

THE INTERNATIONAL CRIMINAL COURT'S (ICC) JURISDICTION OVER ISRAEL'S BLOCKADE ON THE GAZA STRIP: EXAMINING THE CRIME OF AGGRESSION

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ABSTRACT

This paper thoroughly examines the crime of aggression in the form of the blockade of the Gaza Strip imposed by Israel and the jurisdiction of the International Criminal Court (ICC) over this matter, despite Israel not being a state party to the Rome Statute. The research conducted is based on normative judicial research, utilizing primary and secondary legal resources. The findings of this research highlight the significant impact of the blockade on the Gaza Strip and Israel's violation of Article 8 bis of the Rome Statute, which specifically pertains to the crime of aggression. Israel's actions can be unequivocally categorized as a crime of aggression, as they fulfill the elements outlined in the article defining this crime. It is important to note that the ICC retains jurisdiction over the crime of aggression, even in cases involving non-member states like Israel, through UN Security Council referrals. In light of this, it is imperative for the ICC to take proactive action and prosecute Israel for this crime, serving as the last resort for global justice seekers.

Keywords: Blockade; aggression; Rome Statute, ICC, Israel

INTRODUCTION

Israel's blockade of the Gaza Strip is recorded as the longest blockade in history, which constitutes a novel type of collective punishment in flagrant violation of international law.¹ Then, how many more years Israel will get impose its inhumane blockade on Gaza Strip? Obviously, it relies largely on how international law applies in the blockade itself. There are several references that analyze the blockade of Gaza Strip from the perspective of international human rights law and international humanitarian law, but relatively few that discuss the blockade as a crime. However, The term "blockade" was not included in the Rome Statute until after the first Rome Statute Review Conference was held in Kampala in 2010.

¹Noura Erakat, 2021, Euro-Med Human Rights Monitor, "Almost Unlivable after 15 Years Blockade," accessed on <https://euromedmonitor.org/en/gaza>.

The blockade is an aggressive act, and as such may be considered a crime of aggression. The person or people responsible for the blockade may be judged guilty of aggression by the International Criminal Court as a result. If the following three conditions are met, then the Israeli blockade will be considered an act of state aggression in violation of the United Nations Charter. State act of aggression is defined as such by General Assembly Resolution 3314. The perpetrator is a political or military leader who participated in the planning, commission, or execution of the state act of aggression.²

The character, gravity, and scale requirements for justifiable manifest determination in Article 1 must be met. The gravity and scale of the event may determine relevant factors, such as the amount of force and the tools employed, the number of lives lost, the amount of infrastructure damage, and the length of the episode. According to the situation around the Gaza Strip in conditions of blockade, there were four attacks imposed by Israel, which show the factor of gravity and scale of an act of aggression being fulfilled. Deaths and damaged buildings were the reported outcomes of four separate assaults on Israel.³

Looking into the reason of blockade itself, Israel claimed its as an act of self defense into the Hamas attack. On the other hand, Hamas also claimed their action as an act of self defense. According to Francesca Albanez, the situation in Gaza is on the verge of a humanitarian crisis and Israel cannot claim that its defending itself in this conflict.⁴ The author further concluded that the International Court of Justice's ruling disproved Israel's claims of self-defense for the events in Gaza. It finds that Article 51 of the Charter does not apply, particularly in its advisory opinion on the legal effects of constructing a wall in the Occupied Palestinian Territory.⁵

According to the court's justification, Since Israel does not claim that another country is to blame for attacks on its territory, it cannot invoke Article 51 of the Charter. Second, because the armed attack happened in occupied territory, where occupation law probably applies, Resolution 1368 and 1373, which allow the use of Article 51 self-defense against Al Qaeda, are different from and don't apply to the Occupied Palestinian Territories. This is

² Article 8 bis of Rome Statute

³ Euro-Med Human Rights Monitor, 2022, "Suffocation and Isolation 16 Years of Israeli Blockade on Gaza Strip"

⁴ Aljazeera, "UN Special rapporteur says Israeli strikes on Gaza are illegal," 2022, <https://www.aljazeera.com/news/2022/8/7/un-special-rapporteur-says-israeli-strikes-on-gaza-are-illegal>.

⁵ ICJ Wall Decision, supra note 2, at para, 139.

because the Al Qaeda attack on the United States is different from the Occupied Palestinian Territories.⁶

Due to its position as an occupied region, the Gaza Strip is not an independent and sovereign state, and Israel cannot claim to have a legal right of self-defense. Furthermore, according to international law, the right to self-defense requires an actual act of armed aggression or an invasion of the nation. However, Article 51 is irrelevant if the cause is internal, as it is when Palestinian resistance forces battle Israel's tyranny from within the UN Charter.⁷

Additionally, the *Jus contra bellum* does not include the definition of character in Article 8bis (1) as a "Grey area" act.⁸ Protection of citizens abroad, anticipatory self-defense against coming attacks, and self-defense against (cross-border) attacks by non-state actors are all examples of resource-intensive activities related to the grey zone.

As a consequence of this, the blockade of the Gaza Strip may be considered an act of aggression, and the International Criminal Court ought to have jurisdiction over this case. "the rights of courts to receive, try, and consider matters presented to them, in instances where the alleged offender is a national of a state party or when the crime was committed in the territory of a state party," defines the ICC's jurisdiction to adjudicate." Furthermore, state that are not party to the Statute may decide to accept the jurisdiction of the ICC through UN Security Council referrals.⁹ The jurisdiction was activated on 1 July 2002.

In reality, the issue of who falls under the jurisdiction's purview is still up for contention even after it was initially established. The argument centered on whether or not the ICC's procedures are initiated by a state's referral or the prosecutor's own initiative.¹⁰ Then, in the situation of Gaza Strip blockade, Israel's as a perpetrator is non state Party to the Rome Statute, meanwhile Gaza Strip as a victim is part of State of Palestine where the State Party to The Rome Statute.

Thus, Could the International Criminal Court exercise jurisdiction in Gaza? How does the International Criminal Court exercise its jurisdiction? Who is liable for aggressive acts?

⁶ *Op.cit* Page 20.

⁷ In case of Nicaragua Vs US of 1986, the ICJ added two more conditions to be the armed attack stipulated in Article 51 of the Charter. They are "Immediate necessity" and "proportionate"

⁸ Werle and Jeberger, supra note 1, paras 1454, 1475 (referring to the protection of nationals and pre-emptive self defence).

⁹ *Op.cit*, 11.

In this paper, the author will examine these three concerns. Previously, similar topics with various variables, object, and also purpose has been researched beforehand. For example, Eyal Benvenisti, "The International Law of Prolonged Sieges and Blockades: Gaza as a Case Study," The research focuses on a long term blockade or siege as the focus of the research, which addresses the military's responsibilities in enforcing what amounts to a year-long confinement of individuals. Taking these commitments into account, the researcher takes into account a legal framework such as international humanitarian law, human rights law, and occupation law.

While in this paper, the author will examine the action taken by Israel to impose the blockade more specifically in terms of international criminal law. Furthermore, the author will analyze who's responsible for the action in the Gaza Strip according to the ICC statute.

The article "International Responsibility of Israeli Aggression on the Gaza Strip in 2014," written by Mohammed R.M. Elshobake, is another example. This research looks at the fallout from Israel's operation in Gaza and tries to itemize the abuses committed by the Israeli armed forces during their assault of the Gaza Strip in 2014. The author examines Israeli accountability through the lens of international law and international humanitarian law. In this document, the author argues that the ICC has jurisdiction over the crime of aggression in the form of a blockade from 2007 through 2021 by detailing the nature, scope, and consequences of the blockade.

Furthermore, in Eyal Benvenisti, article "The International Law of Prolonged Sieges and Blockades: Gaza as a Case Study," The research focuses on a long term blockade or siege as the focus of the research, which addresses the military's responsibilities in enforcing what amounts to a year-long confinement of individuals. Taking these commitments into account, the researcher takes into account a legal framework such as international humanitarian law, human rights law, and occupation law. While in this thesis research, the author will examine the action taken by Israel to impose the blockade more specifically in terms of international criminal law. Furthermore, the author will analyze who's responsible for the action in the Gaza Strip according to the ICC statute

Pierce Young "Blockades: Their status under international law, effectiveness, and impact," This thesis focuses on the international humanitarian law perspective, which condemns blockades completely. The author attempts to provide a historical explanation of

¹⁰ *Ibid*, p. 952.

the law of blockade in order to demonstrate how today's regulations have improved due to the convenience of states with humanitarian duties precedent. While in this thesis, the author focuses on how International criminal law perspectives relate to the blockade of the Gaza Strip. The author attempts to examine an elaboration of the law of blockade of the aggression provisions in the ICC statute. How the experts interpreted the blockade as a form of aggression is unclear

The preceding study is considerably different from this study since this paper focuses exclusively on the legitimacy of Israel's blockade under international criminal law, more precisely on the term "aggression crime." This paper is not a rehash of previous work. As a result, the validity of this research and writing can be scientifically established, and it is subject to constructive criticism and comment based on scientific norms.

In this paper, firstly, the author will explain the background of the issue, then how the Israel and Gaza Strip known as a state in law perspective, how the ICC jurisdiction entry into force according to the status of Israel and Palestine to the Rome Statute, the criminal liability for the blockade and the last one is conclusion and some recommendations.

RESEARCH METHOD

This research utilizes normative research procedures, such as doing a library search for data, citing, and analyzing secondary data that is relevant to the study's goal. Data collection techniques in this study will be carried out in several ways including inventory, clarification, and systematic. Basic analysis based on norms, jurisprudence, and doctrine. Logical thinking and legal research are deductive.¹¹ The information was gleaned from a library search. To answer the research topic, the acquired data is evaluated and qualitatively interpreted. The qualitative form of analysis is based on data gathered through document studies. The data analysis is expected to produce results that answer the study's questions.

¹¹ *Ibid*, p.20.

FINDINGS AND ANALYSIS

A. How did Israel become a state?

According to the history of the Israeli-Palestinian conflict, Palestine was part of the Ottoman Empire until the early 1900s, a religiously diverse nation where Muslims, Christians, and Jews coexisted. Then, things began to change with the emergence of the European Zionist movement, which advocated the establishment of a Jewish state, ideally in Palestine. Beginning with the first wave, Jews from Europe began leaving the continent. Following the end of World War One, the Ottoman Empire collapsed and Palestine came under British administration.

In 1917, British officials have publicly stated their backing for a Jewish state in Israel/Palestine. Growing Jewish settlements are a source of tension between Arabs and Jews. As fighting escalated on both sides, Britain withdrew support and handed authority to the United Nations. The United Nations has given its approval to a plan that would split Palestine into two separate nations: Israel and Arab-Palestine. Jerusalem is a holy city for Muslims, Christians, and Jews alike, yet it is currently officially a neutral region governed by the United Nations. The Jewish people formally recognize the United Nations partition plan and establish the nation of Israel. However, this land grab has been met with opposition from Arab countries in the region. This marks the beginning of the first Arab-Israeli war.

Israel wins and occupies the region set aside by the UN for the Palestinian state. Israel controls 78% of historic Palestine, which includes West Jerusalem; Jordan occupies the West Bank and East Jerusalem; and Egypt occupies Gaza. As a result, 700,000 Palestinians were forced to seek safety elsewhere. Therefore, the date is observed as Al Nakba, the catastrophe. As a result of the six-day war in 1967, Israel was able to take over all of historic Palestine from its Arab neighbors. The situation is gradually becoming less tense even though no formal peace agreement has been reached. Following this, Israelis started making permanent homes in the Gaza Strip and the West Bank.

The PLO's main goal is to free Palestine from Israel by any means necessary, and one of the ways they plan to do this is by instigating a conflict with Israel. The war has lasted for a long time. Conflict persists even after the PLO agrees to a division of Palestine and Israel. Increased numbers of Israeli settlers move into Palestinian-controlled territory. According to the rest of the world, that's against the law.

A "Intifada" occurs as a result of Palestinians' frustration. As a result, Hamas was established. Following the signing of the Oslo Accord by the US, Israel, and the PLO, the West Bank is split into three zones: Area A, under full Palestinian sovereignty; Area B, under joint Palestinian and Israeli administration; and Area C, under full Israeli administration. The issue is complicated by the fact that most of the West Bank's arable land, water, and minerals are found in Area C. This has led to Palestinians having less access to them and to the ensuing failure of peace talks. The Palestinians give up hope, which sparks the second Intifada, and Israel responds by closing off Palestinian areas and erecting checkpoints. Israeli settlers kept building in the West Bank after the 2005 withdrawal from Gaza. By seizing power in Gaza, Hamas breaks apart from the secular Palestinian Authority. It has been decided to establish two independent governments for the territories of the West Bank and Gaza. The Israeli government then blocked all forms of transportation in 2007.

B. Palestine is a State

The government of the state of Palestine accepted, by means of a declaration under article 12(3) of the Rome Statute, the ICC jurisdiction on June 13, 2014. Then, on January 2, 2015, the State of Palestine acceded to the Rome Statute. Thus, it will enter into force for the state of Palestine on 1 April 2015. By joining Palestine as a member that ratifies the amendment camps, all crimes committed in East Jerusalem, the West Bank and Gaza since June 13, 2014 can be tried at the ICC. Furthermore, on June 16, 2016, the State of Palestine deposited its instrument of ratification of the amendments to the Rome Statute on the Crime of Aggression as the thirtieth state to have ratified the amendments. Part 3 of Article 15bis of the Rome Statute states that *"The court has jurisdiction over the crime of aggression according to this article, unless after January 1, 2017, a decision is made by the same majority of states parties that is needed to change the statute."*

Thus, while Palestine ratified the amendment in 2016, the required 30 ratifications will be fulfilled after 2017. So, the ICC is only investigating the blockade that has been in place since July 17, 2018 for a crime of aggression.

C. ICC Jurisdiction under Gaza Strip Blockade

Israel is not a member of the Rome Statute and has not declared itself to accept the jurisdiction of the ICC. When analyzed from the provisions of article 15 bis paragraph 5¹², it clearly states that Israel cannot accept the jurisdiction of the ICC and cannot be tried as an aggressor. However, through the triggering mechanism, according to article 15 paragraph (1)¹³, Referral by the Security Council gives the International Criminal Court (ICC) authority over alleged Israeli aggression.

Considering that Article 13 of the Rome Statute gives the ICC the authority to establish court jurisdiction over prosecutors, and since Article 39 of the UN Charter requires the Security Council to determine and declare that Israel's blockade of Gaza is an act of aggression, it follows that the ICC should investigate and prosecute Israel for its actions. The United Nations Security Council (UNSC) must order the Secretary-General to look into the allegations of aggression in the form of a blockade of the Gaza Strip, establish whether or not a crime of aggression has been committed, and identify the perpetrators of such violations with the goal of holding them to account.

Furthermore, it's still a hot issue that, without consent, a non-party state cannot be bound by the rules in the Rome Statute. This provision is known as the principle of *pacta tertiss nec nocent nec prosunt*, which also emphasizes that only the state party to an international treaty is bound by the norms in the agreement (*pacta sunt servanda*). Its rules stated in Article 34 of the Vienna Convention on the Law of Treaties (VCLT) expressly stipulate that "*a treaty does not create either obligations or rights for a third state without its consent.*"

Regarding jurisdictions that require consent in article 12 of the Rome Statute, a state party has the right to exercise its jurisdiction over a perpetrator of a crime committed by a non-state party as long as the perpetrator committed the crime and resides in its territory. In the process of negotiating the Rome Statute, it appears that Article 12 only applies to the practice of territorial jurisdiction that has been recognized by international law and confirms that consent here means consent from the state where the crime occurred, namely the state party. So, there is no problem with this mechanism to exercise ICC jurisdiction over Israel.

¹² In respect of a state that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory

¹³ The court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and ©, subject to the provisions of this statute.

There have been just two investigations so far held into the non-state party of the Rome Statute. The first situation to be referred to the ICC by the United Nations Security Council and the first ICC investigation on the territory of a non-state party to the Rome Statute is the situation in Darfur. But its investigation is dealing with allegations of the crime of genocide, not a crime of aggression. In those cases, President Omar Al Bashir is the first sitting President sought by the ICC and the first person charged with the crime of aggression by the ICC. The second one was the situation in Libya, dealing with allegations of crimes against humanity and war crimes.¹⁴

In addition, the International Criminal Court (ICC) prosecutor declared on March 3, 2021, that an inquiry into the state of Palestine's condition had begun. By stating that "the Chamber's conclusions pertain to the current stage of the proceedings," Pre Trial-Chamber I's majority ruling appeared to admit that the ICC might face obstacles when attempting to exercise jurisdiction in this case. If challenges are made by the state or a suspect, or if arrest warrants or summonses to appear are issued later in the process, "the Chamber will be in a position to assess other concerns of jurisdiction which may arise at that point in time." Therefore, fresh developments cannot be ruled out, which is significant in a political situation where Israel and the US both swore in new governments this year.¹⁵

Back to the blockade situation in the Gaza Strip. When analyzed from the UNSC referral mechanism, the main concern should be the permanent members of the UN Security Council. The ICC has five permanent members, each of whom has a veto power. The states are China, France, the Russian federation, the United Kingdom, and the United States. If anyone of the five permanent members cast a negative vote in the 15-member Security Council, the resolution or decision would not be approved. Or if a permanent member does not fully agree with a proposed resolution but does not wish to cast a veto, it may choose to abstain, thus allowing the resolution to be adopted it obtains the required number of nine favorable votes.¹⁶ Actually, it will raise the risk of importing political conflicts into the courtroom. How come?

¹⁴ICC, <https://www.icc-cpi.int/libya>, [Accessed on 07/19/2022].

¹⁵Alexander Leongarov, 2021, "State of Investigation? The International Criminal Court and the Situation in Palestine," <<https://www.washingtoninstitute.org/policy-analysis/state-investigation-international-criminal-court-and-situation-palestine>>, [Accessed on 07/19 2022].

¹⁶UN, "Voting System," <https://www.un.org/securitycouncil/content/voting-system>, [Accessed on 07/19/2022].

Based on the data from the United Nations website¹⁷, it was recorded that from the year to 2018, there were 44 resolutions vetoed by the US for its alignment with Israel. The United States veto makes a referral to the ICC by the Security Council in the context of the Gaza Strip unlikely, as it would be in any existing or hypothetical scenario involving violence by one of the council's five permanent members, or even by one of its close allies. Thus, misuse of the security council's veto power could render the court inoperative.

Similar to the circumstances surrounding the Russian Federation's invasion of Ukraine. On March 1, 2022, the prosecutor announced the start of an investigation after 39 governments that are signatories to the Rome Statute reported the situation in Ukraine to the ICC. This allowed the prosecutor to launch the inquiry without seeking approval from the Pre-Trial Chamber. Genocide, crimes against humanity, and war crimes are all under investigation by the ICC alone, while acts of aggression are not.¹⁸ The crime of aggression is excluded from the investigation because it needs security referrals in case both of the states involved in conflict have not ratified the aggression amendment. Unfortunately, the Russian federation, as a permanent member of the UNSC, used their veto power and vetoed a UNSC resolution denouncing its invasion of Ukraine while China, India, and the United Arab Emirates abstained from the veto.¹⁹

Back to the Gaza Strip blockade in reality, the UNSC frequently permits politics to take precedence over the law. This has been demonstrated by its two Security Council resolutions concerning Gaza since the blockade was imposed; its response to Israel's brutal attack on the aid flotilla, and its response to Israel's announcement that it would reduce the blockade. The security council and the present secretary general have never referred to the blockade as unlawful conduct or otherwise dealt with it in accordance with the law in any of these circumstances.

Instead of sanctioning Israel for flagrantly violating international law, as they did with the former Yugoslavia, the UN and its member states have actually put political pressure on

¹⁷ UN, Security Council Veto List, https://www.un.org/depts/dhl/resguide/scact_veto_table_en.htm, [Accessed on 07/20/2022]

¹⁸Shane Darcy, 2022, "Aggression by P5 Security Council Members : Time for ICC Referrals by The General Assembly," <<https://www.justsecurity.org/80686/aggression-by-p5-security-council-members-time-for-icc-referrals-by-the-general-assembly/>>, [Accessed on 07/20/2022].

¹⁹Vanessa Romo, 2022, "Russia Votes UN Security Council that Denounces its Invasion of Ukraine," <<https://www.npr.org/2022/02/25/1083252456/russia-vetoes-un-security-council-resolution-that-denounces-its-invasion-of-ukra>>, [Accessed on 07/20/2022].

Israel to withdraw the siege. Even the US, Israel's staunchest friend, called the siege "untenable."²⁰ As a result, the security council's viewpoint has no more legal authority or educational value than Israel's and the US's political interests.²¹

From the explanation above, it can be concluded that by using the security referral system, it will not work to end the blockade and punish the aggressor. So then, are there other options so that ICC jurisdiction can be run through a triggering mechanism? Article 12 of the Rome Statute provides the basis for the court's jurisdiction provided there is a connection to a state party: either the crime must occur on the territory of a state party or it must be committed by a national of a state party. Contrarily, whether or not there is a connection to a non-State party, whether through nationality or a territory over which the court has jurisdiction, is irrelevant.²²

Then what about the domestic court? Actually, given characteristics of crimes in the ICC, which are often committed directly or indirectly by the state,²³ then the possibility that the perpetrator state will protect its own people is very large (impunity), so it is irrelevant if it depends on the concept that requires consent from non-party states to exercise ICC jurisdiction. Thus, we need an international mechanism to punish perpetrators without the need for consent.

On this basis, the author argues that such a provision is actually unfair to countries that are victims of aggression when the aggression is carried out by a stronger country, but they cannot be prosecuted because, through the mechanism of UNSC referrals, permanent members of the United Nations will be prevented. Meanwhile, there are no other possible options for the country to be free from aggression and for the aggressor to be punished for his crimes.

D. Criminal Liability for The Gaza Strip Blockade

Statute of Rome international law rules parties who have planned and carried out acts of aggression can be held personally liable. The offense of aggressiveness is a leadership crime, meaning the perpetrator had to be in a position of authority within the state where the

²⁰ MSNBC.COM, 3 June 2020, "Gaza Blockade untenable U.S. believes," <<https://www.nbcnews.com/id/wbna37482341>,> [Accessed on 07/14/2022].

²¹ ISSAM fares Institute, American University of Beirut, P.32

²² *Ibid*, P.658-659

aggression was committed.²⁴ In connection with these provisions, Israeli leaders (president, prime minister, and military officials) can be held accountable through international law enforcement mechanisms for the blockade on the Gaza Strip.

There have been instances in which the leadership of a nation has been held accountable for international crimes, such as the Bosnian-Herzegovinian massacre. Slobodan Milosevic, the former president of Serbia, and Radovan Karadjic, the commander of the Serbian military under the Milosevic administration, were tried for serious abuses of human rights in this instance. Identifying which Israeli leaders would face punishment under this blockade requires a firm understanding of the *actus reus* of the crime of aggression. The tracheotomy of the *actus reus*—conduct, consequence, and circumstances—as a model of the fundamental elements of international crimes that must be connected to the accused in order to hold the perpetrators criminally accountable.²⁵

The planning, preparation, initiation, or execution of an aggressive act is considered to be the conduct of an aggressive crime. According to Freidburg and Zimmermann's definition of planning, the aggressor must be present physically and contribute during the important sessions when the strategy for the particular act of aggression is developed. The international military tribunal did not draw a clear line between the two, therefore both are essential in the production of war. Planning and preparation include activities like as acquiring weapons, recruiting soldiers, and training them for conflict, as well as using the media to convince the public that war is required.

The terms "initiation" and "execution" that follow show, respectively, the start of the use of force required by the definition of the crime of aggression. In conclusion, behavior that consists of the four elements is best understood as having contributed to a stage before the effects of the crime. Therefore, not all of the criteria in this condition must be demonstrated to be met by a person who is believed to be the person who committed the crime.

The second set of circumstances that label someone's actions as wrong is the presence of an act of hostility that clearly breaches the UN Charter. In light of the nature, intensity, and breadth of Israel's siege of the Gaza Strip, the preceding explanation was more accurate than

²³ Antonio Cassese, *International Criminal Law*, New York: Oxford University Press, 2008, p.54

²⁴ Mark Kalmborg, *Commentary on the Law of The International Criminal Court*, Brussels: Torkel Opsahl Academic Epublisher, 2017, [Accessed on 07/08/2022], P.152.

²⁵ Hajdin, N. (2021), "The *actus reus* of the crime of aggression," *Leiden Journal of International Law*, 34(2), 489-504.

ever. Consequences are the final element. For violent crimes, the first step in determining appropriate punishment should be the isolation of offending behavior. The law holds the offender accountable for any group actions in which she participates. Article 30 of the Rome Statute, which addresses the mens rea requirement, provides that the allegation intent contains the material act of employing violence rather than the act of hostility, therefore the prosecution does not have to prove that the defendant undertook any prior legal analysis.

However, it's important to determine who could be classified as a perpetrator according to Article 8bis(1). Referring to the article, a perpetrator need only have planned, prepared, launched, or carried out the act; they are not required to have participated in the entire process from start to finish. To examine who is responsible for planning, preparing, launching, or carrying out the blockade in the form of aggression in the Gaza Strip depends on the further investigation by the ICC. In this condition, the writer will seek the possibility according to the concept of command responsibility.

According to Article 25 (3) bis on individual criminal responsibility, states that the other provisions on responsibility in that article "shall apply only to those persons in a position effectively to exercise control over or direct political or military action of states." This means that the chief suspect in the crime of aggression will always be the political and military leadership at the highest level, often the president or prime minister. However, Israel is a republic with a president serving as the country's head of state, and the president's powers are essentially ceremonial. Nevertheless, the prime minister wields executive power. As a result, Israel's Prime Minister bears responsibility for the crime committed in the form of Gaza Blockade.

CONCLUSION

The actions taken by Israel during the blockade of the Gaza Strip are considered to be a criminal offense of the crime of aggression. Blockades, due to their scale, gravity, and character, cause significant harm. In this situation, the International Criminal Court (ICC) would have jurisdiction over the blockade of the Gaza Strip. To provide legal clarity and adhere to the principle of legality, the ICC has been able to try cases related to blockades since 2018, when the amendment campaign officially began, as stated in paragraph 3 of

Article 15 bis. It is important to note that even though Israel is not a member of the Rome Statute and has not expressed willingness to accept ICC jurisdiction, the ICC could still exercise its jurisdiction over the crime of aggression in the form of a blockade of the Gaza Strip based on UN Security referrals. The actions taken by Israel during the blockade of the Gaza Strip can be seen as a violation of international humanitarian law. Blockades that cause harm to civilian populations, restrict access to essential goods and services, and impede the delivery of humanitarian aid are considered unlawful under international law. The ICC, as a custodian of international justice, has the responsibility to address such violations and hold accountable those responsible.

Allowing the ICC to exercise jurisdiction over the crime of aggression in the form of a blockade of the Gaza Strip would serve as a means of accountability and deterrence. Holding individuals or entities accountable for their actions during the blockade would send a strong message that such actions will not go unpunished. This can contribute to preventing future blockades or similar acts of aggression, promoting peace, and protecting the rights of affected populations. The ICC's jurisdiction can be extended to situations outside the scope of the Rome Statute through referrals from the UN Security Council. In the case of the blockade of the Gaza Strip, if the Security Council determines that the situation poses a threat to international peace and security, it can refer the matter to the ICC for investigation and prosecution. This mechanism allows for the ICC to address crimes committed by non-member states, ensuring that justice is served regardless of a country's membership status.

The international community expects the ICC to fulfill its mandate of ensuring justice and accountability for serious international crimes. By exercising jurisdiction over the crime of aggression in the context of the blockade of the Gaza Strip, the ICC would demonstrate its commitment to upholding international law and meeting the expectations of the global community. This would enhance the credibility and legitimacy of the ICC as an impartial and effective judicial institution. Overall, allowing the ICC to exercise jurisdiction over the crime of aggression in the form of a blockade of the Gaza Strip is crucial for upholding international law, promoting accountability, and protecting the rights of affected populations. It serves as a means to address violations of international humanitarian law, deter future acts of aggression, and fulfill the expectations of the international community.

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