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A STUDY ON THE PROBLEMS FACED BY THE INTERNATIONAL CRIMINAL COURT IN EXERCISING ITS JURISDICTION AGAINST THE PROSECUTION OF INTERNATIONAL HUMANITARIAN CRIME WITH SPECIAL REFERENCE TO THE ISRAEL - GAZA WAR

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ABSTRACT

The International society has undergone an inevitable change right from the inception of civilization to the development of technology. The nature of politics, war, and means for acquiring control or domination has changed drastically after the excruciating world wars. However, international humanitarian crimes perpetrated by the states for dominance remain the same. Due to the significant growth of international law and the demand for regulating international crimes, the effective enforcement of ICC is more than necessary to lay down a proper structure for the International criminal justice system. This paper analyses the problems faced by the ICC in exercising its jurisdiction against the prosecution of International Humanitarian Crimes with special reference to the Israel-Gaza war. Humanity can strive only where there is undisturbed peace. The need for a strong and competent mechanism to preserve and regulate such peace is the need of the hour. The authority and competence of international law have been subjected to severe criticism after the failure of the ICC to take appropriate action against Israel for its war crimes against Gaza. This paper aims to give clarity on the war crimes committed in Gaza and the tussle faced by the ICC to take stringent action and hold Israel liable against such crimes. The core problems faced by the ICC have been analyzed to give clarity on the weak enforcement of international law in the 21st century.

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INTRODUCTION

Public International Law or Law of Nations has gained significant importance in this 21st Century in its interplay to secure peace and security of the international community and in its effective contributions to securing the exploited nations' interests. The international society can never remain static, it is always in the conjoint necessity to expand and expound. The relative growth of international law took place after the great and grave world wars witnessed by the international community. Several obligations and rules acquired their form through treaties, conventions, customs, judicial decisions, etc. The devastating events arising from the previous world wars paved the way for the formation of International Humanitarian Law. The International Criminal System developed due to the grave necessity of controlling and limiting the impact of humanitarian crimes. The International Criminal Court (ICC) being the backbone of the International Criminal System had established its jurisdiction for investigating and prosecuting international crimes. The current outburst witnessed in the Middle Eastern countries, due to the Israel-Gaza war has brought global attention to the humanitarian crisis happening in the 21st century.

The major crisis began when Hamas, an Islamic resistance Movement – a military organization of Gaza-Palestine launched an unprecedented attack on Israel on 7th October 2023, thereby killing thousands of civilians and taking many hostages. Following this attack, Israel in the name of defence launched several devastating countermeasures against such aggression in the Gaza Strip to preserve its territorial integrity. However, the devastating attack on Palestinian civilians gained global condemnation thereby accusing Israel of committing war crimes and severe humanitarian law violations. Israel being a party to several International Human Rights Humanitarian Treaties, Conventions, and Agreements had overstepped and violated the basic principle under which the very nature and purpose of the International Humanitarian Law lies.

This research paper provides a detailed analysis of the problems faced by the ICC in exercising its jurisdiction against Israel in its commission of mass genocide and war crimes against the Palestinians in Gaza. The research problem analysed by the researcher is that "the ICC is facing challenges in prosecuting International Humanitarian Crimes committed by Israel against the Palestinians due to its ineffective jurisdiction." To attain a deep understanding of the subject, the researcher used primary and secondary sources such as international conventions, Treaties, Statutes, Books, Acts, Regulations, Articles, Journals, Research Papers, and Newspapers relating to the Israel-Gaza Humanitarian crisis and the role of ICC. This research paper has been written in an analytical and descriptive form in the sense that the issues have been resolved into elements and constituent parts and the structure of the issue has been described and classified. This research paper offers a close study of the Evolution of International Humanitarian Law and ICC; the number of international crimes committed by Israel against Palestine civilians and protected persons and the challenges faced by the ICC in prosecuting International Humanitarian Crimes due to its complex jurisdiction.

OBJECTIVE

1 To analyse the power and jurisdiction of the ICC against the prosecution of International Humanitarian Crime

2 To analyse the veracity of the Humanitarian crisis in the Gaza Strip

LITERATURE REVIEW

1. The International Criminal Court: limits, potential and conditions for the promotion of justice and peace by Catherine Gegout. The author has enumerated the importance of peace and justice in the international arena and the obligation of the International Criminal Court to protect and

promote the same. Further, the limits of the International Criminal Court have been discussed to an extent of the sovereignty among the states.[2]

2. Analyses of the challenges faced by the international criminal court in the exercise of its jurisdiction by Awa Njoworia Valerie Adamu, University of Bamenda. The author signifies the challenges faced by the International Criminal Court in exercising its jurisdiction against the international crimes perpetuated by the states. This paper revolves around the lack of power of international organizations to enforce their actions due to the sovereignty of the states and the ineffectiveness of international law as a whole factor contributing to this result.[3]

3. International Criminal Court (ICC): An analysis of its successes and failures and challenges faced by ICC Tribunals for war crimes by Minhas Majeed Khan, University of Peshawar and ors. The authors analysed the factors contributing to the successes and failures of the International Criminal Courts in prosecuting war crimes. The authors state that the ICC or any other tribunals or international organizations are dependent on the states for its effective enforcement and this being the scenario, the success of these organizations can be achieved only when the states recognize their duties and obligations towards the international community and enforce the same out of its own will. Hence the ICC is not able to perform effectively due to these lacunae.[4]

4. The role of the International Criminal Court in prosecuting crimes against humanity by Hud jolly, Universitas Negeri Sultan Ageng Tirtayasa. The author has analysed the role of the International Criminal Court in prosecuting crimes against humanity. It has been stated that crimes against humanity are the gravest form of crimes in international law and strict action is the current

[2] Catherine Gegout, The International Criminal Court: limits, potential and conditions for the promotion of justice and peace, Third World Quarterly, 2013
[3] Adamu, Awa, Analyses of the Challenges faced by the International Criminal Court in the exercise of its jurisdiction, International Journal of Law, Vol. 6, Issue 6, November 2020
[4] Khan, Minhas & Majeed, Abbas & Marwat, Khan, International Criminal Court (ICC): An Analysis of its Successes and Failures and Challenges Faced by the ICC Tribunals for War Crimes. The Dialogue. XI, 2016

necessity the role played by the ICC in prosecuting these crimes is not as effective as it should be due to lack of state cooperation.[5]

EVOLUTION OF ICC AND INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Crimes

The International Humanitarian Crimes are the most serious form of crimes under International Law which has a devastating effect on all States and its subjects. These crimes directly violate International Humanitarian Law which regulates and limits the effect of armed conflict. It includes War Crimes, Genocide, Crimes against Humanity, and Crimes affecting peace and security i.e. "Murder, Extermination, Persecution, Rape, Torture, Enslavement, Cruel inhumane treatment, etc.". Due to its destructive nature, it has no statutory limitation. Further, action measures can be taken against the state individual under Individual Criminal Responsibility. The War crimes gained notable global condemnation after World War II when millions of Jews were exterminated. The definition of war crimes has widened due to the changing nature of crimes and the development of mass destruction weapons. Several Conventions and Protocols were established to prevent war and the crimes associated with it. International Criminal Law evolved in such a way that these Humanitarian Conventions imposed an obligation on the state to prosecute or extradite the individuals accused of international crimes i.e. Geneva Conventions on War Crimes and its Additional Protocols, Genocide Convention, Convention against Torture, Apartheid Convention, etc. are the most significant conventions in defining and imposing restriction on the state from indulging in war crimes.[6]

International Humanitarian Law

[5] Hudjolly, The Role of International Criminal Court in Prosecuting Crimes against Humanity. West Science Law and Human Rights, 2023
[6] Michael Bothe. - In: Humanizing the laws of war : the Red Cross and the development of international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2017. - p. 57-80

International Humanitarian Law is a compilation of several Conventions and Protocols that aim to control the adverse and destructive impact of war. It is also known as the "Law of Armed Conflict" or "Law of War" which strives to regulate the conduct of war. The necessity for the formation of Humanitarian Law can be witnessed from the devastating effects caused by the brutal world wars played by the power states in their quest to attain absolute dominance and control. The IHL was developed from customary principles and gradually found its way into Treaties, Convention, Protocol, etc. It is concerned with "Jus in Bello" and not "Jus Ad Bellum". Since war cannot be completely wiped away from the world, the measures to control its impact and regulate the war could be the most affordable choice. The IHL has 2 branches namely the "Law of Geneva" which protects the victim of armed conflicts and the "Law of Hauge" which regulates the conduct (rights and obligation) of the belligerent states and prohibits the means and methods of illegal warfare. The Geneva Conventions 1949 & its Protocols and the Hague Conventions 1899 are the legal frameworks that give the IHL its structure.[7]

International Criminal Court

Due to the brutalities of wars between and within Nations, the establishment of the International Criminal System was seen as a necessity. From the evolution of Ad hoc Tribunals by International Organisations i.e. United Nations to conducting the Nuremberg & Tokyo Trials and to the establishment of the International Criminal Court through the Rome Statute in 2002, the International Criminal System had laid down its structure to deal with the Humanitarian crimes committed by both State and its individuals. The ICC (International Criminal Court) is the World's only permanent international court that has the power to investigate and prosecute individuals who indulge in International Humanitarian Crimes. The necessity for the development of the International criminal justice system emerged deeply after the brutality of World War II. The world peace was completely deteriorated at this stage. To restore humanity, and international peace, and

[7] Robert Heinsch. - In: Humanizing the laws of war : the Red Cross and the development of international humanitarian law. - Cambridge [etc.] : Cambridge University Press, 2017. - p. 27-56

prevent war crimes and their devastating impact, the United Nations General Assembly took crucial initiatives towards the establishment of the International Criminal Court to address and initiate investigation, proceeding, and enforcement measures against the commission of any Humanitarian Crimes. Subsequently, these events led to the adoption of a Multilateral Treaty called the Rome Statue in 1998 under which the ICC was established to prosecute both the State and Individuals for Humanitarian crimes. However, ICC was not a part of the United Nations but it is an independent body having its own structure and procedure. Before the establishment of the ICC, there were several Tribunals and Special Courts that specifically prosecuted the Humanitarian crimes committed by a particular nation, however, they had a limited jurisdiction i.e. the Nuremberg and Tokyo Trials, the International Military Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, Special Court for Sierra Leone, International Committee for Red Cross, Extraordinary Chambers in the Courts of Cambodia, etc.[8]

Structure of ICC

The ICC is composed of 4 primary organs: The Presidency, Judicial Divisions, Office of the Prosecutor, and Registry. Whereas, the Assembly of State Parties and a Trust Fund for Victims are the non-organs of ICC. The chamber consisting of 18 Judges is divided into pre-trial, Trial, and Appeal Revision. These organs have different duties and responsibilities in investigating, administrating, prosecuting, and amending humanitarian crimes.[9]

The Prosecutor -Vs- Thomas Lubanga Dylio ICC-01/04-01/06

Thomas Lubanga Dylio was the 1st individual to have been convicted by the International Criminal Court in 2012 for violation of humanitarian and war principles or "Jus In Bello". Convict was a member of the Union of Congolese Patriots (UPC) which was the political and militant group in Ituri formed after the 2nd Congo War. The rebels under his command have been accused of massive

[8] Michael John-Hopkins. In: Journal of conflict and security law, Vol. 22, no. 2, Summer 2017, p. 275-310
[9] The Rome Statute of the International Criminal Court, 1998

human rights violations such as ethnic massacre, murder, rape, torture, mutilation and forcibly conscripting child soldiers in war and hostility activities. The main allegation charged against the convict was for enlisting and conscripting children under the age of 15 into the armed forces and making them participate in hostilities and armed conflict. The convict was arrested in 2006 & the trial began in 2007. The prosecution was able to prove beyond reasonable doubt the direct & indirect involvement of Lubanga in perpetrating the war crimes. He was sentenced to a period of 14 years & on 15.03.2020 he was released. In 2017, the ICC set the amount of collective reparation for victims at 10,000,000 USD against Thomas Lubanga. Articles 27 & 28 of the Rome Statute of ICC hold the commanders and other superiors accountable for their part in the war crimes. This case played a major part in the implementation of the Rome Statute and the evolution of the ICC.

INTERNATIONAL HUMANITARIAN CRIMES AGAINST GAZA-PALESTINE

Israel and Palestine

The history of the Israel and Palestine conflict is complex and traces back to the 19th century. The intensity of this conflict increased after the Second World War when the Jews were subjected to a severe humanitarian violation by the Hitler Regime in Germany which resulted in the persecution of millions of Jews. The settlement of Jews in Palestine i.e. (present Israel), was the major point of the conflict between Palestinians and Israelis. The formation of the Israel State in 1948 led to further turmoil between Palestine and other Middle Eastern countries. Over the period, Israel occupied much of Palestine's territory due to war, conflict, and aggression by neighboring states. The Israel-occupied Palestine territory was controlled with an Iron fist by Israel to suppress aggression by both the State and Non-State Actors and the Palestine civilians. Right from the inception of the Israel rule in Palestine, the Palestinians were deprived of several basic human rights which were considered to be a serious violation of international law.[10] The Palestinians were

[10] Saxby, Geoffrey. (2021). The Israel-Palestine Conflict: A Case study. 10.13140/RG.2.2.10500.86402.

denied of right to self-determination, harsh restrictions were imposed on the movement and access to resources, and severe violation of human rights and dignity by Israel.[11]

Mass Genocide in the 21st Century

The hell-bound battle between Hamas and Israel has tarnished the lives of millions of innocent civilians in this 21st Century. Though the conflict between Israel and Palestine has a historical origin and a series of complex conflicts, the present humanitarian violations happening in this 21st Century have to be blamed on both Hamas and Israel. The starting point of the series of grave humanitarian violations in 2023 was triggered by the activities of Hamas over the unprecedented attack on the Israel civilians on 7th October 2023. Where thousands of Israeli civilians including women and children were killed, hundreds of them taken as hostages, and several thousands of air strike attacks on Israel had been launched. These acts of aggression have caused a Non-International Armed Conflict which prompted global condemnation of Hamas. The grave violation of territorial integrity, human rights violations, and use of unlawful force against Israel have led to a severe humanitarian crisis. Israel retaliated in self-defence against the act of aggression by Hamas. However, a much graver humanitarian crisis was perpetrated by Israel in the name of self-defence, when the limit of proportionality and distinction was violated.[12]

Humanitarian Crimes in Gaza

Israel had launched an indiscriminate attack rather than a specific attack on Hamas. Thousands of civilians including women and children and protected people such as health care and rescue workers were attacked and killed. Thousands of air strikes were targeted at civilians, their objects (residences), and specially protected places such as Refugee camps, schools, hospitals, health facilities, and religious and cultural places. The forced evacuation of civilians, and complete

[11] Sotirović, Vladislav. (2023). The Historical Background of the Israeli-Palestinian Conflict (up to 1914).
[12] Jubaer, Shah & Sadek, Shah & Rahman, Shah, "The conflicts between Israel and Palestine: A history changed by the historians", 2776-0995, 2021

blockade of essentials such as water, medicine, electricity, fuel, and food, and the destruction of food stores, water stations, and tanks have led to the violation of the Geneva Conventions and its additional protocol II.

The most important conventions and protocols on International Humanitarian Law have been severely violated by Israel. The Geneva Convention 1949, Additional Protocol 1977, and The Fourth Geneva Convention 1949 regulate the armed conflict by providing safeguards to civilians, health specialists, relief workers, injured or ill soldiers, shipwrecked troops, or prisoners of war. However, more than thousands of civilians and healthcare workers were killed by the deadly retributive attacks carried out by Israel in the name of countermeasure action against Hamas. It has been reported that the amount of missile weapons or other weapons of mass destruction used by Israel against the Gaza Strip outweighed the ones that were used by the United States on Hiroshima and Nagasaki during the Second World War (Little Boy and Fat Man)[13]. The countermeasures used by Israel no longer fall into the domain of defence attack, as the Global Society had condemned the acts of Israel as Mass Genocide which is against the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (The Genocide Convention 1948). It is against the law, morals, dharma, custom, or principles to wage war on civilians however, Israel has failed to follow this tenet which forms the basis of International Law. Various basic principles of the IHL have been disregarded by Israel, i.e., the Principles of Military necessity, Humanity, Distinction, Precaution, etc. The very foundation of the IHL has been formed on these principles, which are regarded as the backbone of the IHL Customs and treaties.[14]

According to the Principle of Military Necessity, every conflict has a purpose (to protect its territory from aggression or attack), and only the necessary amount of force must be used by the

[13] Israel's attacks on Gaza: The weapons and scale of destruction, Aljazeera, 9th November 2023

[14] International Humanitarian Law, Handbook of Parliamentarians N25, International Committee Of the Red Cross, Inter-Parliamentary Union, ISBN: 978-92-9142-656-0 (IPU)

military to achieve the object of such conflict, no force more than the necessity must be used. However, Israel had gone overboard in destroying the Gaza Strip in total.

According to the Principle of Humanity, no unreasonable or unjustifiable suffering or destruction that is not required to achieve the purpose of the conflict must be caused by warring parties. The Israel attacks on everyone besides Hamas had ruptured this very principle.

According to the Principle of Distinction, it is predominant that the civilian and the civilian objects must be distinguished from the military or combatants, which signifies the importance of protection of civilians and their objects when the war breaks out. There must be no direct and indiscriminate attack on the civilians. Israel violated this principle by implementing an indiscriminate attack on the Palestinian civilians and their objects in the Gaza Strip.

According to the Principle of Precaution, no civilians or their objects must be attacked i.e. (residences, hospitals, ambulances, etc), such attacks, when necessary, can be initiated only after making a thorough investigation (as to the illegal use of these objects by combatants) after giving a warning to any civilians present in such targeted premises. However, all these principles have been violated by Israel.[15]

In toto, Israel had perpetrated the means and methods of warfare which has been prohibited by the IHL, thereby committing acts of war crimes, genocide, and crimes against humanity.

THE CHALLENGES FACED BY THE ICC IN PROSECUTING INTERNATIONAL HUMANITARIAN CRIMES DUE TO ITS COMPLEX JURISDICTION

Jurisdiction under International Law

[15] Nils Milzer, International Humanitarian Law, A Comprehensive Introduction, International Committee of the Red Cross, ISBN 978-2-940396-46-7

"Jurisdiction concerns the power of the state under international law to regulate or otherwise impact upon people, property, and circumstances and reflects the basic principles of state sovereignty, equality of states, and non-interference in domestic affairs".[16]

The very nature of the jurisdiction under international law is complex due to the varying disparity between the nature of International Organisations and Sovereign States. The status and relationship between the Individual Subjects with their State are different from that of the status and relationship between the State with the International Organisations. As in the former, the State possesses direct and absolute control over its subjects and such subjects are subordinate to the state. However, in the latter, there arises a complex relationship, where the State is not subordinate to the International Organisations despite it being its subject. Further, no state is subordinate to one another, which means all states are equal and sovereign, and there arises no hierarchy, and a system without hierarchy cannot be controlled at the outset. Due to this very reason, the mandatory application of enforcement by the International Organisation upon the state is almost unachievable.

Since International law has been developed from custom, treaties, and general principles, the fulfilment of the duties and responsibilities of the States lies in their consent. Only when the sovereign allows or consents to be bound by the international law or its rulings, the jurisdiction could be exercised, if such consent couldn't be reached then, the jurisdiction wouldn't be absolute to the extent that no implementation or enforcement could be carried out. Further, not all laws are uniform in the international arena, many arise from their very own customary state practices or treaties thereby bringing uncertainty over the change of such conduct. However, such are binding in the very nature like the contracts, but the matter of enforceability and sanction are posed at the mercy of the state parties. The only hindering factor is the lack of hierarchy and the upheld and uncompromisable factor of state sovereignty. The international organizations lack the most important criteria to exercise absolute enforcement as it is not a state and do not have sovereignty,

[16] Malcom N Shaw, International Law, 8th Edition, Cambridge University Press, 2017 (Chapter 11)

and their enforcement mechanism is not as influential as the state mechanism. Since it is impossible to rule the hierarchy in the international arena due to sovereignty, it's even more complex to rule the admittance of jurisdiction towards the vast subjects under international law.

ICC Jurisdiction

The International Criminal Court has no absolute jurisdiction to try all criminal cases that occur in the international arena. It has jurisdiction only to try cases that are of grave nature which bring alarming and destructive loss and disaster to humanity. The cases tried by ICC are:

i. Crime of Genocide
ii. Crimes against Humanity
iii. War Crimes
iv. Crime of Aggression[17]

The crimes perpetrated by Israel against Gaza are Genocide, Crimes against Humanity, and War Crimes which fall under the domain of Articles 6, 7, and 8 of the Rome Statute respectively.[18]

The ICC's Jurisdiction can be invoked by the State when it becomes a Party to the Rome statute or upon accepting the Jurisdiction of the Court and subjecting itself to such jurisdiction. The Court can exercise its jurisdiction when the State party refers such a matter of conflict to the Prosecutor of the Court under Article 13(a) or when the Security Council of the United Nations refers such matter before the Prosecutor of ICC for investigation under Article 13(b) or the Prosecutor of the ICC has the power to initiate the investigation by Proprio Motu under Article 13(c). However, ICC cannot exercise its jurisdiction when the State has not subjected itself to the Courts Jurisdiction or is not a state party to the Rome Statute, or if another State has already taken cognizance of the crime by exercising its national jurisdiction. However, the ICC can extend its jurisdiction, when

[17] Nils Milzer, International Humanitarian Law, A Comprehensive Introduction, International Committee of the Red Cross, ISBN 978-2-940396-46-7
[18] The Rome Statute of the International Criminal Court, 1998

the State that is investigating or prosecuting criminals for international crimes is shielding the person concerned from the criminal responsibility for crimes or such investigation or prosecution was not conducted independently or impartially under norms established and recognized by the International Law. Furthermore, the ICC does punish an international crime retrospectively.[19]

United Nations Security Council

The role of the United Nations Security Council is predominant in helping the ICC to exercise its jurisdiction over Non-State Parties by referring such matters of conflict before the Court. The UNSC and ICC together play a significant role in building the Criminal Justice System. However, there exists an impediment in the role played by the UNSC. The misuse of Veto power by the Permanent members of the UNSC, the international politics, and the frequent absentation of members in voting had limited the UNSC from referring the matters of conflict before the ICC. These limitations and loopholes hinder the Court from exercising its jurisdiction.[20]

Complementary Jurisdiction and lack of Universal Jurisdiction

The Preamble of ICC and Article 1 of the Rome Statute explicitly declare the ICC's Jurisdiction as complementary to national criminal jurisdictions, this emphasizes the importance vested in the national criminal jurisdiction to prosecute the international crimes stipulated under the Rome Statute.[21] The ICC can take cognizance of international crimes only if no other States have taken any cognizance under their National Law or if the cognizance taken by them hinders the due process of International Law. The ICC being the cortex of the International Criminal Judicial System must have been granted a Jurisdiction that is superior in hierarchy i.e., Universal

[19] The Rome Statute of the International Criminal Court, 1998
[20] Trahan, Jennifer, The Relationship Between the International Criminal Court and the U.N. Security Council: Parameters and Best Practices. Criminal Law Forum, 2013
[21] The Rome Statute of the International Criminal Court, 1998

Jurisdiction, for all crimes falling under Article 5 of the Statute, since it directly deals with the grave humanitarian crimes that have a huge impact on the lives of people. Further, the independent jurisdiction of the International Organisation will render more impartial justice towards such humanitarian crimes, free from any prejudice. Universal Jurisdiction is the highest form of Jurisdiction that does not require any nexus between the State, Dispute, Time, Place, etc. This means a State that would otherwise have no jurisdiction to exercise its jurisdiction over another state for committing International Humanitarian Crimes, (not a party to dispute, the matter of conflict not occurring within the jurisdiction of that state or to its nationals) would have the right to exercise its jurisdiction.[22]

International Cooperation

Another significant problem faced by the ICC in exercising its jurisdiction is State Cooperation. Since International Cooperation between States acts as the backbone of International Law, it is of core value that, all the States must cooperate with ICC in punishing the criminals of serious international crimes. Since International organizations have no enforcement mechanism of their own to execute or enforce their functions, they are highly dependent on the States for their effective implementation. From investigation to arrest of the criminals, the ICC is dependent on the other States. Due to these hurdles, the ICC is not able to have absolute jurisdiction for the prosecution of International Crimes.[23]

CONCLUSION

International Humanitarian Crimes are the gravest forms of crime and such a crime is globally condemnable and it demands an ultimate enforcement mechanism in the international arena. The International Criminal System is incessantly trying to cope with the disastrous effects of these

[22] Hosain, Md. (2014). Complementary Jurisdiction of the ICC: A Method to Ensure Effective Prosecution of Perpetrators of the Most Serious Crimes. ISIL Year Book of International Humanitarian and Refugee Law. XI. 214-240.
[23] Adamu, Awa, Analyses of the Challenges faced by the International Criminal Court in the exercise of its jurisdiction, International Journal of Law, Vol. 6, Issue 6, November 2020

grave crimes by punishing them and promoting international peace and security. At present stance, these disastrous crimes are being committed by Israel against Gaza in the name of self-defence and national interest. The fundamental principles of international law are gravely violated by Israel due to their act of mass genocide, war crimes, and crimes against humanity against the Palestinian civilians in the Gaza Strip. The ICC being the backbone of the International criminal justice system must have an absolute enforcement mechanism for controlling these grave atrocities. However, the present jurisdiction of ICC is complementary and the same has been weakened by a lack of cooperation from other state parties. Since the ICC is dependent on the state's cooperation for its effective enforcement, the success of the ICC can be achieved only when the states recognize their duties and obligations towards the international community and enforce the same out of their own will. Since Israel is neither willing to cooperate nor willing to follow its duties and obligations under IHL, the ICC is facing challenges in prosecuting International Humanitarian Crimes committed by Israel against the Palestinians due to its ineffective jurisdiction. The ICC must be granted universal jurisdiction over the complementary jurisdiction for its effective enforcement.

SUGGESTION

The demand for absolute enforcement of international law specifically regarding International Humanitarian Law is increasing among nations. Hence a superior organization has to be created or the ICC has to be given a special status or a superior hierarchy in the international arena where all the independent states whether de jure or de facto have to give their unilateral mandatory consent toward the implementation of IHL in their state laws and they must surrender or subject themselves to the absolute jurisdiction of ICC. Since International Humanitarian Crimes are very serious, the organization that enforces them must be given a special status in the international arena and every state has to bind to it and allow or consent themselves to be bound by these mandatory principles and jurisdiction as far as they want to have a diplomatic relationship in the global level with other states and the states that do not consent to this mandatory obligation under international humanitarian law should not be recognized as a state by all other states thereby leading to waving all other diplomatic ties with that country. A strict approach must be adopted by the international community to take severe action against these humanitarian crimes thereby establishing a strong

foundation for the proper execution of the IHL. There can be no effective enforcement, where there is no hierarchy. Hence the establishment of a hierarchy for regulating and preventing these international crimes is the need of this 21st Century due to the intense development of weapons of mass destruction and the deployment of various strategies by the power states in their conquest for global dominance and power.