

International Responsibility for the Protection of Gaza Civilians under International Humanitarian Law and International Human Rights Law

1. Somayeh Tafaghodi Zare[✉]: Assistant Professor, Department of Law, Payam Noor University, Baharestan, Iran
2. Mohammad Ghanbari[✉]: MA, Department of Private Law, Central Tehran Branch, Islamic Azad University, Tehran, Iran
3. Mozghan Mohammadi[✉]: MA, Computer Department, Babol Branch, Islamic Azad University, Babol, Iran

*Correspondence: somaye_tafaghodi@pnu.ac.ir

Abstract

The inhumane actions of Israel in recent years have led international organizations such as Amnesty International in its February 2022 report and Human Rights Watch in its April 2021 report to label it as an apartheid regime—constituting a form of racial discrimination and an example of crimes against humanity. This designation not only imposes international responsibility on the regime but also on the international community for failing to recognize such a situation. The United Nations Independent International Commission of Inquiry also confirmed in its June 2024 report the commission of crimes against humanity and war crimes by Israeli authorities during the Gaza conflict. These crimes include starvation, intentional killing of civilians, deliberate attacks on civilians and civilian objects, forced displacement, sexual violence, torture and inhumane treatment, arbitrary detention, and violation of personal dignity. Throughout its aggression against Gaza, the Zionist regime has repeatedly violated the rules of international humanitarian law and, in accordance with international law, bears international responsibility. This article is a developmental research study using a combined (descriptive-analytical) method and relies on library resources for data collection. Consequently, it is possible to establish the criminal responsibility of commanders, perpetrators, and orchestrators of the recent Gaza war due to their clear violations of fundamental principles and norms of international humanitarian law. They should be pursued and prosecuted as war criminals under Article 8 of the Rome Statute of the International Criminal Court (ICC).

Keywords: International responsibility, Gaza civilians, International humanitarian law, International human rights law

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1. Introduction

The deadly and unexpected October 7, 2023 attack by Hamas on Israel, followed by Israel's retaliatory bombing of Gaza, has thus far resulted in over 52,344 deaths and more than 99,000 injuries on both sides. As a result of Hamas's assault, many Israelis were killed or injured, and a large number were captured and transferred into the Gaza Strip. A significant portion of

the Israeli casualties, injuries, and captives in this conflict were military personnel, while the rest were settler civilians. The large number of captured Israelis—particularly soldiers—has amplified the political and strategic implications of the operation for Palestinians, especially considering Israel's previous experiences in prisoner exchanges, where it had at times released dozens or even hundreds of Palestinians in return for a single soldier or the remains of one of its nationals ([Pourmohammadi et al., 2023](#)).

The Israeli military is equipped with a wide array of modern weapons, technologies, and military equipment across air, land, and sea. From this perspective, Israel's military power is by no means comparable to the limited and modest forces of Hamas. Hamas and Islamic Jihad are both guerrilla groups lacking conventional military assets such as tanks, airplanes, helicopters, and high-impact bombs. They engage in asymmetrical warfare using light weapons and rockets. Ironically, Israel's vulnerability lies precisely in this asymmetry. Despite possessing a large and technologically advanced military, Israel is weak in confronting irregular warfare and particularly susceptible to psychological impacts. Hamas is well aware of these weaknesses and exploits them in its engagements with Israeli forces. Consequently, this operation is regarded as a significant victory for Hamas.

This operation can be assessed from several dimensions. Firstly, it represents the first historical shift in Palestinian resistance from a defensive to an offensive posture. Until recent years, Zionists and the Israeli regime had consistently maintained the offensive, while the Palestinian people and their resistance forces remained in a predominantly defensive position. In a rare and historic development, Palestinian militants managed to seize an area almost equal in size to the Gaza Strip within a matter of hours. Secondly, the Hamas movement, alongside other Palestinian resistance groups—especially Islamic Jihad—managed to plan a large-scale and complex operation while operating within a small coastal strip under near-total blockade and constant surveillance by Israel's military, security, and intelligence apparatuses. The fact that no information about the operation leaked to Israeli forces attests to the depth of strategic surprise.

Thirdly, this operation marked the first time rocket attacks were combined with a coordinated multi-front incursion—on land through breaches in border fences, at sea using armed boats, and in the air via paragliders. The involvement of paratroopers who bypassed air defense systems undetected was decisive in penetrating Israeli territory. Hamas named its paratrooper unit that infiltrated through the border fences the "Saqr Squadron," meaning "Falcon." Palestinian fighters used one- or two-seater paragliders to fly over the border fences. Comparing the current war in Gaza to Israel's 9/11 is a deliberate narrative designed to justify Western and U.S. military intervention in the conflict against Israel's adversaries, while externalizing the costs. However, considering U.S. priorities in containing China and Russia, and the ongoing entanglement of the West and NATO in the Ukraine war, such intervention appears highly unlikely ([Towhidi, 2023](#)).

Civilians in Gaza are certainly not lawful targets. According to the principle of proportionality—a cornerstone of international humanitarian law—they must be protected. Under this principle, attacks on military objectives that can foreseeably cause civilian casualties disproportionate to the expected military advantage are prohibited. In the case of Gaza, this rule obligates the Israeli military to analyze and estimate the potential impact on civilians prior to initiating an attack. If it appears that an attack would result in excessive civilian casualties, the operation must be suspended or canceled. Given Gaza's extreme urban density, avoiding significant civilian harm is exceedingly difficult even with the use of precision weapons. It can be asserted with confidence that achieving this is nearly impossible. Should Hamas use civilians to shield military objectives, its ability to legally claim that Israeli actions constitute war crimes may be diminished to some extent ([Ahmadi Nejad et al., 2020](#)).

In fact, the Zionist regime's comprehensive blockade of Gaza over the past two decades—despite repeated international appeals to end this gross violation of international law—has exacerbated the human rights crisis there. The systemic mistreatment and violence perpetrated by Israel have been categorized under serious criminal classifications such as crimes against humanity and war crimes. Analyzing the humanitarian conditions in Gaza prior to the October 7 operation, alongside the gradual ethnic cleansing of its population, offers a more realistic understanding of the atrocities committed. Accordingly, on December 29, 2023, South Africa filed a petition against Israel at the International Court of Justice, alleging violations of the Genocide Convention in the Gaza Strip after October 7, 2023. The content of this petition and the resulting ICJ rulings are addressed and examined in this study.

2. Analysis of International Responsibility and Documentation in International Humanitarian and Human Rights Instruments

2.1. Human Rights and Humanitarian Responsibilities

Article 53 of the Fourth Geneva Convention prohibits the destruction of civilian property by an occupying power. Despite this, Israel, as the occupying force in Gaza, has deliberately bombarded and shelled civilian homes and public facilities in the Gaza Strip, causing widespread destruction. These actions, under Article 147 of the Fourth Geneva Convention, constitute war crimes ([Ajli Lahiji & Ahsan Nejad, 2024](#)).

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), citing the Palestinian Ministry of Health, the Israeli military assault on Gaza from December 27, 2008 to January 18, 2009 resulted in approximately 1,430 Palestinian deaths and 5,380 injuries, in blatant violation of the Fourth Geneva Convention. The majority of victims were civilians, including a significant number of women and children. Among the fatalities, 412 were children ([Abedini & Baheri Khiavi, 2022](#)).

The Israeli army has repeatedly targeted and destroyed civilian infrastructure such as homes, public buildings, schools, mosques, media centers, and critical utilities like water and power networks. These acts constitute war crimes under international law and the Geneva Conventions ([Seifi, 2022](#)).

Israel also bombed several hospitals in Gaza during armed conflicts, destroying the facilities and killing many patients and wounded individuals. This directly violates Article 18 of the Fourth Geneva Convention, which obligates military forces to respect the sanctity of hospitals and medical centers. Additionally, obstructing the transport of the wounded (in violation of Article 21) and preventing the delivery of medicine (contrary to Article 23) are both recognized as war crimes ([Ajli Lahiji & Ahsan Nejad, 2024](#)).

The UN Office for the Coordination of Humanitarian Affairs has emphasized in a recent report that the Israeli army violated fundamental principles of humanitarian law, particularly the principles of necessity and proportionality. One prominent example is the October 31 attack on the Jabalia refugee camp. Israel claimed the target was a Hamas commander involved in the October 7 attack. However, the damage caused to the camp—resulting in the deaths of many civilians and extensive property destruction—was grossly disproportionate to the intended military gain. Such acts not only qualify as war crimes, but due to the nature and extent of the killings, may reach the threshold of crimes against humanity. According to Article 52 of the Hague Convention, attacks on undefended cities, towns, and buildings are prohibited. Article 53 of the Fourth Geneva Convention also bans the destruction of private, state, or public property by the occupying power, except when absolutely necessary for military operations. Furthermore, Article 147 defines widespread, unjustified destruction of property as a serious violation, prosecutable under international criminal law ([Hosseini Akbarnejad, 2024](#); [Todeschini](#)).

The ongoing blockade of Gaza, home to 2.3 million civilians, and the deprivation of water, food, fuel, electricity, and medical supplies, constitutes a systematic method of destruction. Using starvation as a tool of warfare is explicitly prohibited under international humanitarian and criminal law. Another alarming issue is the forced displacement of civilians from northern to southern Gaza. Numerous international instruments—including Rule 129 of customary international humanitarian law, Article 49 of the Fourth Geneva Convention (concerning the protection of civilians during armed conflict), and Article 8 of the Rome Statute of the International Criminal Court—explicitly prohibit such forced transfers. Following the Israeli military's directive on October 13, 2023, urging northern Gaza residents to evacuate, OCHA estimated that approximately 1.4 million people were displaced ([Fazaeli & Kowsari, 2022](#); [Wilde, 2021](#)).

The Convention on the Rights of the Child, the most widely ratified international human rights treaty (including by Israel), underscores the importance of safeguarding children during armed conflict. However, in its November 1 statement, the UN Committee on the Rights of the Child condemned Israel's violations of humanitarian law, particularly Article 38, which mandates the protection of children affected by conflict. The committee also highlighted the failure to distinguish between civilian and military populations and the devastating psychological and physical effects of the war on children ([Towhidi, 2023](#)).

On November 11, leaders of the Organization of Islamic Cooperation and the Arab League called on the UN Security Council to adopt a binding resolution to halt Israel's aggression in Gaza. They also urged the Organisation for the Prohibition of Chemical Weapons to investigate Israel's potential use of prohibited chemical weapons and called on all states to cease arms exports that are being used against Palestinians ([Mearsheimer, 2019](#)).

On November 15, the UN Security Council adopted Resolution 2712, which calls for a humanitarian pause in the Gaza crisis. The resolution emphasizes the urgent need to halt attacks, open humanitarian corridors, and ensure access to aid for civilians. It also calls for the unconditional release of all hostages held by Hamas and other groups, particularly children, and demands unimpeded access to humanitarian assistance. The Council further calls on all parties to refrain from denying basic services and essential aid to Gaza's civilian population, in accordance with international humanitarian law ([United Nations Security Council Resolution 2712](#)).

On November 16, UN experts stated that the Israeli regime's widespread attacks using highly destructive and indiscriminate weaponry demonstrated clear genocidal intent against the Palestinian people in Gaza and other occupied territories. These experts asserted that such violations cannot be justified under the guise of self-defense. As the occupying power, Israel cannot legally wage war against the population it occupies. The international community is therefore obligated to prevent Israel's atrocities, including potential acts of genocide, and must take immediate diplomatic, political, and economic measures to that end. They called for urgent action from UN member states and the UN system as a whole ([Hosseini Akbarnejad, 2024](#)).

Eventually, with mediation from Qatar and Egypt, a renewable ceasefire was implemented beginning November 24. During this period, prisoner exchanges, humanitarian aid deliveries, and weapons restrictions were accepted. Although there was speculation about extending the ceasefire, Israel resumed its attacks after it ended. On December 6, 2023, in a rare move, the UN Secretary-General invoked Article 99 of the UN Charter in a letter to the Security Council, urging support for a ceasefire resolution drafted by the United Arab Emirates. He warned the Council's 15 members that as Israel's war on Hamas entered its 63rd day, the collapse of the humanitarian support system in Gaza was imminent. The resolution passed with 13 votes in favor, the UK abstaining, and the U.S. casting the sole veto. The U.S. representative justified the veto by stating that while the U.S. strongly supports a lasting peace in which Israel and Palestine can coexist in security, it does not support an immediate ceasefire, arguing that doing so would only plant the seeds of future wars, as Hamas allegedly opposes a two-state solution ("[Note to Correspondents on Gaza](#)").

On December 13, the UN General Assembly passed a resolution on aid to the Palestinian people, calling on international, regional, and civil society organizations to assist them to the fullest extent possible. The resolution reaffirmed commitments under past Israeli-Palestinian agreements, including the 1994 Paris Protocol on economic relations and the 2005 agreement on crossings and access, emphasizing the use of Palestinian exports in foreign markets ([United Nations Security Council Resolution 2712](#)).

In a subsequent move, the Security Council passed another resolution on December 22, 2023, with the U.S. and Russia abstaining. The resolution did not explicitly call for a ceasefire, but reiterated the need for adherence to international humanitarian law, delivering aid to Gaza's residents, keeping crossings open, appointing a coordinator for humanitarian affairs and reconstruction, ensuring safe delivery of aid, mandating periodic reporting, reaffirming the two-state solution, and ensuring the security of humanitarian workers and UN agencies ([Wilde, 2021](#)).

Finally, on December 29, 2023, South Africa, as a party to the Genocide Convention, filed a case against Israel before the International Court of Justice for failing to prevent genocide, inciting genocide, and participating in genocidal acts against Palestinians in Gaza. The petition also called for provisional measures. In this regard, Iran's potential intervention as a third party could be considered beneficial ([Pourmohammadi et al., 2023](#)).

It is evident that these measures alone are not sufficient, effective, or adequate for achieving peace and regional security or for restoring the pre-occupation status of Palestinian territories. It is essential that legal prosecution of Israel's violations of international human rights and humanitarian law be prioritized by competent authorities. Notably, the use of the veto power by the United States to block UN Security Council action contradicts the pursuit of peace and instead fosters the continuation of war ([Esmaeili, 2024](#)).

2.2. *The Responsibility to Protect (R2P) in the October 7 War*

According to various perspectives on the effectiveness or inherent legitimacy of the Responsibility to Protect (R2P), as well as widespread critiques regarding its selective application, Israel's conduct during its assault on Gaza following the October 7, 2023 Hamas–Israel conflict clearly reflects the failure of the United Nations' R2P doctrine to protect the people of Gaza.

Determining the state responsible for protecting Gaza's civilians can be examined from two viewpoints. On one hand, if Israel is considered the occupying power in Gaza, it bears the responsibility to protect the population—a responsibility it has shown no willingness to fulfill. On the other hand, if Hamas is deemed the *de facto* governing entity in Gaza, then the group's incapacity to protect civilians may be highlighted. Nevertheless, the weight of international legal and political opinion supports the former interpretation: that Israel, as the occupying force, is primarily responsible for the protection of the people in Gaza (Mearsheimer, 2019).

Therefore, in identifying the responsible actor in the 2023 Hamas–Israel conflict, the first interpretation gains precedence based on Israel's status as an occupying power. Given Israel's unwillingness to fulfill its protective obligations—and in fact, its deliberate violations of human rights and international humanitarian law—the UN's responsibility to protect (R2P) is triggered. The R2P doctrine thus provides the necessary legal basis for international response, especially by the UN Security Council, in defense of Gaza's civilians and against Israel's actions (Buzan & Waever, 2021).

Despite the clear legal foundation for invoking the R2P doctrine in defense of Gaza's population—amid severe and widespread violations of human rights and humanitarian law following Israel's latest aggression—no effective measures have yet been implemented by the United Nations (either the General Assembly or the Security Council). The performance of these bodies, apart from convening a General Assembly session and the Security Council's adoption of a single humanitarian pause resolution, reflects no meaningful action.

With regard to the necessity of UN intervention, Paragraph 139 of the 2005 World Summit Outcome Document explicitly outlines actions under Chapter VI (peaceful resolution of disputes) and Chapter VIII (regional arrangements) of the UN Charter to operationalize international responsibility. This paragraph places responsibility on the Security Council to take "timely and decisive" action to prevent or halt genocide, war crimes, ethnic cleansing, and crimes against humanity. Accordingly, the recent Gaza crisis serves as a litmus test that the R2P doctrine has failed—despite the legal preconditions being fully met—due to its non-implementation (Esmaeili, 2024).

Considering the egregious and widespread violations of international humanitarian law against the people of Gaza during the 2023 Hamas–Israel conflict, and the existence of a legal basis for applying the R2P doctrine to protect civilians, no effective action has been taken by the United Nations under this framework. Consequently, the hierarchical structure of power within the international system has permeated the UN itself—particularly through the veto mechanism. The instrumental use of the United Nations by the United States to maximize its global power and regional interests in the Middle East, as well as its unequivocal support for Israel, has rendered the R2P doctrine ineffective and unfulfilled in the context of the 2023 Hamas–Israel conflict.

3. **International Measures to Protect Civilians in Gaza**

3.1. *Actions by Human Rights Bodies*

On October 12, 2023, the spokesperson for the UN Secretary-General issued a statement reporting that Israeli military officers had informed the heads of the UN Office for the Coordination of Humanitarian Affairs and the Office for the Coordination of Safety and Security in Gaza that the entire population of northern Gaza—approximately 1.1 million people—must relocate to southern Gaza within 24 hours. This order also applied to all UN personnel and individuals sheltering in UN facilities, including schools, clinics, and medical centers. However, the UN considered such a relocation impossible without devastating humanitarian consequences. The UN strongly urged that this order be revoked or, if confirmed, rescinded, warning that it could transform an already dire situation into a humanitarian catastrophe. According to OCHA reports, an estimated 1.4 million people had already been displaced in Gaza. Israeli officials claimed the order was issued to “ensure the safety and care of the people of Gaza.” The matter was also raised in the UN Secretary-General's press briefing, where he stated: “After days of aerial bombardments, the Israeli Defense Forces ordered Palestinians in Gaza City and surrounding areas to move south.

The movement of over one million people in a densely populated war zone—without food, water, or shelter, while the entire territory is under siege—is extremely dangerous and, in many cases, practically impossible. Hospitals in southern Gaza are already at full capacity and cannot accommodate thousands more patients from the north” (“[Note to Correspondents on Gaza](#)”).

The UN Special Rapporteur on the human rights of internally displaced persons declared in a statement that forced displacement constitutes a crime against humanity and that collective punishment is prohibited under international humanitarian law. She warned of the danger to over one million Palestinians joining 423,000 others already violently expelled from their homes the previous week. The tripling of the displaced population in a single night threatens the irreversible erasure or alteration of Gaza’s civilian population. Due to the absence of proper evacuation mechanisms for severely ill patients in hospitals, the World Health Organization equated Israel’s evacuation order to a death sentence for those patients. Experts also cited multiple violations of humanitarian law, including denial of access to humanitarian aid, forced evacuation and displacement, systematic destruction of homes and civilian facilities, and the cutting of access to drinking water, medicine, and essential goods. A critical issue remains the ongoing closure of the Gaza crossings to the rest of the occupied Palestinian territories. According to Rule 55 of customary international humanitarian law, parties to a conflict must, while retaining the right of control, allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, conducted impartially and without adverse distinction. However, Israel only allowed humanitarian aid during temporary ceasefires. While it claims the right to control these crossings, Israel has instead entirely prohibited humanitarian passage, causing catastrophic and irreparable harm to Gaza’s civilian population by denying access to vital medical and humanitarian aid ([Todeschini](#)).

On October 9, UN Secretary-General António Guterres expressed deep concern over the blockade of Gaza, reminding that any Israeli military operations must fully comply with international law and international humanitarian law, and that civilians and civilian objects must be respected and protected at all times ([Hosseini Akbarnejad, 2024](#)).

Following the UN Security Council's failure to issue a resolution regarding Gaza, the UN General Assembly adopted a resolution on October 30 calling for an immediate humanitarian ceasefire. The resolution emphasized the need to protect civilians and comply with humanitarian obligations. It called on all parties to respect international human rights and humanitarian law, particularly regarding civilians and civilian objects. The General Assembly also underscored the importance of ensuring access to essential resources and services for all civilians in Gaza. Moreover, the resolution demanded that Israel, as the occupying power, revoke its evacuation order for Palestinian civilians, UN personnel, and humanitarian workers from northern Gaza and halt their forced transfer to the south. Member states also called for the immediate and unconditional release of all unlawfully detained civilians ([United Nations Security Council Resolution 2712](#)).

In this specific context (Gaza after October 2023), the Prosecutor of the International Criminal Court (ICC) has accused the Israeli Prime Minister and Minister of Defense of committing war crimes and crimes against humanity. Each of these crimes includes a contextual element that frames the conduct constituting international crimes. According to the Prosecutor, an international armed conflict exists between the State of Palestine and the State of Israel, which has enabled the commission of international crimes by Israel. The Prosecutor has identified four specific acts constituting war crimes: (1) starvation of civilians as a method of warfare (denial of life necessities), (2) willful killing, (3) directing attacks against civilians (a violation of the principle of distinction under IHL), and (4) inhuman treatment or infliction of severe suffering or serious injury to civilian health. The Prosecutor noted that these crimes were part of a common plan targeting Palestinian civilians and served three objectives: the destruction of Hamas, the retrieval of hostages, and the collective punishment of Gaza residents, who are viewed as a threat to Israel.

Among these crimes, the crime of starvation was most prominently emphasized by the Prosecutor. He asserted that Israel systematically and deliberately deprived civilians in Gaza of life necessities. This deprivation, he explained, was executed through the complete blockade of Gaza, closure of crossings, arbitrary restrictions on the entry of essentials, attacks on humanitarian convoys and workers, and targeting of civilians queuing for food. These acts forced aid organizations to suspend their operations. Starvation, in this context, is a material and process-based conduct that can amount to a war crime, a crime against humanity, or even genocide if coupled with specific intent to destroy a population. The centrality of starvation in the Prosecutor’s statement may lead to future genocide charges and the issuance of arrest warrants. The current omission of this charge could be addressed in future filings. Additionally, the Prosecutor distinguished between *jus ad bellum* (the right to use

force) and *jus in bello* (conduct of hostilities), emphasizing that the right to self-defense does not justify criminal acts such as starvation or inflicting severe suffering on civilians (Hosseini Akbarnejad, 2024).

In addition to war crimes, Israel has been accused of crimes against humanity, including mass killing, persecution, and other inhumane acts against Palestinians. Crimes against humanity are criminal acts committed on a widespread or systematic basis as part of a state or organizational policy against a civilian population. The Prosecutor contends that Israel's attacks on Palestinians were part of its state policy targeting Gaza's civilian population. However, the Prosecutor limited his remarks to general categories of charges without specifying the exact behaviors or incidents underlying each allegation. Notably, certain crimes—such as apartheid—were absent from the list, despite significant evidence of systematic racial oppression and discrimination of Arabs by the Israeli regime, which has been documented by international human rights bodies but was not addressed in the current filing (Towhidi, 2023).

The ICC Prosecutor's request for arrest warrants is not limited to Israeli officials. Given that the ICC prosecutes based on specific situations, the Prosecutor also evaluated the conduct of the opposing party in the conflict. Consequently, arrest warrants were requested against three senior Hamas leaders: Yahya Sinwar, Mohammed Deif, and Ismail Haniyeh. The Prosecutor alleges that Hamas, as an organized armed group engaged in a non-international armed conflict with Israel, committed war crimes and crimes against humanity, particularly during the October 7, 2023 attack. The charges include murder, hostage-taking, sexual violence, torture, inhumane treatment, and violations of dignity, both during the initial attack and in the treatment of hostages thereafter. The Prosecutor claims these actions were part of an organizational policy by Hamas and, given their scale and organization, reached the threshold of crimes against humanity. The leaders are accused both as direct participants and under the doctrine of command responsibility: for ordering, encouraging, or failing to prevent and punish the crimes (under Articles 25 and 28 of the Rome Statute). Although the full content of the Prosecutor's legal reasoning has not yet been disclosed, the charges against Haniyeh—Hamas's political leader—may stem from his public endorsements of the group's military actions, which can render even distant political figures liable under international criminal law (Seifi, 2022).

3.2. *Actions of the International Court of Justice (ICJ)*

On January 17, 2023, the UN General Assembly notified the International Court of Justice (ICJ) of its request for an advisory opinion pursuant to Resolution 77/247, titled "*Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory*", under Article 96 of the UN Charter and Article 65 of the ICJ Statute. The request asked the Court to opine on the legal consequences of the ongoing violations of the Palestinian people's right to self-determination due to prolonged occupation and de facto annexation of Palestinian territory by Israel, as well as on the implications of Israel's policies and practices for all UN member states.

In its 2004 advisory opinion on *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court had already affirmed the occupying power's responsibility—Israel's in this case—to uphold and guarantee the human rights of all individuals under its jurisdiction. A major difference between the 2004 opinion and the current advisory request is that the earlier case concerned the legality of a specific act (the construction of the wall), while the present question addresses the broader legality of the occupation itself and its consequences. Nevertheless, the principles developed in the 2004 opinion can help discern the Court's likely position on key legal questions raised here (Fazaeli & Kowsari, 2022).

In its 2004 opinion, the Court declared Israel's efforts to annex parts of the West Bank to be in violation of the principle prohibiting acquisition of territory by force, and thus a breach of the right to self-determination. Even the Security Council unanimously declared such annexation attempts illegal under international law. These legal positions and prior advisory opinions carry significant weight and credibility for any future ICJ determinations.

Occupation resulting from unlawful use of force—such as in Israel's case—is considered a continuous violation of the *jus cogens* norm prohibiting aggression. International law recognizes no exception to the obligation to terminate an internationally wrongful act. Therefore, such an occupation must end unconditionally. Even if occupation arises from a lawful use of force (e.g., self-defense), it cannot be rendered permanent. The Court is likely to evaluate the legality of the occupation through the lens of peremptory norms and *erga omnes* obligations, and if it finds the occupation unlawful, it may emphasize the need for its unconditional termination.

The grave situation in the occupied territory—characterized by suppression of Palestinian self-determination, systemic discrimination, and apartheid—can only be resolved through an end to occupation. In short, Israel's gross and systematic violations of *erga omnes* obligations render its occupation illegal and necessitate its termination. The international community continues to recognize the West Bank, including East Jerusalem, and the Gaza Strip as occupied territories, subject to the international legal regime of occupation, including the obligations under the 1907 Hague Regulations and the 1949 Geneva Conventions.

In its Wall opinion, the Court confirmed the customary nature of the 1907 Hague Regulations and the applicability of the Fourth Geneva Convention. It differentiated between rules applicable during the initial phase of military operations leading to occupation and those applicable throughout the occupation. The Court reaffirmed Article 47 (protection of persons in occupied territory even in cases of annexation), Article 49 (prohibition of forced transfers), Article 52 (ban on forced unemployment), Article 53 (ban on destruction of property), and Article 59 (obligation to provide humanitarian aid to the occupied population). In addition to humanitarian law, human rights law remains applicable in occupied territories.

The complementary relationship between international humanitarian law and human rights law is particularly critical in armed conflict settings. When humanitarian law falls short in protecting basic human rights, human rights law fills the gap to ensure minimum protections. Human rights norms often apply to a broader set of individuals and offer wider protective scope. While humanitarian law may sometimes offer stronger protections in conflict, it is more closely tailored to wartime realities (Ajli Lahiji & Ahsan Nejad, 2024).

The Court's Wall opinion emphasized that occupying powers must ensure the human rights of all individuals under their jurisdiction. While Israel claimed it was responsible only for the rights of its own citizens, the Court held that all individuals within a state's jurisdiction are entitled to human rights protections. Thus, in addition to the clear violation of Palestinians' right to self-determination, numerous systematic human rights violations—such as Israel's attempts to change the demographic composition of East Jerusalem, forced displacements, overcrowded resettlements, and discriminatory military governance—indicate entrenched institutional discrimination.

Palestinians who are Israeli citizens face legal discrimination, while those living under military occupation suffer even harsher conditions, including movement restrictions, denial of permits, house demolitions, restricted access to water and electricity, and denial of civil liberties such as freedom of expression and assembly. These facts support allegations of apartheid and serious systematic violations of human rights by Israel, particularly when such policies are enshrined in recent Israeli laws, potentially triggering international responsibility (Seifi, 2022).

According to Article I of the 1948 Genocide Convention, the contracting parties affirm that genocide, whether committed in peacetime or wartime, is a crime under international law and undertake to prevent and punish it. This means that genocide is never legally justifiable. South Africa's legal argument rests heavily on the claim that self-defense or protection of civilians cannot excuse acts of genocide.

South Africa has thus focused on presenting detailed evidence, statistics, and reports to persuade the Court that genocide is occurring and that the urgency of the situation warrants the issuance of provisional measures. A key requirement in such cases is to demonstrate a legal link between the requested provisional measures and the rights allegedly being violated. South Africa emphasized this link in both its written submissions and oral arguments. For example, it argued that suspending military operations was necessary to prevent violations of Convention rights by Israel.

By submitting extensive factual evidence, South Africa aimed to show that every military action by Israel results in Convention violations, especially given Israel's intent to destroy the Palestinian people, either wholly or in part—not just Hamas. South Africa also drew from the Court's Wall advisory opinion to challenge Israel's invocation of self-defense and reminded the Court of Israel's obligations as an occupying power.

South Africa views the post-October 7 atrocities—including cutting water, electricity, fuel, and humanitarian aid—as part of a deliberate Israeli strategy. If the Court accepts this premise, a suspension of military operations may not seem unrelated to preventing genocide. However, such determinations require significant examination of the merits. South Africa argues that its requested measures—especially suspension of military operations—are necessary to preserve the rights it asserts under the Convention (Wilde, 2021).

In the author's view, while South Africa attempts to establish the necessary legal link between its requested measures and Convention rights, it does not sufficiently elaborate on how its requests align with specific Convention provisions. This gap allowed Israel to argue that military suspension is unrelated to the core rights protected under the Convention. Israel's defense focused on self-defense, balance in provisional measures, and the link between rights and relief requested—arguments that will be analyzed in subsequent sections.

From the totality of facts presented, the Court concluded that the people of Gaza constitute a protected group under Article III of the Genocide Convention and should benefit from its guarantees, in times of peace and conflict alike. While the Court found *prima facie* jurisdiction and acknowledged the possibility of violations of Article II, it did not accept all of South Africa's requests as legally connected to the Convention rights at issue.

The Court deemed its order sufficient in directing Israel to prevent acts prohibited under Article II of the Convention, without necessarily mandating a suspension of military operations. Though the Court acknowledged ongoing operations could worsen the crisis, it focused instead on ensuring access to food, water, electricity, and medicine for Gaza's civilians. It did not order a ceasefire. Rather, the Court emphasized that Israel must ensure its military forces do not commit prohibited acts, distancing itself from the broader issue of ending hostilities.

Although the Court could have issued a more balanced provisional order addressing both parties, the key issue was whether the Convention legally empowered it to do so. Given the limited mandate under the Genocide Convention and the specific emergency conditions in Gaza, the Court arguably issued the most appropriate ruling available. It is important to note that the Court's silence on halting Israeli military actions does not imply their legality. Instead, it reflects the Court's narrow focus on genocide prevention. The resulting order imposes binding obligations on Israel from the date of issuance. Further proceedings will reveal how the Court develops its position (Buzan & Waeber, 2021).

3.3. *Actions of the International Criminal Court (ICC)*

On November 21, 2024, following investigations into war crimes and crimes against humanity, the International Criminal Court (ICC) issued arrest warrants for two senior Israeli officials: Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant. The charges against them include responsibility for war crimes, such as the use of starvation as a method of warfare, and crimes against humanity including murder, persecution, and other inhumane acts during the Israel–Hamas conflict. This marks the first time the ICC has issued an arrest warrant against a sitting head of government from a major Western ally. Netanyahu and Gallant now risk arrest should they travel to any of the 124 states parties to the Rome Statute.

Josep Borrell, the European Union's foreign policy chief, affirmed that ICC arrest warrants are binding on EU member states. *Le Monde* described the decision as a "turning point in the Court's history." The ICC also issued an arrest warrant for Hamas's military commander, Mohammed Deif, who was reportedly killed in an Israeli airstrike on July 13, 2024.

On November 21, 2024, Pre-Trial Chamber I of the ICC—composed of Presiding Judge Nicolas Guillou (France), Judge Reine Adelaide Sophie Alapini-Gansou (Benin), and Judge Beti Hohler (Slovenia)—issued the arrest warrants upon the request of the Prosecutor. The warrants relate to the "activities of Israeli state institutions and military forces against the civilian population in Palestine, particularly civilians in Gaza," and apply to Benjamin Netanyahu, Yoav Gallant, and Mohammed Deif.

The Pre-Trial Chamber held that there are reasonable grounds to believe that from October 8, 2023, to at least May 20, 2024, Netanyahu and Gallant bore criminal responsibility. This includes "co-perpetration of war crimes and crimes against humanity," specifically: the war crime of starvation as a method of warfare; crimes against humanity including murder, persecution, and other inhumane acts; and the war crime of directing attacks intentionally against a civilian population. The Court further found that these crimes against humanity were part of a widespread and systematic attack orchestrated by Hamas and other armed groups against Israeli civilians.

The Office of the Israeli Prime Minister condemned the ICC's arrest warrants as "anti-Semitic" and likened them to the infamous Dreyfus Affair. Israeli Foreign Minister Israel Katz declared that the ICC had "lost its legitimacy," while Yuli Edelstein, Chair of the Foreign Affairs and Defense Committee of the Knesset, described the move as "a disgraceful action by a politically motivated institution influenced by Islamist interests." Israeli opposition leader Yair Lapid also condemned the ICC's decision.

The ICC's previous inaction toward Israeli crimes and the historical impunity of perpetrators has starkly contradicted its stated mission to combat impunity and uphold justice. This failure has emboldened violators and contributed to the continuation—and even escalation—of unlawful conduct against Palestinians, including widespread torture and indiscriminate attacks on civilians (Esmaili, 2024).

Despite reports that Mohammed Deif may have been killed in an Israeli airstrike on July 13, 2024, the ICC proceeded with the arrest warrant, stating that it could not independently confirm his death and was therefore obligated to issue the warrant.

4. Conclusion

The events of October 7, 2023, and the subsequent military operations in the Gaza Strip marked a profound turning point in the protracted Israeli–Palestinian conflict. The recent report by the Independent International Commission of Inquiry presented significant evidence of war crimes and crimes against humanity committed by both parties to the conflict. Alongside these findings, the recent actions of the International Criminal Court in seeking arrest warrants for leaders of both Hamas and Israel have added new legal and moral dimensions to this crisis. For over two decades, the Israeli regime's comprehensive blockade of Gaza has progressively exacerbated the human rights situation, leading to widespread and systematic violations—such as the right to life, human dignity, physical integrity, health, minimum standards of living, protection from torture, liberty and security, freedom of movement, protection from forced displacement, and the rights of vulnerable groups including women and children. These violations fall under legal categories such as genocide and crimes against humanity.

An examination of reports issued by human rights bodies over the past years—particularly in the months preceding the October 7 operation—reveals a precise and distressing picture of the Gaza population's suffering and the extent of human rights violations committed against them by Israel. Unfortunately, these violations were met with apathy and inaction by the international community. Following October 7 and the escalation of violence that claimed over 30,000 civilian lives, including women and children, global public opinion was confronted with the overtly inhumane conduct of the Israeli regime. According to many international legal experts and human rights organizations, the crime of genocide constitutes the final stage in Israel's 75-year campaign of ethnic cleansing—a campaign aimed at erasing the Palestinian people in favor of the Zionist settler regime.

Under these circumstances, where the crime of genocide—as the gravest international crime—is evident, it is expected that states will act urgently to halt the ongoing human catastrophe, demand an immediate ceasefire, and facilitate the delivery of humanitarian assistance. However, the unwavering political and military support of the United States and certain European states for Israel, which enables continued violations and impunity, has significantly undermined the effectiveness of international institutions such as the United Nations in addressing, condemning, and preventing gross breaches of human rights and international humanitarian law.

States must rise above Western media narratives and fulfill their obligations under the Genocide Convention. They must demand that the United Nations' competent organs—particularly the International Court of Justice—take firm measures to prevent and suppress genocidal acts, including by supporting South Africa's legal case. On December 29, 2023, South Africa filed a lawsuit against Israel before the ICJ for “violations of its obligations under the Genocide Convention concerning the Palestinian people in the Gaza Strip.” In response, the Court issued two rulings—on March 28 and July 26, 2024—obligating Israel to take all measures within its power to prevent genocide and to ensure effective humanitarian access to basic services for Gaza's civilians.

However, Israel's continued disregard for the Court's orders—evidenced by the killing and injuring of thousands of civilians, including women and children—demonstrates its blatant contempt for international law and reinforces the need for coordinated, global action. This reality underscores the inadequacy of relying solely on legal mechanisms to counter the impunity of the Israeli regime for international crimes.

The failure of the Responsibility to Protect (R2P) doctrine in the recent Gaza crisis illustrates the limits of international law when faced with political power dynamics. Despite the legal clarity of the R2P framework and its applicability following the 2023 Hamas–Israel conflict—given Israel's designation as the responsible occupying power and its deliberate violations of human rights and humanitarian norms—the UN has failed to implement any meaningful action under this doctrine. This study situates this failure as part of a broader systemic breakdown in the application of R2P.

Despite all these issues, the ICJ is expected to go beyond its previous advisory opinion on the Wall and issue more definitive and enforceable obligations under the principle of “cooperation to end unlawful situations.” Notably, the Wall opinion was seen as a bold and influential move, in which the Court extended its advisory role to articulate a broader responsibility for the United Nations and member states in facilitating the establishment of a Palestinian state—an opinion that arguably played a role in the growing recognition of Palestine as a state in subsequent years.

In conclusion, the atrocities in Gaza reflect not only a humanitarian disaster but a profound legal and moral failure of the international community. Addressing these crimes requires more than condemnation; it requires assertive international legal action, the enforcement of ICJ and ICC rulings, and a reassertion of human rights principles over political interests.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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