

COVID-19 in Palestine: What International Laws Can Offer?

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Abstract

The unprecedented health and social crises caused by COVID-19 has extended the ongoing humanitarian issues of the people living in Palestine. It was reported by the World Health Organization that until 14th of August 2021, there were 349,108 cases of COVID-19 and 3,891 deaths reported in Palestine. In such a context, international laws in particular international humanitarian law (IHL) and international criminal law (ICL) can offer vital protection and recourse to prevent any destructive effect from the pandemic to Palestinians. The purpose of this article is to examine the contents of IHL and ICL that can be applied in mitigating the effects of COVID-19 in Palestine. This article argues that there are specific principles and provisions in these areas of laws that could play significant roles in this context. Using a qualitative method, primary and secondary sources are examined to address how IHL and ICL could come into play to address the impeding humanitarian needs of the people living in Palestine. The preliminary findings from this article indicate that IHL and ICL provide workable solutions that can be ventured further in dealing with COVID-19 in Palestine.

Keywords: *international humanitarian law, international criminal law, Palestine, Geneva Conventions, Rome Statute, COVID-19*

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1.0 Introduction

COVID-19 has become a major global health threat since December 2019 that triggered serious concern especially in humanitarian settings for the conflicting countries (Lambert et al., 2020). Hostile situations on the ground and ongoing conflicts have caused a great test for the effort of controlling the pandemic in these countries (Kurtzer, 2020). This remark is perfect to describe the situation in Palestine, which has been the subject of persistent territorial disputes which led Palestine to become one of the most vulnerable countries that suffers from intensifying challenges, political instability, fragility, poor living conditions, poverty, and mobility constraints. COVID-19 shows triple tragedies in the territory i.e., the spread of the virus itself, ongoing Israeli occupation, and Intra-Palestinian divide (Moss & Majadle, 2020).

In furtherance of this, reference should be made to IHL provisions that provide crucial safeguards for victims of hostilities. This is the body of law which is regarded as *lex specialis* in the situation of armed conflict—the specific body of rules that apply in war and continue to apply even as countries adopt special measures to combat COVID-19 (International Committee of the Red Cross, 2020). Indeed, several provisions of IHL are relevant to be leveraged during this pandemic and have the potential to greatly assist in ensuring a better protective response for affected populations around the world particularly in Palestine (Malhotra, 2021).

Similarly, the application of ICL provisions to compliment the operation of the IHL provisions is also needed. The ICL may act as an enforcement mechanism or legal recourse to bring those who conduct or perpetuate crimes against humanity or war crimes in the guise of COVID-19 (Guariglia, 2020). Hence, the iteration on the ICL provisions would become catalyst to a better compliance and performance of the provisions of IHL for those who involved in the Palestinian conflict (Gutierrez Posse, 2006).

Following this context, this article is intended to examine and address the mutual roles of IHL and ICL to see what they have to offer in the purview of COVID-19 pandemic in Palestine.

2.0 COVID-19 Situation in Palestine

The World Health Organization (WHO) (2021) reported that until 14th of August 2021, there are 349,108 cases of COVID-19 which resulted to 3,891 deaths in Palestine. From the confirmed cases, 3,456 cases are still active while 341,761 recovered cases have been reported. Overall, case fatality ratio is recorded at 1.1% of all the confirmed cases in Palestine. Besides, (WHO, 2021) also reported that there are until 12th of August 2021 626,279 of the population in Palestine have received at least the first dose of COVID-19 vaccine.

From the WHO Situation Report (2021), it was found that there was an increase of 81% of confirmed cases which equal to 1689 cases as compared to 538 confirmed cases in the week before the previous reporting period which was on 15th of July 2021. In total, 117,985

cases have been confirmed and 1,111 deaths among Gaza's population and the West Bank recorded about 230,249 cases and 2,778 deaths in the same period.

At the early stage of pandemic, the surge in contagion in Palestine was attributed to the relaxation of restrictions and lack of compliance with public health regulations on the part of the population in previous weeks after the spread of the disease has been contained temporarily (United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), 2020). In response, the Palestinian Authority (PA) re-imposed movement control measure on several severely infected areas together with extra precautionary measures in containing the pandemic (UNOCHA, 2020).

The Palestinian Ministry of Health and the humanitarian community continue to address critical deficiency in laboratory appliances as well medical instruments which include the important ventilators and equipment in Intensive Care Unit (ICU) (UNOCHA, 2020). Consequently, in response to the new outbreak in Palestine in the West Bank, the entire Hebron governorate has been under lockdown from 28th of June until 5th of July 2020. A similar measure was imposed on 29th of June 2020 in the Bethlehem governorate for 48 hours. Only essential movements in and out, as well as within, these governorates, are allowed, while all shops have been closed except supermarkets, bakeries, and pharmacies. The PA checkpoints have been deployed at the entrance of these and other localities to enforce the access restrictions (UNOCHA, 2020).

Other measures adopted by the PA, include a full prohibition on public gatherings across the West Bank, including weddings and graduation parties, and a re-activation of the local emergency committees, to ensure compliance with precautionary regulations (Moss & Majadle, 2020). Penalties will reportedly be imposed on all those who do not abide by the restrictions and the safety instructions issued by the Ministry of Health. Additionally, the PA has called on the Palestinian citizens of Israel to refrain from visiting Palestine for one week (Moss & Majadle, 2020). The PA's ability to enforce these movement restrictions and measures has been severely undermined by its decision to halt its security coordination with the Israeli authorities, as mentioned above, which limits the mobility of the PA security forces through certain designated area of the West Bank (Moss & Majadle, 2020).

Confirmed cases with light or mild symptoms have been increasingly referred to home isolation, rather than to isolation centers, while those entering the West Bank are being sent to a 14-day mandatory quarantine at home; however, enforcement of these regulations on those returning from Israel (mostly workers) remains limited, due to the long and porous boundary between the two areas (McKay et al., 2020).

From the underlined development, COVID-19 situation in Palestine is quite fluid. Also, several humanitarian issues have exacerbated the fatal impact of the pandemic which is quite unfavorable to the population of Palestine. These humanitarian issues need to be address in accordance with the relevant IHL principles in ensuring that the effects of the humanitarian conflict in Palestine can be cushioned for the sake of the population of Palestine who are directly affected from the ongoing hostilities.

3.0 COVID-19 and Humanitarian Issues in Palestine

On 21st of February 2020, Israel recorded their first case of COVID-19. From that date, it was reported by the United Nations that the Israeli Civil Administration (ICA) destroyed 69 buildings in Palestine (McKay et al., 2020). It has resulted to the forcible displacement of 63 people and other 417 people are severely affected from such destruction. The said destroyed buildings and facilities include 28 residences together with seven water, sanitation, and treatment facilities. Immediate action has been taken by donor states which provided to fund the repair of a third of the diminished structures as humanitarian relief (McKay et al., 2020). Israelian authority initially confirmed on 7th of April 2021 that it would not make populated civilian area in the West Bank as their target to mitigate the spread of the COVID-19. However, they did not include the freeze order to other physical structures which includes the facilities such as the water treatment infrastructures that are quite vital in the infectious disease prevention (Barghoti, 2020).

Since the imposition of movement restriction imposed by Israeli and Palestinian authorities to contain COVID-19, the vulnerable groups of people have been isolated from being in markets and interrupted their daily routine particularly in relation to economic activities in earning a living. Despite that difficult situation, 28 Palestinian agricultural and livelihood structures the Palestine have been destroyed by Israel. This aggravated the suffering to the affected families' capability to work in maintaining their livelihood. The UN verified this fact through its report which unveiled the surge in attacks since the beginning of COVID-19 outbreak (Barghoti, 2020).

The humanitarian situation further deteriorated from the recent development in Palestine where a significant number of fatalities and casualties are the repercussions of the hostile situations which took place in the Palestine from 10th of May 2021. This has resulted to a further stretch of the health system which already overwhelmed from responding to the global COVID-19 pandemic (Al Mostafa et al., 2021). The conflict between the Israeli forces and several armed groups in Gaza and other parts of Palestine has resulted to at least 230 Palestinians were killed in the 11-day conflict, including more than 60 children, while 12 Israelis died. More than 58,000 Palestinians in Gaza were rendered homeless, and the only lab in the territory that processes Covid-19 test results was knocked out in an Israeli air strike (Sheng, 2021).

Following the hostile attacks and bombardments that were targeting the Gaza Strip, it has been discovered that the functioning of health care and the public health of the population has been affected by damage and destruction to buildings, including health facilities, and essential infrastructures (International Federation of Red Cross and Red Crescent Societies (IFRC), 2021). Further, heavy damage to roads is causing obstructions to ambulance access. This happens whilst there also reports on the lack of electricity and scarcity of fuel for generators which led to the closure of a hospital providing essential care to patients (IFRC, 2021).

Besides, there are also hygiene risks and limits to physical distancing measures in preventing COVID-19 transmission effectively as water and sanitation structures have been destroyed. The risks are aggravated following the displacement of 72,000 Palestinians

including those who seek shelter in the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) schools across the Gaza Strip (Dahman et al., 2021).

Meanwhile, in the West Bank, there are ongoing demolitions and threats of forcible transfer as a result from Israel's plans to unilaterally annex large parts of the West Bank. This has taken a toll on the health and safety of thousands of Palestinians. The arbitrary land annexation especially in the area of Sheik Jarrah would not only undermine the Palestinians and their aspiration for self-determination, but also put the effort of Israel and PA in coordinating important strategies to control the propagation of COVID-19 to become stagnant (Norwegian Refugee Council, 2020; Cook, 2021).

By realising the outset of COVID-19 pandemic in Palestine, it is pertinent to measure how does IHL view Israel's position as an occupying power and whether any duty can be attributed upon Israel in containing the spread of COVID-19 in Palestine. In answering these questions, the following chapter will underline the answers to those questions in terms of the law of occupation under IHL and international human rights law.

4.0 Israel as an Occupying Power in Palestine

The COVID-19 pandemic ultimately posed an unprecedented threat to the conflicting regions and countries. IHL is a *lex specialis* that is pragmatic and flexible in providing legal safeguard to the victims of armed conflicts or under the situation of occupation by an occupying power just like in Palestine (ICRC, n.a.). The provisions of IHL were drafted to address the hostile situations, and its obligations ultimately gives due regards to the feasibility and reasonableness in the application in such circumstances (Melzer, 2016). These obligations should not be considered as a bar in the fight against COVID-19 in the war-torn countries. Instead, it can carry a facilitative role in complementing the outbreak control action to bring favourable results for civilians facing the multi-dimensional threats of COVID-19 and humanitarian conflict. In fact, there are provisions of IHL are of a particular importance during this pandemic and will likely to become pivotal in ensuring the smooth sailing of the efforts in preserving the livelihood of the affected populations.

In the context of situation in Palestine, the IHL specifically provides on the law of occupation as its branch which applies in this situation. The law of occupation becomes effective during either complete or partial occupation of a territory by a hostile army. The law of occupation can trace its root to the Hague Regulations of 1907, the Fourth Geneva Convention Related to the Protection of Civilian Persons in Time of War 1949 and Additional Protocol I to the Geneva Conventions of 1977. Occupation under the IHL literature is defined as 'the effective control of power over a territory to which that power has no sovereign title, without the volition of the sovereign of that territory' (Benvenisti, 2012).

The legal definition of occupation can be found in Article 42 of the 1907 Hague Regulations which stipulates that:

“Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” (Arai-Takahashi, 2009)

Therefore, as an occupied territory, IHL shall become applicable in Palestine and Israel shall be considered as an occupying power which requires them to exercise duties in managing COVID-19 situation in Palestine.

In light of this, there are specific provisions under the Fourth Geneva Convention Related to the Protection of Civilian Persons in Time of War 1949 (Fourth Geneva Convention) and Additional Protocol I of 1977 which provide on the duty of occupying power on to promote public health particularly in the time of the global pandemic.

Firstly, Article 55 of the Fourth Geneva Convention provides on the duty of ensuring the availability of medical supplies that reads:

“...the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate...” (International Committee of the Red Cross (ICRC), 1949)

Article 56 of the Fourth Geneva Convention provides further on the duty of occupying power to take measures relating to public health and hygiene. The provision reads as follows:

“...the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.” (ICRC, 1949)

The duties of the occupying power are in consonant with the provision on the duty to provide the right to health as established under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It provides that:

“the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” (United Nations General Assembly (UNGA), 1966)

At present, Israel is not a party to either the Geneva Conventions or the ICESCR. Thus, it might be argued that these provisions would not be applicable upon Israel for their

occupation of Palestine. As such, in addressing this, it is appropriate to put forward an Advisory Opinion that was passed by the International Court of Justice (ICJ) in the case of *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* in which the ICJ opined that:

“The Court accordingly finds that the Convention (GC IV) is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories.”

Pertaining to the applicability of the ICESCR, the ICJ stressing its previous judgment in *Legality of the Threat or Use of Nuclear Weapons* which states:

“The protection of the ICCPR and ICESCR does not cease in times of war, except by operation of certain provisions that may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily be deprived of one’s life applies also in hostilities.”

The ICJ further concluded that:

“For the reasons explained above, the Court cannot accept Israel’s view. It would also observe that the territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying Power. In the exercise of the powers available to it on this basis, Israel is bound by the provisions of the ICCPR and ICESCR.”

From the Advisory Opinion of the ICJ, there are certain duties that are attributable to Israel as an occupying power in Palestine primarily to take measures in controlling the spread of COVID-19. Failure to fulfil such duty will constitute a violation on the rules of IHL and international human rights law. Even without any legal basis, Israel still needs to take responsibility in providing adequate healthcare and hygiene to Palestine on the moral or humanity basis. It is the high time to take aside the long-lasting feud over the past decades for some time to control the propagation of COVID-19 in Palestine. It is better to take swift action to prevent further detrimental effects of COVID-19 in Palestine due to its vulnerable situation particularly in terms of healthcare facilities and staff after a prolonged conflict.

5.0 Dealing with COVID-19 in Palestine: What the International Humanitarian Law Can Offer?

It is already established that Israel is an occupying power in the lens of IHL. Taking into account the ongoing COVID-19 pandemic, Article 56 of the Fourth Geneva Convention is of a particular importance in providing the general duty of the occupying power which relates to hygiene and public health in the occupied territory. There are several scopes in fulfilling this duty under IHL which need to be obliged particularly by Israel as an

occupying power in containing rampant spread of the virus. The scopes of duties which are of pertinence consist from safeguarding medical services, supplies and hygiene; ensuring proactive distribution of vaccine; respecting and protecting medical activities and facilitating humanitarian relief.

5.1 Medical services, supplies and hygiene

The Palestinian people living in the Palestine are entitled to be humanely treated and protected (ICRC, 1949). Israel as the occupying power is primarily responsible for the well-being of the population of the occupied territory. They need to take cognizance in ensuring by all necessary means on the establishment of medical facilities, hospitals, public health and services and hygiene with the cooperation of Palestinian local authorities (ICRC, 1949). More importantly, this includes the responsibility to exercise the required preventive measures in containing the spread of contagious diseases like COVID-19 (ICRC, 1949). This obligation is crucial in the face of the COVID-19 outbreak and it may include a duty to share accessible information on prevention measures. This is in accordance with Article 56 of the Fourth Geneva Convention. Moreover, IHL provisions afford specific respect and protection to the vulnerable population such as older persons, children and persons with disabilities who are affected by armed conflict (ICRC, 1949).

Israel must also fully responsible to provide the appropriate medical supplies on the population of Palestine and oblige to import necessary items if the medical resources are depleted for the usage of population (ICRC, 1949). The medical supplies available at the occupied territory also may not be transferred for use by the population of the occupying power and any transfer, if required, must be made with the paramount consideration on the need civilian population of the occupied territory (ICRC, 1949). Water infrastructure, which is critical during the COVID-19 outbreak as a resource center to taking the recommended preventative measures must be protected from becoming the target of military attack (Hague Convention, 1907).

The obligation of Israel to provide for a health system and health supplies in the Palestine under IHL is complemented and strengthened by international human rights law as what has been explained above. The international human rights law requires the occupying power to take proactive steps towards the complete realization of the right to health of the Palestinian population while ensuring at least a minimum level of the underlying determinants of health such as sanitisation, medicines and health-care facilities (UNGA, 1966).

Israel is also required under the international human rights law to address factors that may affect the life and livelihood in the Palestine. In addressing the pandemic, they need to provide a national public health strategy on the basis of scientific evidence to prevent and contain life-threatening diseases. The urgent medical treatment must be fully utilised as a measure to mitigate the risk of loss of life (UNGA, 1966). It was reported however that Israeli airstrikes campaign since 7th of May 2020 in the Palestinian territory of Gaza have damaged six hospitals, nine primary health care centers which signified that Israel failed to comply with IHL as far as this scope of duty is concerned (Mahase, 2021).

5.2 Distribution of Vaccine

The occupying power is obliged to take measure in ensuring and maintaining the public health and hygiene in the occupied territory. In the situation of pandemic, this particular obligation does in fact extend to the effort in distributing the vaccine. This duty is spelled out in Article 56 of the Fourth Geneva Convention explicitly provides the occupying power to take “preventive measures necessary to combat the spread of contagious diseases and epidemics”. The logistics arrangement in the distribution of vaccines, the safekeeping of vaccine supplies and the mobilization of medical workers to administer vaccinations to all the population of the occupied territory are the measures which need to be taken by the occupying power. In doing so, the occupying power may initiate a cooperative effort with national and local authorities of the occupied territory (Breitegger, 2020).

This IHL obligation must be fulfilled with a particular observance of international human rights law principle of non-discrimination. As such, no adverse distinction can be exercised irrespective of any basis other than on medical reason (Breitegger, 2020). This is because, medical consideration may, at some instances, need to prioritize or even permit differential treatment to secure a de facto fairness as far as the medical aspect is concerned in the lens of IHL (ICRC, 1949). This enables the prioritization in vaccinating the vulnerable groups which are at risk which include the elderly, persons suffered from co-morbidities as well as the medical workers. Occupying power also needs to take proactive measures pertaining to the vaccination programs on the children, older people, or people with disabilities which might experience a difficulty in the enrolment process for vaccination.

Owing to this specific IHL obligation, Israel has the duty to provide COVID-19 vaccines to the population in the Palestine. Early on, Israel denies having such an obligation in the first place pointing to interim peace agreements reached with the Palestinians in the 1990s (Aljazeera, 2021). After an extensive negotiation, Israel has signed an agreement with the PA to supply approximately one million doses of Pfizer vaccine that are about to expire. The deal was called off eventually because it was found out by the PA that doses that are about to be received did not up to the specifications contained in the agreement (Aljazeera, 2021). It was also reported that Israel vaccinated more than 100,000 Palestinians who work in Israel but refused to vaccinate millions of other Palestinians living in Palestine. Rather, the PA took their own initiative to order about hundred thousand of vaccine doses from COVAX which is a global vaccine cooperation initiative and several million doses from Pfizer. Some countries like the United Arab Emirates nearly ten of thousand doses of Sputnik V vaccine to population in Gaza (Kingsley, 2021). Until 18th of June 2021, some 30 percent of eligible Palestinians in the Palestine have received at least one vaccine dose from 5.2 million population in Palestine according to the PA (Aljazeera, 2021). From the recent development, it can be concluded that Israel have not done enough in fulfilling its duty as an occupying power pertaining to the distribution of vaccine in Palestine.

5.3 Respect and Protect Medical Activities

Medical facilities and transports belonging to the civilian hospitals must be respected and protected in all circumstances (ICRC, 1949). Such protection can be lost if it is found that such facilities and transports have been used outside their humanitarian function like

committing act which would detriment the occupying power or the civilians living inside the occupied territory.

Even in such a case, significant precautionary measures must be adhered to (ICRC, 1949), any requisition of civilian hospitals can only be temporary and must be preceded by arrangements to serve the humanitarian needs of the occupied territory. Therefore, any act of requisition cannot be conducted by Israel as the occupying when it is found that the material and stores of civilian hospitals are necessary for the needs of the population in Palestine (ICRC, 1949). Medical personnel that work for both the armed forces or civilian hospitals must be respected and protected in all circumstances while they are exercising medical activities unless they commit harmful acts outside of their humanitarian functions (ICRC, 1949). Moreover, medical personnel cannot be subjected to any punishment for exercising medical duties that are in line with medical ethics (ICRC, 1949).

Finally, even though restriction on freedom of movement may be imposed in Palestine for health reasons related to the spread of COVID-19, all medical services should be allowed to continue functioning and ambulances should not be affected by the movement restrictions when requested to intervene as decided in the case of *Association of Israeli-Palestinian Physicians for Human Rights v. Minister of Defence et al.*, The Supreme Court of Israel 45(2) PD 832. However, there were some reports from media outlets that Israel have been targeting the road which provide emergency service access which clearly undermined their duty to respect and protect medical activities (Osman, 2021).

5.4 Humanitarian relief

The IHL obligations to secure medical services and supplies must be ensured by Israel as the occupying power to the maximum amount of the resources that they may supply. If Palestinian population is inadequately supplied due to the shortage of resources, Israel also has an obligation to agree to and to facilitate relief schemes that are impartial and conducted without any adverse distinction (ICRC, 1949). Hence, Israel should not arbitrarily impede the delivery of hygiene kits, ventilators and other supplies which include COVID-19 vaccines for the Palestinian population and it should ensure that relief operations can take place adjusting COVID-19 related movement restrictions.

Although Israel has a right of control over relief schemes, the control shall not be excessively exercised where there is a reasonable fear that confiscation or destruction of external assistance would result from Israel's exercise of the right of control. Repetitive breaches that halt the humanitarian relief mission may become the basis for the implementing agencies to bypass Israel's right of control. This was stressed by the ICJ in its Advisory Opinion of *Legal Consequences for States of the Continued Presence of South Africa in Namibia*. Pertaining this the ICJ found that:

“One of the fundamental principles governing the international relationship thus established is that a party which disowns or does not fulfil its own obligations cannot be recognized as retaining the rights which it claims to derive from the relationship.”

Impartial humanitarian organizations, including from the ICRC should be allowed to operate in the occupied territory to offer their services during the COVID-19 outbreak (ICRC, 1949). Their personnel must be respected and protected, guaranteed with freedom of movement which is required to exercise their functions. It can only be temporarily limited in the case of imperative military necessity.

Similarly, Israel must protect the relief consignments and cannot divert the consignments from their intended purpose. The exception may be granted in the situation of high urgency with due regard to the interest of the population in the occupied territory where the consent of the Protecting Power shall be secured beforehand (ICRC, 1949). Property belonging to relief organizations should not be confiscated or destroyed unless for reasons of military necessity nor can it be object of attacks during military operations (ICRC, 1949).

Essentially, the IHL has provided a comprehensive legal framework on the duties which have to be fulfilled by the Occupying Power that shall play a significant role pertaining to the pandemic management. However, there are several shortcomings on the Israel's part to discharge the IHL duties have been identified in the previous sections of this article. Hence, it is submitted that, the ICL mechanism may be utilized to address any deliberate breach of IHL duties. The punitive nature of ICL's mechanism might deter any further violation of IHL that will be addressed in turn in the subsequent section of this article.

6.0 Dealing with COVID-19 in Palestine: What the International Criminal Law Can Offer?

ICL is a branch of public international law that is designed to hold individuals who are responsible for particularly serious violations of international law to account before the law. The central idea for the establishment of ICL is that not only States, but also individuals, could be found responsible for such violations (ICRC, n.a.). From this idea, the ICL establishes individual criminal responsibility for international crimes, such as war crimes, crimes against humanity, genocide, and aggression (ICRC, n.a.). The ICL is also being seen as a relatively new body of law because there is no established uniform and universal courts system that principally governs its operation although it was later evolved in the 1990s with the establishment of the Tribunals for the former Yugoslavia and Rwanda (Cryer et. al., 2010). The foundation of the ICL system was further strengthened with the creation of the International Criminal Court (ICC) following the coming into force of the Rome Statute of the International Criminal Court on 1 July 2002 (Cryer et. al., 2010). Since then, the ICC has made a significant contribution regarding the ending of impunity of violations of IHL by enforcing and inducing compliance with specific norms of IHL (Song, n.a.).

ICL can also be viewed as an enforcement arm for IHL as the Geneva Conventions do not provide any redress mechanism for its violations (Zyberi, 2018). Both ICL and IHL share common foundational principle that is the body of law formulated to protect victims of armed conflict (ICRC, 2009). Large areas of IHL are now criminalized as war crimes. Thus, IHL serves as a point of reference in understanding and interpreting the corresponding war crimes provisions (Cryer et. al., 2010). This is evidenced when Article 8 of the Rome

State made a direct reference to the Geneva Conventions in defining the term ‘war crimes’ which mainly consist of the acts that constitute grave breaches of the Geneva Conventions.

The evidence of inter-relation between ICL and IHL is more apparent by taking into consideration on the jurisprudences of the ICC that consistently made references to the provisions of the constituent documents IHL which are the Geneva Conventions. This can be seen in *The Prosecutor v. Thomas Lubanga Dyilo* case that the Pre-Trial Chamber made a direct reference to the two Protocols Additional to the Geneva Conventions regarding the recruitment of children below the age of fifteen in the armed forces or groups, the Pre-Trial Chamber went on to describe that:

“Numerous international instruments have since been adopted, prohibiting the recruitment of minors of a certain age. A review of these international instruments and the two Protocols Additional to the Geneva Conventions shows that a distinction can be drawn as to the very nature of the recruitment, that is to say between forcible and voluntary recruitment.”

Also, the ICC’s Pre-Trial Chamber in *The Prosecutor v. Jean-Pierre Bemba Gombo* case also quoted the provisions of the Geneva Conventions in one of the paragraphs of its judgment. The Pre-Trial Chamber observed in relation to the classification of armed conflict in the Central African Republic by saying that:

“The Chamber further notes that article 3 common to the 1949 Geneva Conventions, to which article 8(2)(c) of the Statute refers, specifies that the armed conflict not of an international character occurs within the territory of a State.”

In another instance, the Pre-Trial Chamber in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* ICC-01/04-01/07 (30 September 2008) made a reference to the Geneva Conventions when it carried out assessment upon the defendants’ charge of directing an attack against the civilian population under Article 8 (2)(b)(i) of the Rome Statute. The Pre-Trial Chamber mentioned that:

For the purposes of its findings, the Chamber adopts the objective elements as defined in the above paragraphs, in respect of the concepts of "attack"; "civilians", and "direct part in the hostilities", because each is consistent with the definitions established, inter alia, by common article 3 of the Geneva Conventions ("the GC"), and articles 49, 50 and 51 of the AP I.”

From the robust development of jurisprudence in the ICC on the establishment of mutual relationship between the ICL and IHL, it is not too much to ask for the same concept to be applied for any alleged violations of IHL that occurred in Palestine. The question of Palestine has become academic in the ICC forum. The recent decision of the Pre-Trial Chamber in *Situation in the State of Palestine* which has affirmed that the accession of the Rome Statute by Palestine is valid and therefore the ICC has a jurisdiction to carry

investigation and if there is a substantial ground to believe that any crime under the Rome Statute has been committed further action of prosecution would be carried out in due course. In affirming its stance, the Pre-Trial Chamber stressed that:

“Accordingly, in the view of the Chamber, Palestine acceded to the Statute in accordance with the procedure defined by the Statute and, in addition, the Assembly of States Parties has acted in accordance with Palestine’s accession. In view of its accession, Palestine shall thus have the right to exercise its prerogatives under the Statute and be treated as any other State Party would. Moreover, Palestine’s accession has not been challenged under article 119(2) of the Statute.²⁹⁶ Palestine is therefore a State Party to the Statute, and, as a result, a ‘State’ for the purposes of article 12(2)(a) of the Statute.”

On enabling the initiation of investigation by the Prosecutor and the territorial limitation for such investigation in the territory of Palestine, the Pre-Trial Chamber concluded that:

“More specifically, the Chamber is of the view that the aforementioned territorial parameters of the Prosecutor’s investigation pursuant to articles 13(a), 14 and 53(1) of the Statute implicate the right to self-determination. Accordingly, it is the view of the Chamber that the above conclusion – namely that the Court’s territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967 on the basis of the relevant indications arising from Palestine’s accession to the Statute – is consistent with the right to self-determination.”

Based on this developing circumstance, there is also a possibility for the utilisation of ICL in terms of legal recourse at the ICC to take legal action for any violation of the provisions of the Rome Statute that corresponds with the violation Geneva Conventions. This includes provisions relating to the responsibility of Occupying Power concerning sanitation and public health in containing COVID-19 in Palestine. Towards this end, there are several provisions of the Rome Statute which can be utilised as charges when there is a violation on Article 56 of Fourth Geneva Conventions. These applicable provisions are, *inter alia*, on war crimes pursuant to the existence of alleged grave breaches of the Geneva Conventions that as part of a plan or policy or as part of a large-scale commission especially under Articles 8(2)(a)(i) on willful killing, 8(2)(a)(iii) on willfully causing great suffering, or serious injury to body or health, and 8(2)(a)(iv) on extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. Besides, the crime against humanity of extermination under Article 7(1)(b) of the Rome Statute also can be considered to be invoked when the denial of access to medicine especially in treating COVID-19 is committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Therefore, the mechanism provided under ICL is worthy to be ventured or explored as the last resort for legal redress in order to ensure the full compliance of the IHL provision by

all parties that involved in the Palestinian conflict. At the same time, it can also prevent any impunity for violations of the IHL.

7.0 Conclusion

It is undeniable that COVID-19 pandemic is a pressing public health crisis which resulted in a challenging time in humanitarian context. It creates an uncertainty, fragility and insecurity to the regions where humanitarian conflicts are taking place. These regions, like Palestine, have a limited material resources and financial capacity to address the pandemic. The pandemic has inextricably revealed the gaps with exist in the governance as well as social and public health systems in Palestine. The gaps such as social inequity, underinvestment, poor governance and lack of cooperation between the authorities in Palestine which are identified during the pandemic need to be diligently address as the priorities other than the primary agenda of public health response.

In light of this, IHL could play a pivotal role in addressing the detrimental impacts of COVID-19. The rule of IHL particularly article 56 of the Fourth Geneva Convention on the responsibility of the Occupying Power which relates to hygiene and public health in the occupied territory provides that an occupying power needs to be responsible in spearheading the efforts to curb the propagation of COVID-19 along with the Palestinian authorities at Palestine. In fulfilling the responsibility, IHL requires the occupying power to collaborate in the pandemic response in Palestine in the event that the local healthcare infrastructures are found to be scarce. The other measures such as guaranteeing safe passage for humanitarian relief and the distribution of vaccine also need to be taken by Israel. The principles under international human rights law also applicable where it obliges the occupying power to take appropriate measures in preserving the health of the local population. Hence, this shall become the occupying power's main objective by taken into account the hostility and COVID-19 spread in Palestine.

Toward the fulfilment of duty by Israel as an occupying power, there shall be concerted efforts for testing, contact tracing, public engagement in good public health practices, fiscal support packages are required for COVID-19 response in Palestine. These efforts should become the stepping stone to a more concise and unified response plan that will become fruitful in the long run where a robust exit strategy should be adopted in providing the soft landing for the livelihood of the Palestinians after the pandemic is under control in Palestine. Strategic governance directions, additional financial and capital injections as well as measures in empowering the public health system's capacity with research program and surveillance for early detection need to be highlighted by Israel as the occupying power in the comprehensive exit plan (Al-Khaldi et. al., 2018).

In fulfilling this aspiration, it is important for Israel to honor the duties under IHL as an occupying power. Failure to do so will render the applicability of the ICL which is an international redress mechanism to prevent impunity for any commission of war crimes and crimes against humanity. As such, the pressure that is continuously being put by the Office of the Prosecutor of ICC to initiate investigation of any violation on the provisions of the Rome State is very laudable and timely from the ICL standpoint and should be ventured further in the context of COVID-19 management in Palestine as well.

It is also equally important that the international organization such as the United Nations to constantly oversee the situation in Palestine. The recent adoption of the resolution by the United Nations Human Rights Council to establish the International Commission of Inquiry to Investigate Violations in the Occupied Palestinian Territory, including East Jerusalem, and in Israel is a laudable step towards the desired ends (Nebhay, 2021). This will apply considerable amount of pressure upon the parties of the conflicts to adhere all the relevant rules prescribed by the international law particularly the IHL.

To conclude, the exceptional health crisis resulting from the spread of the COVID-19 has intensified the vulnerability of the Palestinian population living under prolonged military occupation. In such a context, IHL obligations to protect the health and life of the occupied population are particularly relevant and it is of utmost importance. In the context of the present discussion, as long as Israel exercises authority over Palestine as an occupying power the must supply the relevant resources to protect Palestinian population from the detrimental repercussions of COVID-19 pandemic. It must go beyond an act of charity but must be seen as a legal obligation originating from the provisions of IHL supplemented by ICL.

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