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## **WAR CRIMES IN GAZA STRIP FROM YEAR 2008 2021: INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER THE LEGAL FRAMEWORK OF ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT**

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### **ABSTRACT**

From the end of the year 2008 to 2021, Israel committed four wars in the Gaza Strip. These wars were known as Operation Cast Lead in 2009, Operation Pillar of Cloud in 2012, Operation Protective Edge in 2014, and Operation Guardian of the Walls in 2021. The destructive impacts on vital facilities in Gaza, including schools, universities, mosques, hospitals, and United Nations Relief centers, as well as the killings of thousands of innocent civilians by Israeli forces, are visible evidence of a serious violation of the principle of distinction, a basic principle provided under the international humanitarian law conferring protection upon the civilians during armed conflicts. The accession of

Palestine to the Rome Statute of the International Criminal Court on crimes. This paper aims to analyze the position of individual criminal responsibility committed during the above-mentioned wars, regulated under the Rome Statute of the International Criminal Court and other relevant international conventions. In analyzing the data from primary and secondary sources, this paper applied doctrinal legal research and qualitative approaches. This paper concludes that the Rome Statute of the International Criminal Court associated the individual criminal responsibility for war crimes by systematically determining the extent of participation, namely: (1) commission; (2) ordering/instigating; (3) assistance; and (4) contribution to a war crime as a group crime. Thus, Israeli military leaders ought to be held liable for the commission of war crimes in accordance with Article 8 of the Rome Statute of the International Criminal Court. The pretexts of the Israeli occupation to be exempt from criminal responsibility should be rejected according to the state of legitimate defense.

**Keywords:** Israel-Palestine conflict, individual criminal responsibility, war crimes, Gaza Strip, International Criminal Court.

## INTRODUCTION

After the end of World War I (WWI) and World War II (WWII), the entire world began to realize the magnitude of the scourge and the pain of these man-made disasters to the entire international community, given the deployment of weapons of warfare with unimaginable means (Çakmak, 2017). Fifty million people were assassinated during these wars, and caused the death of many other millions of people due to contagiously severe epidemics (Cheng, 2019). War crimes are a dreadful breach of the international law and principles of war which calls for a criminal justice system to prosecute war criminals (Talbert & Wolfendale, 2018). Thus, the vital role of international criminal justice as a legal system is emphasized by prescribing legal provisions associating criminal responsibility for violation of the international humanitarian law (IHL) and, further, prosecuting war criminals (Kendall & Nouwen, 2018).

Wars in Gaza are widely known being the most horrendous wars in Palestine. Gaza Strip is a tiny part of Palestine, located on the eastern

Mediterranean coast. The length of Gaza is 41 km, and its width ranges between 5-15 km, covering an area of 60 km (Elshobake, 2019). Egypt borders the Gaza Strip on the southwest, while Israel, an “occupied Palestine,” shares northern and eastern borders. The population of Gaza is around 2 million and thus is regarded as the most densely populated area in the world (Alsaedi, n.d.). Since the last decade, Israel has gained a reputation as the world’s most vicious country. Thus far, Israel has launched four horrific wars against the Gaza Strip, which have caused thousands of innocent people massacred and tens of thousands of houses and infrastructure demolished. These four brutal wars, namely the 2009 Operation Cast Lead, the 2012 Operation Pillar of Cloud (Cohen et al., 2017), the 2014 Operation Protective Edge (Pennington, 2020), and the 2021 Operation Guardian of the Walls (BBC, 2021) were justified by Israel as merely attempts to prevent the launching of missiles from Gaza to the southern areas of Israel (Cohen et al., 2017).

Being a non-member Observer State in the United Nations (UN) (United Nations, 2013), Palestine has ratified numerous international conventions. This includes the Rome Statute, which established the International Criminal Court (ICC) and was ratified on 1 April 2015. Following this ratification, the State of Palestine falls under the jurisdiction of the ICC. Hence, scrutinizing the related issues is crucial, as it helps to examine war crimes of the Israeli occupation and the criminal responsibility thereof as provided under international law, in particular the Rome Statute of the International Criminal Court.

## **RESEARCH METHODOLOGY**

This paper composed doctrinal legal research in pursuance to establish the individual criminal responsibility (ICR) of the Israeli forces for committing war crimes in the Gaza Strip from 2008 to 2021, and to exclude the exemption of punishment thereof, as well as to let Palestinian victims have more evidence to reclaim their rights. Numerous international conventions and related legal provisions were analyzed in this paper using a qualitative approach based on primary and secondary sources. The primary sources included international and regional treaties, United Nations resolutions, the Rome Statute, international documents, and non-governmental organisations

(NGOs). Additionally, this paper referred to secondary sources too, which were obtained from books, articles, publications, and internet sources. The reason for selecting the doctrinal approach can be justified by the fact that the related issues require clarification of vagueness in several areas and the need to arrange the said issues in a logical structure and orderly manner (Razak, 2009).

## **LITERATURE REVIEW**

Although international criminal law has been the main subject of a considerable number of studies, the legal studies concerning individual criminal responsibility (ICR) for war crimes in Gaza wars committed between 2008 to 2021 are painfully limited. Hence, in order to substantiate such scarcity with this paper, the researcher focused on exploring the most related essential works as discussed next.

The issues in the Gaza Strip regarding the breach of the rules stipulated in the IHL, especially the 1949 Geneva Conventions (GC 1949) and the Rome Statute, were analyzed in writing by Elshobake (2019). By adopting a content analysis approach, the author, however, narrowed down the scope of his study to include only the Gaza War of 2014. The said article identified the impact of Israeli operations and crimes committed in the Gaza Strip solely in the year 2014. The author concluded that the Gaza Strip is still under Israeli occupation, and thus, the relation between Israel and Gaza Strip falls under the IHL. Elshobake's article, nevertheless, did not cover the crimes committed in the Gaza Strip prior and post-2014. Moreover, the author failed to address the problems and weaknesses that existed in the legal frameworks by not in any way attributing the ICR of war crimes in the Gaza Strip to the Israeli forces.

The international responsibility for the crimes of the Israeli occupation was mainly dealt with in the article written by Marni and Shehab (Ahmed Shehab, 2018). The authors traced the evolution of the framework of responsibility of the Israeli occupation for its crimes against the Palestinian people, as well as the extent of availability of international protection to the Palestinians. The researchers used the descriptive analytical approach in examining the basic rules of international law and their applications in the case of the Israeli-Palestinian conflict.

The authors divided their paper into two parts, namely Israel's civil responsibility and the impediments of international liability. The article also analyzed the provisions of international civil responsibility of humanitarian response. According to Marni and Shehab, it is the elements of international civil responsibility that conform with the crimes committed by the Israeli occupation forces. Therefore, Israel is obligated to bear its international obligations under international civil liability. The current paper has benefited from this work despite the fact that it was limited to civil liability and did not specifically address the criminal responsibility of war crimes.

Further, the legal characterization of violations and crimes committed by the Israeli occupation in the Gaza Strip in 2014 was reviewed in Basal's comprehensive study (Basal, 2016). The author successfully identified the absence of an international legal framework, being the Palestinians' most challenging obstacle to progress. The study highlighted the most prominent legal, political and procedural challenges faced by Palestinians, internally and externally, concerning the use of mechanisms to prosecute Israel provided under international law. The author adopted an analytical research method to show the substance of the crimes perpetrated by Israel during the aggression. The study clarified the international responsibility of the Israeli forces against civilians in the Gaza Strip and attempted to identify the legal and judicial options available for the Palestinians to pursue against the Israeli leaders. The study also addressed essential issues within the appropriate context that this instant research may benefit from. Basal's study, however, did not address the problems and impediments of attributing criminal responsibility under international criminal law to the Israeli war criminals that committed massacres in Gaza in 2014 and 2021. Thus, this current article seeks to fill the research gap.

Details of civilians in the Gaza Wars in 2012 and 2014 who lost their limbs and obtained serious injuries due to the Israeli prohibited use of Dense Inert Metal Explosive (DIME) were analyzed in a study conducted by Al-Qidra (2014), which was based on official reports. This particular munition is evidently banned by international law. Al-Qidra emphasized that Israel also used small "nail bombs" or "shrapnel", which may cause serious injury to all body parts. The author also argued that DIME munitions contain fragments or particles that cannot be detected by X-rays. Moreover, the author identified that

the use of DIME munitions in a densely populated area contravened the GC 1949. Hence, there is a dire need for an international probe to investigate Israel's war crimes against the Gazans.

The weapons used by Israeli were apparently revealed in a unique article written by Hammond (2013). It was argued that the Israeli forces did use the internationally banned weapons in their wars in the Gaza Strip. The author demonstrated that the Israeli forces employed white phosphorus and cluster munitions in Gaza Strip through a series of confessions, indisputable exposures, and evidence. This included the announcement made by Marc Garlasco, serving at Human Rights Watch as a senior military analyst stating that Israeli forces used white phosphorus against Gazans. Marc Garlasco also emphasized that "white phosphorous burned down houses and caused horrific burns in Gaza wars". The author posited that despite the fact that Israel did not sign "the Additional Protocols" of the GC1949, the prohibition on the use of white phosphorus and cluster munitions, however, was based on two customary principles of international law, which are plainly binding on Israel. The first customary norm prohibits employing weapons that cannot differentiate between combatants and civilians. The second principle prohibits using weapons that may inflict unnecessary suffering. Hammond's work is commendable and apt in terms of the in-depth analysis undertaken. The author, however, did not address the concept of ICR stipulated in the Rome Statute governing the internationally banned weapons, nor did the analysis tackle and cover the three Gaza wars that took place in 2012, 2014, and 2021.

## **DISCUSSION AND ANALYSIS**

### **War Crimes under the Rome Statute of the International Criminal Court**

Under the international legal philosophy, there is no unanimous categorization of grave crimes concerning the global community, such as war crimes (Bassiouni, 2002). However, within the legal framework of Article 8 of the Rome Statute, war crimes are divided into two categories of conflicts which are: crimes in international armed conflicts and crimes in non-international armed conflicts

(Bartels, 2020). Such a distinction is becoming antiquated in the case of assimilation. The same sentiment applies to the categorization of war crimes that are based on the legal sources from which they are derived, for example, the Hague Convention of 1907, the 1977 Additional Protocol I to the Geneva Conventions (Additional Protocol I), and other conventions pertaining to IHL. For the reasons of transparency and comprehensibility, it appears fair to classify the many sorts of war crimes into four basic categories based on the nature of the activity that is being criminalized. First, offenses committed against protected persons; second, offenses committed against protected things such as private property; third, offenses committed against unlawful techniques of warfare; and fourth, offenses committed against unlawful means of warfare (Schwarz, 2014).

### **War Crimes in Relation to Protected Persons**

Protecting civilians from severe brutality and the direct outcomes of warfare is a fundamental principle of international treaties, and attacks may only be oriented towards the combatants (Melzer, 2016). Any intentional physical violence against “protected persons” such as the wounded, civilians, prisoners of war, shipwrecked persons, and residents of occupied territories is considered a war crime under international armed conflict laws, including the GC1949 and its Additional Protocol I, unless justified by military necessity or proportionality (Venturini, 2010). Thus, any “willful killing; the cause of great suffering or serious injury to body or health; torture; cruel inhuman or degrading treatment including biological, medical or scientific experiments, mutilation, and taking hostages” against protected persons constitute war crimes as well, being provided under Article 8 (2) (a) (i), (ii), (iii), (viii) and Article 8 (2) (b) (x) of the Rome Statute (Lachenmann & Wolfrum, 2016).

Article 50 of the Additional Protocol I specifies “civilians” to mean any person not belonging to a group of persons mentioned in Article 4 (A) (1), (2), (3), and (6) of the Third Geneva Convention 1949 (GCIII). This, among others, denotes that, “a civilian is a person who is not a member of the armed forces” (Lachenmann & Wolfrum, 2016). Additionally, Article 43 of the Additional Protocol I, grants the legal status of a combatant to all personnel of a party’s armed forces who are involved in a battle. As a result, only combatants possess the legal authority to take a direct part in hostilities and, therefore,

may kill, harm, or destroy (the so-called “combatant’s privilege”), on condition that the said actions are within the limitations of the IHL and do not cause harm or destroy civilians. Nonetheless, combatants, being classified as non-civilians, are legitimate subjects of attacks by the opponent’s military (Watkin, 2009).

On the contrary, civilians should never be directly involved in military operations and should always be safeguarded. Therefore, Article 85 (3) (a) of the Additional Protocol I considers direct strikes against civilians or individual civilians to be regarded as a war crime as long as the civilians themselves do not directly engage in such hostilities (Schwarz, 2014). Accordingly, war crimes targeting the civilian population as a whole or people who are not directly involved in hostilities are classified as war crimes under Article 8 (2) (b) of the Rome Statute. Pursuant to Article 28 of the Fourth Geneva Convention 1949 (GCIV) and Article 51 (7) of the Additional Protocol I, the manipulation of people constituting as a shield for the purpose of making specific locations or regions be excluded from military attacks is banned. Article 8 (2) (b) (xxiii) of the Rome Statute stipulates that such a technique is tantamount to a war crime (Moneta, 2013). Moreover, regarding investigating the commission of war crimes in relation to protected persons, two principles should be explained:

### ***Principle of Distinction***

When war pursues, the principle of distinction distinguishes the people into two sections; one section is the combatants being the appropriate targets of attack and destruction, and the other section is civilians, who are and should be protected (Kasher, 2007). Therefore, attacks of a kind that target both military objectives as well as civilians or civilian objects, regardless of the distinguished section, are referred to as indiscriminate strikes under international law (Ponti, 2015). This concept is established in Article 85 (3) (b) of the Additional Protocol I, which classifies indiscriminate attack as a grave breach, if carried out knowingly that it will lead to excessive civilian casualties or property damage (defined in the Additional Protocol I Article 57 (2) (a) (iii)) and, as a result, being a war crime. In other words, violation of this provision is considered a war crime if the breach causes excessive civilian casualties or property damage. Although the Rome Statute does not adequately and explicitly prescribe the effect of violating the



principle of distinction, Article 8 (2) (b) of the Rome Statute considers purposeful direct strikes against civilian populations as war crimes (Schwarz, 2014).

### ***Principle of Proportionality***

The rule of proportionality is the most visible example of the delicate balance that must be struck between military necessity and humanity concerns being the basis of IHL. This is an undisputed fact about the principle of proportionality in its essence. Article 51 (5) (b) of the Additional Protocol I requires “belligerents to abstain from attacks expected to cause incidental loss of life or injury to civilians, damage to civilian objects, or any combination thereof, and which would be excessive in relation to the concrete and direct military advantage anticipated” (Gillard, 2018). However, this principle is not absolute and conclusive. There is an exception for war parties to be justified to kill or injure protected persons (such as civilians) or to destroy objects belonging to civilians. Civilians will be deprived of their status as protected persons when they are directly involved in warfare, which means that they could be a legal target of assault during this period. Furthermore, the accidental death or injury of people and the damage of civilian property that occur due to a justifiable military action are permissible, provided that the said fatalities are inevitable and appropriate to the military benefit gained by the operation (Schwarz, 2014). The principle of proportionality sets out that inadvertent losses among people or civilian objects (often known as “collateral damage”) be in balance with and not “excessive” in relation to the expected concrete and direct military advantage (Rubinstein & Roznai, 2011). This is prescribed in Article 51 (5) (b) of Additional Protocol I. In summary, the principle of proportionality being part of customary international law is applicable in both international and non-international armed conflict. Ultimately, violation of the principle of proportionality is implied as a war crime by Article 8 (2) (b) (iv) of the Rome Statute (Lachenmann & Wolfrum, 2016).

### **War Crimes in Relation to Protected Objects**

Provisions for the wide protection of civilian objects and property are clearly established under IHL. Attacks, reprisals, or other acts of violence against such objects are prohibited in both internal and international conflicts. This specific protection is typically coupled

with the fact that the items in issue have a distinctive sign that is protected by IHL. The provisions of IHL applicable to international and non-international armed conflicts provide this particular protection (Sassòli & Cameron, 2006). The principle of distinction, as laid out in Article 48 of the Additional Protocol I, does not only cover distinction relating to persons but also includes military and civilian objects in warfare. Accordingly, nations are required to differentiate between civilian and military objects at all times, and they are not allowed to target civilian objects when directing strikes (Melzer, 2014).

To clarify, military objects are defined as “objects that, by their nature, position, purpose, or use, contribute constructively to military operations and whose total or partial destruction, capture, or neutralization delivers an undeniable military advantage” (Article 52, Rule 8 of the 2005 ICRC customary IHL). Therefore, to consider an object as a military object, it must fulfill at least two collective requirements, which are as follows: (1) the object in question must make a significant contribution to military action; and (2) the capturing, destroying, or neutralizing of the object in question must result in a decisive military benefit for the party claiming the object (Jachec-Neale, 2014). The absence of fulfillment of one of the prerequisites may not render the object a military object (Sari & Tinkler, 2019). The protected status of civilian objects will always be maintained unless being transformed into military object status. This is a truly unavoidable reality. To illustrate, if enemy combatants use a school as a weapons cache, the school, which is initially a protected civilian object, has therefore converted into a military object. This has been dealt with in Article 52 (3) of the Additional Protocol I that provides “if there is any uncertainty about whether an object that is ordinarily dedicated to civilian functions is being used to make an effective contribution to military operations, it will be deemed not to be so employed unless shown otherwise.” Further, as stipulated in Article 8 (2) (b) (ii) of the Rome Statute, “intentionally directing attacks against civilian objects during armed conflict amounts to war crimes.”

Additionally, in accordance with Article 8 (2) (b) (ix) and Article 8 (2) (e) (iv), the Rome Statute goes beyond the texts of the Additional Protocol I and protects a variety of civilian objects. This protection extends to “buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are treated,” and it applies to both international

and non-international armed conflicts. Besides that, cities, towns, households, and buildings that are undefended during international armed conflicts are afforded an additional layer of protection under Article 8 (2) (b) (v) of the Rome Statute (O'keefe, 2010).

Moreover, the Hague Convention of 1907 contains a provision that safeguards personal property as specified in Article 46. In furtherance, Article 147 of the GC IV provides that severe breaches include the illegal and wanton destruction or seizure of property extensively that is unable to be validated by military necessity. As a result, according to Article 8 (2) (a) of the Rome Statute, substantial looting and looting of property that are not validated by military necessity or carried out illegally and wantonly are regarded to be a form of war crime. In furtherance, pillaging of towns and sites during international warfare is expressly forbidden under Article 8 (2) (b) (xvi) of the Rome Statute. Subsequently, Article 8 (2) (e) (v) prescribes that the same rules apply to both international and non-international armed conflicts (Schwarz, 2014).

### **War Crimes Associated with Illegal Methods of Warfare**

Generally, illegal warfare refers to the operating of weapons or methods of fighting which do not comply with the fundamental standards of IHL that regulate how conflicts must be handled. Article 35 of the Additional Protocol I provides that “the right of the parties to a conflict to select methods and means of combat is not unlimited” in armed conflict (Lawand, 2006). This customary rule has been affirmed by the International Court of Justice, which provides that “methods and means of warfare that would preclude any distinction between civilian and military targets, or that would result in unnecessary suffering to combatants, are prohibited” (Doswald-Beck, 1997). Thus, it can be seen that this rule is based on the guiding concept of military necessity, which enables only appropriate methods and means of warfare to be utilized during warfare. The application of this principle manifests that belligerent parties in warfare should observe the principles of distinction between civilians and combatants, between military and civilian objects, and the prohibition of causing unnecessary injury or suffering, as outlined in both Article 48 and Article 35 (2) of the Additional Protocol I respectively (Luban, 2013).

Accordingly, direct assaults on people and civilian property are prohibited by Article 8 (2) (b) (ii), (ix) and (xxiv), as well as Article

8 (2) (e) (ii) and (iv) of the Rome Statute. Each and every military operation is tasked with ensuring that the principle of proportionality is adhered to, which stipulates that the number of accidental casualties must not be disproportionately high in comparison to the gains made by the military. This is one of the underlying elements of the humanitarian norms that govern the conduct of war. Pursuant to Article 8 (2) (b) (xxv) and Article 8 (2) (b) (xxiii) of the Rome Statute, the causing of intentional deprivation of food to civilians during warfare are both considered to be war crimes because they are warfare techniques that affect people who are not participating in the conflict. In this regard, warfare techniques that may cause unreasonable destruction to the environment are specifically prohibited by Article 35 (3) of Additional Protocol I, which sets out that “methods or means of warfare which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment are prohibited” (Schwarz, 2014).

### **War Crimes in Relation to Unlawful Means of Warfare**

Using weapons that cause disproportionate pain or unnecessary suffering or are fundamentally indiscriminate is banned under IHL. One of the oldest rules is the prohibition of poison or poisonous weapons, including water or food supplies poisoning. It is apparent that the utilization of forbidden weapons of war has exceptionally severe consequences for one’s physical health (İzmir, 2016). For example, if mining a territory or spraying an area with chemicals that are designed to kill or hurt people as a result of the poison’s impact, it may be in violation of IHL. That being the case, those who direct, order, or plan such an act may be held personally liable for a war crime (Schmid, 2011).

Weapons, projectiles, and materials of war which are used during warfare that may cause “superfluous injury” or “unnecessary suffering” are prohibited in Article 35 (2) of the Additional Protocol I. Further, attacks that use methods or means of combat that cannot be targeted at a specific military objective are prohibited by Additional Protocol I as stipulated in its Articles 51 (4) (b) – (c). Similarly, attacks that use methods or means of combat that cannot be limited in accordance with the Additional Protocol I requirements and are of a nature to strike military objectives as well as civilians or civilian objects without distinction are also banned (Lachenmann & Wolfrum,

2016). In addition, Article 51 (4) of the Additional Protocol I deals with the principle of distinction in the sense that weapons should not be used if their destructive force may potentially cause indiscriminate consequences towards both combatants and civilians, thereby making the principle of distinction between combatants and civilians unattainable (Schwarz, 2014).

In conclusion, the use of particular kinds of weapons, such as weapons of extensive destruction, nuclear, biological and chemical weapons, of which disastrous nature renders them essentially unable to prevent excessive injury, is wholly or partially prohibited by multilateral treaties and general principles of IHL being part of customary international law. This is due to the reason that those weapons are destructive in nature (Schmitt, 2013). As a consequence, to this, the employment of chemical weapons during a state of armed conflict is regarded as a war crime. Several international treaties, most notably the 1925 Geneva Protocol for War and the 1972 UN Biological Weapons Convention, both forbid the use of biological weapons during warfare. This is the most vital aspect of warfare prohibition (Alamuddin & Webb, 2010).

### **THE LEGAL FRAMEWORK OF INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER THE ROME STATUTE**

Individual Criminal Responsibility (ICR) is defined in Article 25 (2) of the Rome Statute, “a person who commits an international crime shall be individually responsible and liable for punishment in accordance with the Statute”. Generally, under international criminal law, committing war crimes normally necessitates the participation of a substantial number of persons. As a result, determining the degree of individual guilt in international criminal law is even more important than the national legal systems. ICR is regulated under Article 25 of the Rome Statute (Werle, 2007). According to Article 25 (1), the ICC has jurisdiction only over natural persons and not states or organisations. The underlying idea that each person is responsible for their own criminal actions is restated in paragraph 2 of Article 25. In the third paragraph of the provision, several types of individual responsibility are differentiated from one another. In conclusion, the responsibility of nations in accordance with international criminal law is unaffected by the requirements of the ICR provisions, as stated in Article 25 (4) of the Rome Statute (Marchuk, 2017). Contrary to the

statutes of the UN ad hoc International Criminal Tribunals, Article 25 (3) of the Rome Statute does not only enumerate the numerous modes of crime involvement; rather, it further classifies and categorises the various forms of participation, namely: (1) the commission of a crime; (2) ordering and instigating; (3) assistance; and (4) contribution to a group crime (Jikia, 2008).

### **Individual Criminal Responsibility for the Commission of a War Crime**

Due to the fact that the commission of war crimes implies the highest level of individual criminal liability, Article 25 (3) (a) of the Rome Statute manifests that such war crimes commissions can be actualized in three main forms, which are either directly by an individual, jointly by a group of people, or indirectly by another person (Werle, 2007).

#### ***Commission as an Individual***

Actions by a person that directly contribute to a criminal act and which are accompanied by the necessary mens rea are regarded as an individual criminal liability in accordance with Article 25 (3) (a) of the Rome Statute and accountable as a principal of crime under international criminal law (Sanikidze, 2012).

#### ***Joint Commission***

The basic premise established by Article 25 (3) (a) of the Rome Statute is that an act is regarded as a joint commission if a group of people collaborates to commit a crime considered under IHL as a war crime and, as a result, each perpetrator is individually responsible for the said war crime. The essential element of co-perpetration is the existence of cooperation in the commission of a crime specified in an established plan or blueprint. By the reason of this work-sharing collaboration, each one of the co-perpetrators is liable for the acts of all other co-perpetrators. This implies that each co-perpetrator is guilty of a complete war crime that is committed within the limits of the common plan (Jikia, 2008). Under Article 25 of the Rome Statute, three factors are required for the joint criminal commission comprising: “(1) a group of persons, (2) the existence of a common plan, and (3) the contribution of the accused within the common plan” (Engvall, 2007). However, the suggested plan of action does not have

to be made prior to the crime being committed; it can even be made impulsively. Furthermore, the existence of the arrangement might be inferred from the fact that multiple people worked together to carry out such criminal joint pursuit (Werle, 2007).

The liability for the joint commission is determined by the mental element included in the crime's classification. If the mental conditions for the crime are not satisfied, then the co-perpetrator only needs to satisfy the general mens rea test that is outlined in Article 30 of the Rome Statute. It is sufficient for the co-conspirator to be aware of and accept the risk of participating in criminal activity in order for the shared plan to be successfully carried out (Goy, 2012). In summary, to establish the joint commission of a crime, the actus reus needs (1) more than one person, (2) a common plan that involves the commission of a crime in violation of international law, and (3) a significant contribution to the execution of the common plan. In regards to the mens rea of the crime, each co-perpetrator must be shown to act with the necessary mental element in order to satisfy the requirement.

### ***Commission by Omission***

In certain circumstances, it is undoubtedly that a simple failure to perform something can constitute a crime in accordance with international criminal law. In this particular instance, criminal culpability can be established on the basis of a failure to prevent or reveal a breach of international law. Furthermore, this is the scenario in which the definitions of offenses expressly punish the omission of a certain behaviour (Marchuk, 2017). In situations like these, the sheer fact that the culprit does nothing to stop the situation is the act of committing a crime. For instance, the starvation of civilians during warfare is defined as a war crime by Article 8 (2) (b) (xxv) of the Rome Statute. Depriving civilians from obtaining necessary sustenance to subsist constitutes a criminal offense (Naqvi, 2003). Even though international law has yet to prescribe detailed criteria governing when such a duty is established, it is possible to identify several instances of the same. As an illustration, a responsibility to act arises from international law's need to protect particular interests, such as objects or people in armed conflict. Appropriate measures must be taken by the necessary person if these interests are threatened (Werle, 2007). The same principle applies when a person is responsible for supervising another person, particularly in a superior-subordinate relationship. At



any moment a subordinate is about to commit an international crime, the superior is under an obligation to intervene to prevent him from performing it. The failure to act in certain situations is in violation of a legal obligation to interfere, and as a result, the person is liable for the omission (Jikia, 2008).

### **Individual Criminal Responsibility for Ordering and Instigating**

According to Article 25 (3) (b) of the Rome Statute, anybody who commands his subordinate to commit a crime, instigates or, in other words, “solicits or induces someone to commit a crime is criminally accountable”. To be held criminally responsible in this situation, the offense in issue must have been committed or, at the least, attempted. As a result, ordering and instigating are considered to be accessory forms of culpability (Goy, 2012).

#### ***Instigation***

A person who instigates is “someone who ‘prompts’ another to commit a crime under international law. This can also be achieved by omission”. It is required that there be a causal relationship between the instigation and the conduct of the crime in order for the crime to be considered. To prove the act of instigating, the accused must have intended to cause the crime to be committed or realized that following their actions, the crime would be committed (Coco, 2019).

#### ***Ordering***

Contrary to instigation, the act of ordering relates to an order which presumes a superior-subordinate connection between the person issuing a command and the other person receiving it. A crime is committed by following the authority of the person who issues the command. As a rule of thumb, a court order requires that the person who issued the command knew or should have known that the crime would be committed due to their actions (Werle, 2007). Therefore, the fact that the accused was aware of the perpetrator’s special aim but did not share it is sufficient evidence of guilt. This strategy provides the right weighing in a differentiated participation model by putting it in the correct sequence. In this way, it demonstrates that the accused has used their position to give out instructions within a hierarchical system and thus carries a greater degree of accountability as compared to someone who only assisted in the crime’s commission (Jikia, 2008).



### **Individual Criminal Responsibility for Assistance**

Under Article 25 (3) (c) of the Rome Statute, anybody who abets, aids, or otherwise supports in the commission or attempted commission of war crime is criminally liable. In this respect, providing the means for committing a crime is a common type of giving help, specifically recognized in the Rome Statute. According to Article 25, the assistance should obviously impact the commission of the crime. However, the UN ad hoc International Criminal Tribunals have interpreted this factor broadly by merely referring to the act of encouraging the offender or providing moral support, or in some cases, it is sufficient to just simply be at the crime scene (Werle, 2007). Furthermore, assistance may be supplied regardless of before, during, or even after the committed crime, and it is unnecessary to establish a causal link between the crime and the assistance (Militello, 2007).

In terms of the mental element of the crime, the individuals assisting must be conscious that their assistance is supporting the conduct of the crime. The assistance must also have been provided “for the purpose of facilitating the commission” of the crime, as stated in the additional requirement manifested in Article 25 (3) (c) of the Rome Statute. As a result, the accomplice does not need to share specific mental characteristics possessed by the offender as required to prove war crimes, such as the intent to destroy. It is sufficient that the accomplice is aware of the intent only.

The degree of personal involvement in the illegal conduct and the subsequent amount of individual culpability for the crime are directly correlated to the type of participation in the crime. The aid encompasses actions that are not necessary for bringing about the unlawful outcome and are not carried out with the necessary mens rea for the crime. Assisting is therefore considered a form of participation in a differentiated participation pattern, which indicates secondary culpability and a relatively low degree of individual liability for the criminal conduct (Werle, 2007).

### **Individual Criminal Responsibility for Contribution to a Group Crime**

Contributions made collectively to commit a crime or an attempt to commit a crime are considered to constitute examples of criminal participation under Article 25 (3) (d) of the Rome Statute. As regards

to the *actus reus* as an element of a crime, Article 25 (3) (d) mandates that there must have been a contribution to a group's commission or attempted commission of a war crime. A group is defined as "any association of at least three persons who act in furtherance of a common purpose. The wording of Article 25 (3) (d) of the Rome Statute clearly comprises any contribution to the commission of a collective crime by stating "in any other way contributes". This catch-all provision includes non-direct types of assistance, such as financing the group or aiding and abetting (Militello, 2007). Therefore, involvement in a group crime that constitutes a war crime should be taken as a secondary form of participation that results in the lowest level of accountability (Jikia, 2008).

Further, in relation to *mens rea* as another element to be proven in crime, Article 25 (3) (d) of the Rome Statute defines two independent standards in which the individual providing the aid must either have the intent to (1) enhance the group's illegal activity or shared purpose, or (2) is conscious of the group's desire to commit a particular international crime. As a result, the participant does not need to share specific mental elements of the group's crime, for example, having a specific intent to destroy in the case of a war crime (Werle, 2007).

### **TYPES OF WAR CRIMES COMMITTED IN THE GAZA STRIP BETWEEN 2008 – 2021 AND THE IMPACTS ON PALESTINIANS**

Numerous evidence demonstrates that the Israeli army obviously breached certain basic principles of IHL and committed various types of war crimes during the Gaza wars. These violations included launching attacks directed against civilians and civilian objects without discrimination as opposed to the principle of distinction provided under IHL, launching attacks that were not in proportion to any genuine military benefit, intentionally attacking medical services, hindering humanitarian relief, and other brutal acts. The types of these war crimes are illustrated as follows:

#### **Indiscriminate Attacks against Civilians and Their Homes**

Indiscriminate attacks on civilians are considered a war crime in IHL, whether it is local or international (Ponti, 2015). Article 51 (4) of

the Additional Protocol I, which supplements the GC 1949, defines indiscriminate attacks as follows:

“(a) which are not directed at a specific military objective; (b) which employ a method or means of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, are of a nature to strike military objectives and civilians or civilian objects without distinction.”

Article 51 (5) of the same protocol offers the following useful examples of what would be regarded as an indiscriminate attack:

“(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

Additionally, under Article 8 (2) (b) (i) of the Rome Statute, the war crime of attacking civilians must include the following elements:

“(1) The perpetrator directed an attack; (2) the object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities; (3) the perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack; (4) the conduct took place in the context of and was associated with an international armed conflict; and (5) the perpetrator was aware of factual circumstances that established the existence of an armed conflict.”

Israeli forces showed a shocking disregard for the lives of Palestinian people by carrying out a series of bombings targeting residential

buildings during the Gaza wars, killing whole families in assaults that may amount to war crimes. The wars were considered the most heinous against Palestinian civilians, which resulted in the killing of thousands of innocents, including children, women, and the elderly, as illustrated in Table 1.

**Table 1**

*The Toll of Israeli Wars in the Gaza Strip from 2008 to 2021*

No	Name of war	Period	No of deaths	No of civilians killed	No of women killed	No of children killed	No of casualties
1.	Operation Cast Lead (2009)	27 December 2008 to 18 January 2009	1,391 Palestinians	795 civilians	110 women	344 children	4336 Palestinians
2.	Operation Pillar of Cloud (2012)	14 to 21 November 2012	167 Palestinians	87 civilians	11 women	42 children	1300 Palestinians
3.	Operation Protective Edge (2014)	8 July to 26 August 2014	2,104 Palestinians	1,462 civilians	253 women	495 children	10,870 Palestinians
4.	Operation Guardian of the Walls (2021)	10 May to 21 May 2021	256 Palestinians	129 civilians	39 women	66 children	1,900 Palestinians

*Source: BBC NEWS. "Gaza crisis: Toll of operations in Gaza."*

As a consequence, there is sufficient reason to believe that the serious breach of IHL and war was committed in accordance with international criminal law that falls under the jurisdiction of the ICC as stipulated in Article 8 of the Rome Statute. These are specifically mentioned in Article 8 (2) (a) (i) "willful killing"; Article 8 (2) (a) (iv) "widespread destruction and appropriation of property" [...]; Article 8 (2) (b) (i) "intentionally directing attacks against the civilian population" [...]; Article 8 (2) (b) (ii) "intentionally directing attacks against civilian objects" [...]; and Article 8 (2) (b) (iv) "intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians." Attacks on Medical Facilities, Transports, and Personnel.

During armed conflict circumstances, a special and exceptional level of protection is offered to medical workers, facilities, and vehicles.

Due regard and consideration must be given to medical personnel, units, and transportation accordingly and should be safeguarded at all times. In other words, they must not, at any time, be the target of an assault or attempted attack (Rubenstein & Bittle, 2010). Similarly, the wounded and sick are to be guaranteed special safety and security. Thus, attacks on medical personnel, facilities, and transportation are strictly prohibited under IHL, provided that they do not participate or involve in any acts which are harmful to the enemies and are not within their human welfare responsibilities as prescribed in Article 15 of the Additional Protocol I and the Additional Protocol II. Furthermore, attacks on medical personnel, facilities, and transportation indicate that not only are civilians made victims of the battles but are also denied hiatus and breathing space from their grief and pain as a result of the attacks. Moreover, under IHL, medical supplies and humanitarian aid must be delivered freely to people in need, provided to the right of control of the war parties, unless an urgent military need necessitates otherwise. Correspondently, the GCIV requires nations to respect and protect the injured, facilitate the transfer of wounded or sick people from besieged regions, and allow the transit of medical staff into besieged areas (Bachmann et al., 2014).

Disrupting the flow of medical professionals in order to prevent the injured from obtaining medical assistance may amount to “willfully causing severe suffering or serious harm to body or health,” a serious violation of the GCIV, and thus constitutes a war crime (Rubenstein & Bittle, 2010). Specifically, Article 19 of the GCIV states that hospitals shall not be deprived from their protections during armed conflict. However, termination of such protection may occur if “they are used to commit, outside their humanitarian duties, acts harmful to the enemy,” which includes “the use of a hospital as a shelter for able-bodied combatants or fugitives, as an arms or ammunition store, as a military observation post, or as a center for liaison with fighting troops.” Other than the above-mentioned situation, IHL allows for the tolerance of harm to hospitals when the hospital suffers “collateral damage” due to the reason of gaining military objectives. A direct strike to the hospital, on the other hand, is not permissible (ICRC, 2004).

Israel’s military operations in Gaza resulted in the destruction of medical facilities, ambulances, and hospitals, as well as the deaths of several medical professionals. Multiple times, they impeded the transfer and evacuation of the injured and opened fire on ambulance

staff. Damage to healthcare institutions and ambulances has been documented since the beginning of hostilities, and it has occurred in all parts of Gaza. Attacks against hospitals, medical staff, rescue teams, and ambulances on a regular basis raise severe concerns about possible violations of IHL (Rights, 2014). “After Israeli missiles killed boys on a beach and repeatedly struck a well-marked hospital, one can only be gravely concerned for the safety of civilians caught up in the ground offensive; Israel needs to do more than tries to explain away unlawful attacks—it needs to stop them,” said Eric Goldstein, Deputy Middle East, and North Africa (Human Right Watch, 2014).

Based on reports conducted by Al Mezan Center, apart from launching both direct and indiscriminate attacks against civilians, Israeli forces deliberately targeted hospitals and locations where the ailing and injured gathered without showing their value as legitimate military objectives. In furtherance, Israeli forces attacked buildings, materials, medical units, transportation, and personnel who were wearing the particular emblems of the Geneva Conventions. Such disrespectful and inconsiderate acts clearly violated Article 8 (2) (b) (ix) of the Rome Statute.

As specified by the International Committee of the Red Cross, ambulance insignia and geographic information system (GIS) maps of healthcare facilities in the Gaza Strip, such as hospitals, care centers, and primary clinics, were frequently provided ahead to the Israeli military by the reason to recognize medical personnel and facilities, and further, to ensure due respect for medical neutrality during wars (Bachmann et al., 2014). Nevertheless, in spite of that, more than 50 facilities, namely medical units, clinics, and NGOs, which were included in the list of coordinates, were attacked, and in some cases, medical transports that were ferrying patients appeared to be specifically targeted (Finkelstein, 2018).

Attacks against medical institutions, transportation, and employees were not limited and confined to only the instances outlined above. There are several other additional instances that demand pressing attention. Medical infrastructure has been destroyed in large parts of the region, and this will have a long-term effect on the civilians in that particular area, which initially had restricted access to medical equipment and supplies even before the wars. Evidently, legal proceedings could definitely be initiated for the commission of war crimes relating to attacks on hospitals, medical personnel,

or medical transportation. Article 8 (2) (b) (ix) of the Rome Statute states that “Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives” and Article 8 (2) (b) (xxiv) sets out that “Intentionally directing attacks against buildings, material, medical units, and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law.”

### **Attacks on Buildings That Give Shelter to Displaced People**

Unfortunately, Palestinians were coerced to seek refuge in the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) bunkers throughout the recent Gaza wars because of the extensive Israeli bombardment. Other than that, the majority of citizens sought refuge in the houses of friends and family due to the deplorable living conditions in government shelters. However, Israel’s ground attacks caused a rapid surge of internally displaced people. Tragically, it gradually became the ultimate resting place for many citizens who were terrified and dispossessed. Israeli artillery also disregarded and attacked these refugees. In this respect, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) expressed that “repeated attacks on shelters are causing widespread fear among IDPs. Palestinians in Gaza increasingly feel that there is no safe place to shelter” (OCHA, 2014).

Israeli troops were fully aware and knew the exact position of each of these shelters, made possible by the presence of flags representing the United Nations (UN), as well as regular reports sent by the UN to the Israeli military relating to the coordinates of these places. Attacks on schools and shelters in Gaza that house displaced civilians are considered attacks on the civilian population, either directly or with the understanding that they may cause significant incidental death or damage to civilian objects. As indicated above, strikes on educational buildings without proving they are valid military targets are also war crimes under Article 8 of the Rome Statute.

### **Attacks on Objects Indispensable for Civilian Survival**

Under IHL, food items, agricultural regions used to produce foodstuffs, crops, animals, power, and irrigation works are all deemed important

to the life of civilian populations and thus are secured and protected (DeSimone, 2020). This is due to the fact that IHL categorically outlaws starvation of people as well as the use of terror against civilians in any situation as a technique of warfare, specified by Article 54 of the Additional Protocol I. Article 54 (2) of the Additional Protocol I bans the attacking or destroying objects essential to the survival of civilians, or to remove or render them useless, to specifically deny them to the civilian population or to the adverse party, regardless of the purpose, whether to cause starvation or to disperse the civilians or for any other reason, such as to cause them to flee (DeSimone, 2020). This ban does not apply if the objects are utilized by a war party for the purpose of providing food to its armed troops or in the case of essential military needs. If the objects are utilized in direct support of the military activity, they may be targeted, provided that such measures do not cause hunger in civilian populations, or the relocation of civilian populations (Schmitt, 2012). During the various military operations by Israel, the humanitarian catastrophe that had already existed for the territory's two million residents became exacerbated because of the shelling method of attack that damaged the Gaza Strip's lone electrical power plant and subsequently caused a blackout. The existence of several circumstances stipulates the obvious intention of the Israeli army. For example, workers have been unable to receive official engagement on the power plant's immunity despite the earlier shelling attack, and the plant has been subjected to repeated attacks (Human Rights Watch, 2014). As a matter of fact, the strike on the power plant emerged to be merely one element of a comprehensive and organized campaign of attacks on electrical and water infrastructure, along with other resource of sustenance and infrastructure (OCHA, 2014).

It has been maintained by the Israeli government that the power station may be regarded as a dual-use object, namely, a civilian object that also serves Gazan armed forces, thus making it a lawful military goal to be attacked (Al Mezan Center for Human Rights, 2014). However, the loss of the region's only power plant has had a significant impact on the operation of healthcare institutions, water supply networks and wastewater treatment. Therefore, even if the power station was to be regarded as a dual-use object, an attack would rely on the principle of proportionality as a defense against the possibility of disproportionate damage, i.e., that the expected harm to civilians and civilian objects caused by the attack versus the concrete military advantage gained.



It is difficult for the principle of proportionality to be applied in this scenario because, in a way, that would allow for the justification of an attack that would have such severe effects on human life. Instead, the damage to the objects is consistent with war crimes specified in Article 8 (2) (a) (iv) of the Rome Statute.

### **Bombing the Cities and the Destruction of the Infrastructure**

Infrastructure can be defined as “basic physical systems of a country or inhabitants of a specific community, including roads, public utilities, and sewage, and all structures and other systems that provide the economy of a country with the production capacity” (Torrise, 2009). As the Israeli occupation forces shelled several cities in Gaza without distinction between military and civilian targets (Bachmann et al., 2014), it violated Article 59 (1) of the Additional Protocol I, which states: “It is prohibited for the Parties to the conflict to attack, by any means whatsoever, non-defended localities.” In addition, Article 25 of the Hague Convention of 1907 states: “The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.” These two provisions impliedly state that there should not be any attack towards unguarded populated cities, although there exist legitimate military targets in these cities.

The bombardment by Israel has caused scores of individuals to be killed, as well as the devastation of several cities. Further, such act has resulted in destroyed infrastructures, including those involved with food production. Additionally, civilian properties, such as television stations, government offices and ministries, schools, and religious institutions, namely mosques, have been targeted in numerous attacks. As a result, there has been an increase in unemployment, and subsequently, the living conditions, health, housing, and the entire social services system have deteriorated to a catastrophic degree.

The destruction of cities in the Gaza Strip has affected and overreached the most critical civilian life and property, such as drinking water factories, water distribution systems, and banks (Bachmann et al., 2014). Moreover, the grocery shops, the Customs Department’s headquarters, the Qadisiyah market, the Nasr market, and the southern suburbs of Gaza were all targeted in rocket attacks. Israeli troops carried out airstrikes on civilian electricity distribution infrastructure in Nasiriyah, causing great suffering to civilians, and there were

attacks on Palestinian media institutions in the area (B'Tselem, 2014). The above actions manifested clear violations of Article 8 of the Rome Statute.

### **Environmental Crimes**

In terms of ‘environmental pollutants’, the phrase is defined as “any solid, liquid, or gas substances; noise, vibrations, radiations, heat, light, or similar substances; or biome variables that contribute to environmental pollution either directly or indirectly.” On the other hand, the ‘pollution of the environment’ can be defined as: “The presence of any contaminants in the environment with a certain quantity, concentration or natural character directly or indirectly leads to harm humans, living creatures or non-living components that exist in it” (Board, 2003). As a consequence of the recognition of the significance of environmental pollution in all forms of pollutants and their fatal varieties, the Rome Statute is particularly concerned with the inclusion of crimes against the environment as forms of war crimes during international warfare.

Wars in the Gaza Strip have detrimental effects on many aspects of life and have aggravated the present difficult circumstances of the inhabitants in the Gaza Strip, as well as causing significant environmental damage. Tons of munitions, bombs and poisonous chemicals were dropped onto the Gaza Strip during these wars, with the majority of the damage occurring on the eastern side (United Nations Environment Programme, 2009). Myriad homes were destroyed or bombed and further reduced to ruins, resulting in innumerable particulate matter and dust pollution in the air, as well as the possibility of various sorts of nuisances, such as rodents and insects. Heavy machinery, tanks, and artillery have intruded practically the whole east side of the Gaza Strip, which has resulted in both mechanical and chemical damage to the topsoil and soil structure (Center, 2015). According to UN reports, the recent conflicts in the Gaza Strip have most likely had various distinct effects on practically every aspect of the environment in the territory of the Gaza Strip itself, Eastern Gaza City (Al Shijaea), Beit Hanoun, Khuzza’a, and Ester Khan Yuniis villages, and Al Shuaka which were among the regions that have been worst damaged by the conflicts. It is possible that the majority of environmental damage has occurred in these locations. Al Zahra and Western Gaza City, although they suffered the environmental impact, these areas may continuously face the least number of it (United Nations Environment Programme, 2009).

During the wars, extensive damage was done to water and wastewater infrastructures, resulting in a dramatic reduction in people's avenues to clean drinking water and hygienic aspects. Due to extensive Israeli military activities, particularly in regions that were subjected to the most severe strikes, water supplies were disrupted for weeks or even months in certain locations. Nevertheless, people in almost all areas of the Gaza Strip suffered unusually longer water cuts (Baroud & Rubeo, 2019). Furthermore, as a result of the wars, the water quality in some areas has deteriorated. Water supply from Israel was shut off in certain regions, such as the Eastern Villages of Khan Yunis, even until after the war subsided and stopped, forcing local authorities to rely on far lower-quality local wells. When municipal water wells were destroyed, these were substituted with other wells, affecting the water quality obtained by residents in such localities (International Amnesty, 2017).

As previously noted, the degradation of the water and hygiene conditions in temporary shelters or private residences has resulted in serious health repercussions. During the battles, practically all sewage treatment was interrupted, which means that the millions of cubic meters of wastewater generated by the people living in Gaza were discharged directly into the Mediterranean without being given any sort of treatment. This halt in wastewater treatment was caused by a number of factors, including limited crew travel because of the increased risk status of the wastewater treatment sites and low electrical availability (United Nations Environment Programme, 2009). Moreover, during wars, the Israeli army sprayed herbicide on Palestinian arable land along the besieged territory's border with Israel. The most common herbicide used was glyphosate, a chemical potentially causing cancer. According to the International Committee of the Red Cross, the spraying of such a herbicide damaged Palestinian crops and also polluted the soil and water (Baroud & Rubeo, 2019).

## CONCLUSION

This article has established that the Rome Statute follows a systematic approach to attribute the criminal responsibility for war crimes by distinguishing four levels of participation in the crime, namely commission, ordering or instigating, assistance, and contribution to a group crime. This particular distinction is important in determining the

level of individual criminal responsibility, and it will be of assistance in deciding how severe a punishment to impose on the perpetrator. There are multiple sorts of accessory culpability for participating in the criminal activity of another person. These include instigation and ordering, assistance, and contribution to a group crime. The Rome Statute deals with the accessorial character of these modes of participation, requiring that the crime must at least be attempted. In terms of the *mens rea*, it is not necessary for an accessory to share the mental aspect of the crime committed by the principal in order for the accessory to be held liable for the crime. Further, indirect forms of participation that are not covered by any other method of participation might result in criminal liability under Article 25 (3) (d) of the Rome Statute. In summary, Article 25 of the Rome Statute gives the ICC a strong foundation on which may be utilized to address issues of ICR related to war crimes. Moreover, the commission of war crimes by Israeli forces during wars in Gaza are crimes committed in the context of international armed conflict prescribed in Article 8 of the Rome Statute. In conclusion, the evidence presented in this article shows that Israeli forces manifestly engaged in both indiscriminate attacks and direct attacks during the wars in Gaza Strip, disproportionately impacting civilians and civilian objects, as well as persons and objects which were granted special protection such as medical personnel, facilities and transportations, the ailing and injured, and also additional civilian infrastructures, all of which are classified as war crimes under the Rome Statute. On the other hand, as a potential direction for future research, there is only a limited amount of research done on attributing individual criminal responsibility to collective crimes. Future research should take into account this gap in the literature to better understand the procedures for prosecuting criminals.

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