

International Law and Gaza Strip¹

Within the “Emancipatory Human Rights” Project

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2024

¹ This paper was supposed to be co-authored with Professor Koen De Feyter. Unfortunately, after delivering the paper’s outline, Prof. Koen passed away. He was an inspirational scholar who left us far too soon.

*Special thanks and appreciation for the honourable academics: Gentian Zyberi, Thalia Kruger, Tomaso Ferrando, Gamze Turkelli, and Maha Abdallah, for their remarkable contributions in this Policy brief.

Executive Summary

This policy brief examines states' international obligation, the double standards in applying international law, and the inability of its organisations and instruments to serve their purpose, advancing peace, and safeguarding internationally established norms, particularly as Israel is persistent in committing grave violations to international law. Furthermore, it seeks to influence advocates, activists, scholars, national and international organizations, solidarity movements; third-party states to the Genocide Convention, and legal groups to promote civil space and social initiatives, to influence their governments to adhere to their international obligations towards international conflicts, in particular, the ongoing genocide in Palestine. It provides examples of possible and needed actions to make that possible. The policy highlights initiatives' vital role in supporting an emancipatory understanding of human rights, international law instruments, and the importance of national and global initiatives, also, legal action for peace-building.

The first section of this policy brief discussed some of the international efforts to end the genocide in Gaza, followed by exploring some of the global efforts at the national level and the obligations of third states concerned with preventing and stopping mass atrocities against Palestinians. In the second section, it addressed the question of the future of international law in light of the failure to stop the genocide in Gaza, and how this can be an opportunity to reshape the world order and introduce an emancipatory approach to international law. It addresses ways to challenge double standards in the application of international law. Finally, it concludes with recommendations to legal groups, activists, scholars, solidarity movements, social initiatives, Palestinian universities, national and regional organizations, and Palestinian public institutions, on how they can contribute as actors of change to promote an emancipatory understanding and application of international law, to support Palestinian people and to contribute to efforts aimed to end the genocide in Gaza.

Introduction

The ongoing genocide in Gaza and the hostilities against civilians in the West Bank, and Jerusalem, accompanied by accelerating land annexation, settlement expansion, settler violence and the forcible displacement of Palestinians, are results of the prolonged Israeli occupation. Indeed, the ongoing crimes against the Palestinian people highlighted how power structures can disregard their international obligations, and established norms of international law; also, it persists in dominating the international legal discourse, while depriving suffering nations, such as the Palestinian people of their right to self-determination.

The Israeli-waged war revealed double standards when it comes to the application of international law. The contradiction in the application of international law raises serious questions about the effectiveness of International Law Instruments. Can this weaken the established international norms? Is there still a future for international law, especially when it repeatedly fails to deliver justice and peace? Can initiatives influence the emancipatory understanding of international law? This policy brief proceeds to shed light on these questions. By first highlighting some of the international efforts to end the genocide in Gaza, also, recall some global efforts at the national level and obligations of states concerning preventing and stopping mass atrocities against Palestinians. Afterwards, it moves to the second section, to elaborate on how this is an opportunity to reshape the world order and introduce an emancipatory approach to the understanding and

application of international law. Finally, the policy provides some recommendations to contribute to the emancipatory understanding and application of international law.

The Objectives of this Policy Paper:

- Highlight some of the global initiatives to stop the genocide,² and highlight the selective application and enforcement of international law.
- Elaborate on needed actions to make the current international law and human rights system universally functional and effective.
- Influence advocates, activists, scholars, national and international organizations, solidarity movements, third-party states to the Genocide Convention, and legal groups to promote civil society and social initiatives, to pressure their governments to abide to their international obligations.
- Highlight the vital role that initiatives play in supporting an emancipatory approach to human rights, international law instruments, and the importance of legal action, also, national and global initiatives on the peace-building front.

International efforts aimed to preventing genocide in Gaza

Following the atrocities in Gaza, there were various international initiatives to mitigate the crisis and contribute to the political efforts by using legal means. In May 2024, the International Criminal Court “ICC” Prosecutor stated that several applications for arrest warrants had been filed with the Pre-Trial Chamber at the ICC, requesting to arrest Israeli Prime Minister Netanyahu and Defence Minister Gallant. However, the ICC Pre-Trial Chamber (I) granted the UK request to file an amicus brief, in what seemed like an attempt to delay the issuance of the warrants, while initially keeping the content of the request incognito for the public. The ICC on 21 November 2024 the ICC finally issued the arrest warrants for Netanyahu and Gallant, for crimes against humanity and war crimes committed from at least 8 October 2023 until at least 20 May 2024.³

² There are many remarkable initiatives from local and international civil society actors, all of which worked tirelessly to use all possible legal means to support the Palestinian people. It’s important to note that for this paper, some initiatives were highlighted as an example. It’s an attempt to draw a link and shed light on the main issue here; the violation and bias in the application of binding rules of international law. Nonetheless, other papers discuss one or more of the topics mentioned here such as genocide and other issues, which are important topics, however, the paper focused on the source of the issue: the selective application & understanding of international law. Therefore, it aims to highlight the most relevant points to inspire further discussions.

³ International Criminal Court, “Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel’s challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant,” *International Criminal Court*, (21 November 2024), <https://www.InternationalCriminalCourt-cpi.int/news/situation-state-palestine-InternationalCriminalCourt-pre-trial-chamber-i-rejects-state-israels-challenges> (accessed 30 November 2024). Also, watch full video on “Statement of International Criminal Court Prosecutor: Applications for arrest warrants in the situation in the State of Palestine, published by the ICC: <https://www.InternationalCriminalCourt-cpi.int/news/statement-InternationalCriminalCourt-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state#>.”

This prolonged process, which took more than 6 months to issue arrest warrants raises concerns about whether the ICC can stop international crimes and function independently. Undoubtedly, this instils scepticism in the international criminal justice system. At the same time, it appears that ICC officials were under intense pressure to drop the investigations against Israeli senior state officials.⁴ And recently the U.S. House of Representatives voted to sanction the ICC for its arrest warrants for Israeli Prime Minister and his former defense minister over Israel's campaign in Gaza.⁵ Nonetheless, it's important to mention the United Nations Security Council's "UNSC" failure to call for a ceasefire, largely due to US multiple vetoes, which is associated with representation-power-voting dynamics within the Council. Taking into consideration, these dynamics hinders the UNSC primary responsibility to maintain international peace and security.⁶

On the other hand, South Africa submitted a claim against Israel at the International Court of Justice "ICJ", for violating the Genocide Convention. Moreover, South Africa requested the ICJ to order protective measures. The ICJ expressed, that prima facie evidence showed that Israel may be committing genocide; also, in May 2024, the ICJ reaffirmed its previous provisional measures, also ordered Israel to halt its military offensive, and any other action in Rafah Governorate,⁷ which Israel invaded and carpet-bombed afterwards. Most important the court didn't order a ceasefire.

While the ICJ's provisional measures orders are binding, clearly Israel did not respect any; and proceeded to escalate. This raises many questions on the lack of enforcement capabilities of international law, also the failure of the international law mechanisms and organizations to hold Israel to account. If one were to draw an analogy, the ICJ used a firmer tone towards Russia in a similar situation –not necessary identical situation- concerning Ukraine in March 2022, where it affirmatively ordered Russia to immediately stop its invasion of Ukraine, and suspend its military action there.⁸

On another note, previous to the war on Gaza, the United Nations General Assembly "UNGA" adopted request for an advisory opinion in 2022. Based on, the ICJ landmark advisory opinion in

⁴ Jasmin Johurun Nessa, "Delays, Interference, and Espionage: The ICC's Struggle with Arrest Warrants in the Situation in the State of Palestine," *Opinio Juris* (11 October 2024), <https://opiniojuris.org/2024/10/11/delays-interference-and-espionage-the-iccs-struggle-with-arrest-warrants-in-the-situation-in-the-state-of-palestine/>, (Accessed 8 December 2024).

⁵ Karoun Demirjian, House Passes Bill to Impose Sanctions on I.C.C. Officials for Israeli Prosecutions, *The New York Times*, (9 January 2025), <https://www.nytimes.com/2025/01/09/us/politics/icc-sanctions-house-israel.html>, (Accessed 9 January 2025).

⁶ Sergey Vasiliev, "Tackling Israel's Interference with the International Criminal Court: A Wake-up Call from the Netherlands," *Verfassungsblog* (21 October 2024), <https://verfassungsblog.de/tackling-israels-interference-with-the-international-criminal-court/> (accessed 8 December 2024).

⁷ International Court of Justice, "Order of 24 May 2024- Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)," *International Court of Justice* (24 May 2024), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf> (accessed 5 October 2024).

⁸ See the Summary of the Judgment of 2 February 2024 (Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening) Summary of the Judgment of 2 February 2024). See also the International Court of Justice ruling on 16 March 2022 in the same case.

July 2024 concluded that; Israel’s occupation of the West Bank, Gaza Strip, and East Jerusalem, is unlawful, along with the associated settlement regime, annexation and use of natural resources. Moreover, that Israel should end the occupation, evacuate settlers, cease settlement activities, and make reparations.⁹ This was followed by the UNGA’s recent resolution in September 2024, which urged the ending of the occupation within 12 months from its adoption.¹⁰ Taking into consideration, the ICJ identifies the right to self-determination as a peremptory norm, namely *Jus Cogens*: “The Court considers that, in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law.”¹¹

The ICJ’s advisory opinion and the UNGA’s resolution establish a causal relation between the occupation and the settlements, on one hand, the right of the Palestinian people to self-determination and peace, on the other. The ICJ reiterated that the right of all peoples to self-determination is owed *Erga Omnes* and all states have a legal interest in protecting that right.¹² It also imposes an obligation on all states to see to it that this right is fully supported through international modalities and channels.¹³ Hence, international community have an obligation to support Palestinians’ right to self-determination. Therefore, aiding the war which results in the expansion of the occupation on Palestinian land is a violation to this right.

The principle of responsibility of third states’ parties (*Erga Omnes Partes*)

Third states parties in the Genocide convention have *Erga Omnes Partes* obligation to stop the ongoing genocide. Since *Erga Omnes Partes* refers to obligations towards all in the same conventions, the ICJ recognized that states’ can initiate proceedings against other states before the ICJ for certain kinds of human rights violations, even if the state who invoked the request to comply was not subject itself by the violation.¹⁴ In particular, the Genocide Convention in article (I) and

⁹ International Court of Justice, “Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,” *International Court of Justice* (19 July 2024), <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>, (accessed 25 September 2024).

¹⁰ United Nations General Assembly, “Resolution on the Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory,” *United Nations General Assembly* (13 September 2024), <https://documents.un.org/doc/undoc/ld/n24/266/48/pdf/n2426648.pdf> (accessed 1 October 2024).

¹¹ International Court of Justice, “Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,” *International Court of Justice* (19 July 2024),. 66.

¹² See the Advisory opinion of the International Court of Justice on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 199, para. 155. See also East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 102, para. 29. and the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965.

¹³ See the advisory opinion by the International Court of Justice on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. The court recalled that “respect for the principle of equal rights and self-determination of peoples” is one of the purposes of the United Nations (Article 1, paragraph 2, of the Charter).

¹⁴ Pok Yin S. Chow, “On Obligation *Erga Omnes Partes*,” *Georgetown Journal of International Law*. Vol. 52, No.2 (20 August 2020), 469-504.

supplemented with the articles that follows established a duty on state Parties to take measures to prevent and punish the crime of genocide.¹⁵

There is an active role of non-injured states in international adjudicative procedures regarding the accomplishment of the high purposes of the Genocide Convention and violations protected by *Erga Omnes Partes*.¹⁶ Hence, third states' parties to the Genocide Convention have a responsibility to prevent and to stop genocide when it occurs. Therefore, states aiding Israel, by sending arms and financial aid that contributes to genocide are clearly in breach of their obligations.

National tribunals and initiatives around the world

Meanwhile, on the national level, there have been attempts to counteract genocide such as the recent call by the Spanish Prime Minister to urge a global arms embargo on Israel, or Entry denial by Spain to a ship carrying arms to Israel. In addition, Spain in a brave move cancelled 7 million dollar arms deal with Israel following large public and media pressure. Other examples include a Dutch appeals court ordering a ban on F-35 Aircraft Deliveries to Israel, over concerns that such aircraft are participating in actions amounting to war crimes.¹⁷ However, based on recent updates the court was advised to uphold the ban until a final ruling in the case is made.¹⁸ Undoubtedly, the recent investigation launched by the Belgian prosecutor towards a Belgian soldier fighting for Israel in Gaza for possible war crimes, which came after a complaint by the Belgian-Palestinian association, will be a significant precedent for other EU member states to prosecute their citizens, if their participation in international crimes is established. Hence, ending the impunity in such crimes should be a welcomed practice against those perpetrators who commit such heinous crimes and are *hostis humani generis*.

This reminds us of the appropriateness of enacting universal jurisdiction over persons suspected of committing some international crimes when other states are unable or refuse to take effective

¹⁵ International Court of Justice, "Order of 23 January-Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 7 States intervening)," *International Court of Justice* (23 January 2020), <https://www.icj-cij.org/sites/default/files/case-related/178/178-20200123-ORD-01-00-EN.pdf> (accessed 6 October 2024). In this case the court affirmed, at least preliminarily, South Africa's *erga omnes partes* standing, meaning the ability to bring the case as a fellow party to the Genocide Convention, despite not being directly affected by the allegation. See also Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal).

¹⁶ Declarations of intervention submitted to the ICJ to provide arguments to one of the parties can be seen in some Genocide cases before the ICJ. States can intervene pursuant to Article 63 of the ICJ convention, where it allow states that are parties to a convention have the right to intervene in proceedings that concern the construction of that convention. It was highlighted that intervenes are to serve the purpose of harmonizing the application of principles, and to reduce repetitive litigation before the ICJ.

¹⁷De Rechtspraak, "Court of Appeal The Hague," *De Rechtspraak* (12 February 2024), <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2024:191> (accessed 15 October 2024).

¹⁸NLTimes, "Netherlands to challenge court ruling blocking F-35 spare part exports to Israel," *NL times* (12 February 2024), <https://nltimes.nl/2024/02/12/netherlands-challenge-court-ruling-blocking-f-35-spare-part-exports-israel> (accessed 5 November 2024).

measures to stop these crimes.¹⁹ Furthermore, groups of NGOs in Belgium have filed a complaint against Israeli shipping company ZIM for violating the arms rules.

In addition, Nicaragua broke diplomatic ties with Israel amid the ongoing war. It proceeded to file claims against Germany in the ICJ under the Genocide Convention. The suit is a result of Nicaragua state commitment towards respecting its legal obligation towards the international law in connection with obligation *Erga Omnes Partes*, and refusal to be complicit in international crimes through supporting genocide in any means.²⁰ Furthermore, the recent recognition of the State of Palestine, by number of state such as Ireland, Norway, and Spain, holds a significant value at such time. Such step amid ongoing genocide implicates a stance towards the existence of Palestinian people both politically and legally within their land. Altogether, these initiatives signify international attempts at national levels to pressure states to adhere to their international obligation. Nevertheless, there have been other peaceful efforts and initiatives that were not mentioned here, which are not any less significant of the ones mentioned in this policy brief.

An opportunity to reshape the world order: Emancipatory version of International Law

The future of international law in light of recent failure to stop the genocide

International Law does not lack international tools or instruments to prevent or stop international crimes, but what's lacking is the enforcement of these laws, and the bias in the application of these international laws is one of the issues, also it lacks the will to enact them against Israel. For instance; the German Foreign minister justified genocide as a form of self-defense against terrorism.²¹ This implies a deranged practice in international law, legitimizing genocidal actions under the pretext of state self-defense. Genocide is to become acceptable in some situations; a very dangerous assumption allowing the termination of a nation.

Opportunities and limitations of international law

Accountability requires congruence between laws and their application, and International law, as it stands today, does not promise a bright future for Palestinians. However, quitting the current international legal system including human rights is not a solution to any problem. Nonetheless, noncompliance with international law does not amount to non-effectiveness. In the case of non-

¹⁹ Many countries adopted legislations that allow prosecuting perpetrators of crimes against humanity, torture, and genocide. See also International Court of Justice elaboration on the need to prosecute genocide: "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)," *International Court of Justice* (11 July 1996), <https://www.icj-cij.org/sites/default/files/case-related/91/091-19960711-JUD-01-00-EN.pdf> (Accessed 18 October 2024).

²⁰ Susan Akram and John Quigley, "Is International Law Still Relevant after the Carnage in Gaza?," *Arab Center Washington DC* (23 April 2024), <https://arabcenterdc.org/resource/is-international-law-still-relevant-after-the-carnage-in-gaza/> (accessed on 10 October 2024).

²¹ Middle East Monitor, "German FM: Israel can kill civilians in Gaza to 'defend itself'," *Middle East Monitor* (15 October 2024), <https://www.middleeastmonitor.com/20241015-german-fm-israel-can-kill-civilians-in-gaza-to-defend-itself/> (accessed 16 October 2024).

compliance, what fails is the inaction of relevant measures against the state and individuals engaging in unlawful conduct under international law. Identifying the root causes of non-compliance, amongst which are the double standards and selectivity in applying international law is necessary. Otherwise, International law has proven effective in certain cases globally.

Rather, there is an evident need to introduce a new emancipatory approach that reflects the understanding of international law, where it serves the emancipatory purpose it was created for; that is prompting justice, peace and equality. In particular, for nations like the Palestinians, it's not possible to discuss human rights, without addressing decolonization, self-determination, and unbiased application of international law. For that, there is a need to explore international law beyond the political and economic restraints of the contemporary international legal system. Such an approach assumes that International Law, its instruments, and its organization serve nations equally and mandate the emancipation of nations from colonial practices including the echolalia of the Zionist narrative.

This is achieved on the formal and informal level. The latter is critical in this case, since individual and group initiatives around the world, civil society organizations, political and social groups, universities, human rights and legal activists, intellectuals, scholars, and others have become more able to influence their states' policies.²² This requires social and political initiatives questioning double standards when applying international law, and addressing how countries are contributing to the oppression and suffering of other nations.

The global national and regional civic spaces are key factors in promoting an emancipatory approach to the use of International Law instruments, and human rights. The International volition to take effective measures relies on the state's foreign policies, which are influenced by initiatives at the national level. The spaces the universities, social groups, and civil society organizations provide around the world; have become a foundational component to the emancipatory understanding of human rights and international law. In that sense, there is still hope for international law to become more efficient, and apply the same mechanisms without bias. Only then international law can become a liberating tool to serve justice and assume all people are equal and brothers in humanity.

Conclusion

For international law to become an emancipatory tool that promotes equality for nations; it requires redrawing the narrative it functions within; which uses double standards to gear the international Law. This created a selective international system that only functions to serve colonial powers at the expense of suffering nations. Subsequently, deprives nations of basic rights such as equality, freedom, and their right to self-determination. Peace is a humane requirement, not a luxury, and crimes that disrupt the world's peace should not be tolerated without prosecution or repercussions.

²² Vincent Intondi, "The Threat of Nuclear Bombing and Incitement to Genocide," *Journal for Peace and Nuclear Disarmament* (26 August 2024), <https://www.tandfonline.com/doi/full/10.1080/25751654.2024.2396670>, (Accessed 22 October 2024).

Recommendations

The following recommendations are suggested for the purposes of this policy brief:

1. Legal Groups, human rights and social activists, legal scholars, academics, solidarity movements and social initiatives should contact their local representatives, and council members, send letters and petitions to pressure their representatives to address the topic of foreign policies concerning Palestine, urge them to stop arming Israel, and vote against laws and regulation that supports genocide. In addition, to pressure their governments to adopt legislations that invoke the universal jurisdiction principle, and allow investigation and prosecution of perpetrators who participated and committed international crimes.
2. Legal Groups, human rights and social activists, legal scholars, academics, solidarity movements and social initiatives around the world, need to urge their local institutions, organizations, and governmental departments to suspend their relations with Israeli institutions and corporations that support and aid genocide and apartheid.
3. National and regional human rights organizations to promote relations with international and national civil society movements, student groups, social initiatives and organizations, to support the dialogue on the topic of Palestine, hate speech, emancipatory education, and emancipatory application of international law and human rights.
4. Civil society organizations, solidarity movements, legal scholars, lawyers, human rights and social activists, and legal organizations should urge their governments which are third-state parties to the Genocide Convention to file a joint declaration of intervention in the case brought by South Africa, also, to put more pressure to stop the ongoing genocide, using the means international law provided.
5. Palestinian Universities should focus on the concept of an Emancipatory understanding of international law and human rights and highlight the real role of human rights in liberating nations and promoting their prosperity rather than serving the neocolonial agenda that markets its principles in exchange for partial rights.
6. Universities in Palestine should connect and build relations with Regional and International Universities to facilitate the engagement of Palestinian students in the global dialogue on Palestine.
7. Palestinian Public Institutions need to continue promoting relations with international society, civil movements and organizations, to support the dialogue on the topic of Palestine, strengthen diplomatic affairs through dialogue, and urge states to respect their legal obligations under international law.

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