rebuilt for Palestinians to live in Gaza. But also that Israel can heal from its collective trauma. I wish that, as the human race, we would still believe in the humanity in one another. We must respect the rules of human life and dignity. The notion that all men are created equal can't just be an empty sentence. We must protect human rights because they are no longer a given right.

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