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# The Role of the International Court of Justice in Addressing Humanitarian Issues in Gaza: A Hypothetical Judgment on the Israel vs. South Africa Case

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## ABSTRACT

*The ongoing conflict in the Gaza Strip has posed significant humanitarian challenges, leading to calls for international intervention. The International Court of Justice (ICJ), as the primary judicial organ of the United Nations, has a crucial role to play in addressing these humanitarian issues. This paper presents a hypothetical judgment on a case brought before the ICJ, examining the Court's potential approach to the conflict in Gaza and its implications.*

*The ICJ has a long history of involvement in the settlement of interstate disputes, often playing a mediative role in the negotiation process. In recent years, the Court's jurisprudence has expanded to cover a broader range of international law topics, including human rights, humanitarian law, and the use of force. As such, the ICJ is well-positioned to consider the complex legal issues underlying the situation in Gaza.*

*One case that has come before the ICJ is a dispute between Israel and South Africa, two states with a contentious history and divergent approaches to the Palestinian question. In this scenario, South Africa has brought a case against Israel, alleging that its military operations in Gaza constitute violations of international humanitarian law and human rights law. South Africa argued that Israel's actions in Gaza, including the blockade, military strikes, and occupation, amount to an illegal use of force and an unlawful occupation that has resulted in severe humanitarian consequences.*

*This paper will define what should be the judgment given by the International Court of Justice (ICJ) on some issues that require immediate attention.*

**Keywords:** Conflict, Israel, Gaza, South Africa, ICC.

## I. INTRODUCTION

**Issue 1:- Whether Israel's compliance with international law by facilitating humanitarian aid entry into the Gaza Strip mitigates the allegations of genocide, or whether further**

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**actions are necessary to address the humanitarian crisis, including starvation and famine, as urged by South Africa?**

This issue concerns whether Israel's facilitation of humanitarian aid entry into Gaza mitigates genocide allegations or if further actions are needed to address the humanitarian crisis, including starvation and famine, as advocated by South Africa. The court will assess the effectiveness of aid efforts, and the severity of the crisis, and consider additional measures such as lifting restrictions and ensuring the safety of aid workers to comprehensively tackle the situation.

The court examines if Israel's compliance with international laws by facilitating humanitarian aid entry into the Gaza Strip mitigates the allegations of genocide. The additional issue observed by the court is whether further necessary actions are required to address the humanitarian crisis which includes starvation and famine.

Shockwaves were sent across the world after the news of atrocities Hamas committed against Israel on October 7, 2023, which prompted the Israeli government to embark on a war of 'still unknown magnitude and character' the Operation Sword of Iron as an Israeli way of seeking 'justice' against the Palestinian militant group, Hamas. The court emphasizes how international laws allow for certain limited uses of insurgent force, including uses directed toward 'self-determination',<sup>2</sup> However, these residual allowances do not include any rights of indiscriminate violence or deliberate attacks on noncombatants. It is always observed that 'Revenge', is never a permissible or law-based justification.

According to the **reports of 29.02.2016**, there are currently 332 large-scale projects under construction across Gaza, The Gaza Coordination and Liaison Administration (CLA) works closely with various international organizations, governments, and NGOs to facilitate projects across the Gaza Strip to benefit the civilian population. With an additional 69 projects already completed, these developments directly impact over a million local Palestinians. In 2015 there was a 108% increase in the number of trucks entering Gaza and an increase of over 120% in the amount of goods entering Gaza. In 2015, 139,364 trucks of goods entered Gaza carrying construction materials (over 3.7 tons), medical equipment, and other goods for the benefit of Gaza's civilian population. The entrance of merchants from Gaza into Israel has grown by 325% in the last year. In addition, over 11,500 tons of agricultural goods from Gaza were distributed in Israel and abroad in 2015.<sup>3</sup> These humanitarian aids were observed by Israel in the Gaza

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<sup>2</sup> Beres, L.R. (2023) *Hamas terror attacks and international law*, *Jurist*. Available at: <https://www.jurist.org/commentary/2023/10/hamas-terror-attacks-and-international-law/> (Accessed: 17 May 2024).

<sup>3</sup> *Embassies.gov.il*. Available at: <https://embassies.gov.il/MFA/FOREIGNPOLICY/Peace/HUMANITARIAN/Pages/Israeli-aid-to-the-Palestinians-COGAT-update-February-2016.aspx> (Accessed: 17 May 2024).

Strip, before the ongoing conflict.

According to **reports of 20.03.2016**, the new Israeli-Palestinian regional business development centre is designed to serve the business, state-institutional, and third-party sectors in both Israel and the Palestinian Authority and offers 19 meeting and conference rooms of various sizes and a lecture hall.<sup>4</sup> This is observed by the court that in the past both sides took steps for economic boost as well as peacekeeping. Further, according to **reports of 23.03.2017**, Israel was actively working to support reconstruction efforts in the Gaza Strip.<sup>5</sup> The old reports establish the past steps Israel took to restore peace between the two conflicted nations.

The past reports emphasized the humanitarian support provided by Israel to Gaza. Still, in light of recent events, it is observed by the court that Israel has failed to comply with this court's order of January 26<sup>6</sup> To take immediate measures to protect Palestinians in the occupied Gaza Strip from the risk of genocide. Despite the court's clear directive to ensure humanitarian assistance and basic services within one month, Israel has not taken significant steps to meet these obligations. It is observed that the situation in Gaza remains dire, with a looming famine exacerbated by Israel's bombardment and longstanding blockade. Israel has not ensured sufficient life-saving goods and services reach the population at risk, nor has it lifted restrictions on aid entry or opened additional access points.

**Amnesty International's** Regional Director for the Middle East and North Africa, Heba Morayef, criticized Israel's indifference to Gaza's population, accusing it of failing to fulfil its obligations as an occupying power under international law. Before this court's order, Gaza's aid supply was already inadequate, but post-order, the number of aid trucks entering Gaza decreased significantly. Fuel, tightly controlled by Israel, also saw reduced quantities entering Gaza. Israel's limited opening of crossings further demonstrates its disregard for this court's measures. Aid workers reported challenges, with Israel refusing to take obvious steps to improve the situation.

The court takes on record America's most detailed assessment of Israel's conduct in Gaza, the State Department said in a written report that "*Israel has the knowledge, experience, and tools to implement best practices for mitigating civilian harm in its military operations.*" But it added

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<sup>4</sup> *Embassies.gov.il*. Available at: <https://embassies.gov.il/MFA/FOREIGNPOLICY/Peace/HUMANITARIAN/Pages/New-Israeli-Palestinian-regional-business-development-center-20-Mar-2016.aspx> (Accessed: 17 May 2024).

<sup>5</sup> *Embassies.gov.il*. Available at: <https://embassies.gov.il/MFA/FOREIGNPOLICY/Peace/HUMANITARIAN/Pages/Reconstruction-in-Gaza.aspx> (Accessed: 17 May 2024).

<sup>6</sup> *Gaza: ICJ ruling offers hope for protection of civilians enduring apocalyptic conditions, say UN Experts / OHCHR*. Available at: <https://www.ohchr.org/en/press-releases/2024/01/gaza-icj-ruling-offers-hope-protection-civilians-enduring-apocalyptic> (Accessed: 16 May 2024).

that “the results on the ground, including high levels of civilian casualties, raise substantial questions as to whether the Israel Defense Forces are making sufficient use of those tools”.<sup>7</sup> At the start of the Israeli operation, over 33,000 Palestinians had lost their lives in Gaza, which includes more than 13,000 children, and 9,000 women, as reported by the **Gaza Health Ministry**, an agency in the Hamas, controlled by the government.

After observing the recent circumstances and looking at all the above-mentioned reports, this court observes that facilitating humanitarian aid entry into the Gaza Strip is undoubtedly a crucial step in addressing the humanitarian crisis there, this court observes that Israel does not mitigate allegations of genocide or fully address the extent of the crisis, including issues such as starvation and famine. The court holds that mitigating allegations of genocide requires a comprehensive approach that goes beyond humanitarian aid alone. It involves addressing the root causes of the conflict, ensuring the protection of civilians, upholding human rights, and promoting accountability for any violations under international law.

The court observes that Israel has fundamental legal obligations to abide by during its campaign against Hamas. Heavily charged statements by some Israeli officials need to be separated from the sound legal policy. In brief, this court states that Israel must meet several standards:-

- i. It must not use starvation (including deprivation of food, water, and other essentials for survival) of Gaza’s civilian population as a weapon of war against Hamas or for any reason.<sup>8</sup>
- ii. It must take every possible step to target only Hamas militants and their military infrastructure and to minimize civilian casualties and the destruction of civilian infrastructure. The Israeli air and artillery campaign, as well as its ground warfare, must be guided by the immutable legal principles<sup>9</sup> Of humanity, distinction, proportionality, and military necessity.<sup>10</sup>
- iii. It must allow for the return of displaced civilians after the conflict. While a temporary evacuation<sup>11</sup> If civilians from the ground of combat can be legally requested, it would be unlawful to permanently displace the civilian population

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<sup>7</sup> Crowley, M. (2024) *U.S. criticizes Israel for failure to protect civilians in the Gaza conflict*, *The New York Times*. Available at: <https://www.nytimes.com/2024/05/10/world/middleeast/biden-israel-us-weapons-gaza.html> (Accessed: 16 May 2024).

<sup>8</sup> Court’s observation on the allegation presented by South Africa.

<sup>9</sup> *Fundamental principles of IHL*, *Fundamental principles of IHL | How does the law protect in war? - Online casebook*. Available at: [https://casebook.icrc.org/a\\_to\\_z/glossary/fundamental-principles-ihl](https://casebook.icrc.org/a_to_z/glossary/fundamental-principles-ihl) (Accessed: 17 May 2024).

<sup>10</sup> Court’s observation on the defence presented by Israel.

<sup>11</sup> *IHL*. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49/commentary/1958?activeTab=undefined> (Accessed: 17 May 2024).

from their homes. The circumstances in Gaza today create enormous hardship for hundreds of thousands of Palestinian civilians, and Israel should take measures to ameliorate these difficult conditions.

This court opines another paramount objective for Israel is the rescue or release of roughly two hundred Israeli, American, and other foreign hostages. Hamas's taking of hostages from Israeli territory and using them, illegally, as human shields in Gaza under life-imperilling conditions pose challenges for Israeli military action. It further holds that if Hamas had not taken hostages, Israel's strategy for confronting the militant group might have been different. Though much debated among international lawyers and governments, there is a legal right.<sup>12</sup> for states to use force to rescue hostages, as long as their actions meet four criteria:-

- i. Many hostages are seized, particularly during an armed attack (as occurred on October 7),
- ii. The actions are necessary (there is a threat of violence against Hamas's hostages, and non-forcible recovery options, such as a negotiated deal with the group, may prove futile),
- iii. There is an immediacy (a quickly negotiated release is not possible, and the fate of the hostages appears to worsen with each passing day),
- iv. The use of force is proportional (using only the level of armed force that is necessary to rescue the hostages).

The court also holds that actions are necessary to address the humanitarian crisis in Gaza, particularly concerning starvation and famine. The current situation is dire, with the population at risk of irreparable harm due to a combination of factors including Israel's blockade, bombardment, and denial of adequate humanitarian aid. Immediate steps should be taken such as:-

- i. **Increase in Humanitarian Aid:** The current level of humanitarian aid entering Gaza is insufficient to meet the basic needs of the population. There is a critical shortage of food, clean water, medical supplies, and fuel, which is exacerbating the humanitarian crisis. Increasing the quantity of aid, as well as diversifying its composition to address specific needs, is crucial. This could involve coordinating

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<sup>12</sup> EICHENSEHR, K. *Defending Nationals Abroad: Assessing the Lawfulness of Forcible Hostage Rescues* . Available at: [https://openyls.law.yale.edu/bitstream/handle/20.500.13051/17766/VJIL\\_Defending\\_Nationals\\_Abroad\\_12\\_21\\_07.pdf](https://openyls.law.yale.edu/bitstream/handle/20.500.13051/17766/VJIL_Defending_Nationals_Abroad_12_21_07.pdf) (Accessed: 16 May 2024).

with international aid organizations, governments, and non-governmental organizations (NGOs) to ramp up aid delivery efforts.<sup>13</sup>

- ii. **Lift Restrictions:** Israel's restrictions on the entry of life-saving goods into Gaza have significantly hampered humanitarian efforts. These restrictions include tight controls at border crossings, limitations on the types of goods allowed into the region, and bureaucratic hurdles that delay or prevent aid shipments. It is essential to pressure Israel to lift these restrictions and facilitate the smooth passage of humanitarian aid convoys to Gaza. This may require diplomatic negotiations and mediation efforts to address security concerns while ensuring the unhindered flow of essential goods.<sup>14</sup>
- iii. **International Pressure:** Since it is observed that Israel has not complied with this court's previous orders the international community plays a crucial role in addressing the humanitarian crisis in Gaza. Governments, intergovernmental organizations, and civil society must exert pressure on Israel to comply with international law and fulfil its obligations as the occupying power. This could involve diplomatic initiatives, public statements condemning human rights violations, economic sanctions, and legal actions to hold Israel accountable for its actions.<sup>15</sup>
- iv. **End the Blockade:** The 16-year-long blockade of Gaza has had devastating consequences for the civilian population, restricting access to essential goods, services, and opportunities for economic development. There have been efforts by Israel in the past to provide humanitarian aid but these observations are based in light of recent events. Ending the blockade is essential to alleviate the humanitarian crisis and promote long-term stability in the region. This may require multilateral efforts to address security concerns and establish mechanisms to monitor and regulate the movement of goods and people in and out of Gaza.<sup>16</sup>

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<sup>13</sup> Diamond, J., Cotovio, V. and Ebrahim, N. (2024) *Israel says aid to Gaza is ramping up - but the UN says it's yet to see a major change on the ground*, CNN. Available at: <https://edition.cnn.com/2024/04/12/middleeast/gaza-aid-israel-ramping-up-un-famine-mime-intl/index.htm> (Accessed: 17 May 2024).

<sup>14</sup> Qiblawi, T. (2024) *Anesthetics, crutches, dates: The aid Israel is arbitrarily keeping from Gaza*, CNN. Available at: <https://edition.cnn.com/2024/03/01/middleeast/gaza-aid-israel-restrictions-investigation-intl-cmd/index.html> (Accessed: 17 May 2024).

<sup>15</sup> MSN. Available at: <https://www.msn.com/en-ae/news/other/israel-says-it-reopened-key-gaza-crossing-after-rocket-attack-but-un-says-no-aid-has-entered/ar-BB1m26qO?ocid=BingNewsSearch> (Accessed: 17 May 2024).

<sup>16</sup> Abdulrahim, R. (2023) *Gaza has suffered under 16-year blockade*, *The New York Times*. Available at: <https://www.nytimes.com/2023/10/07/world/middleeast/gaza-blockade-israel.html#:~:text=The%20Palestinian%20territory%20of%20Gaza%20has%20been%20under,and%20prevents%20most%20people%20from%20leaving%20the%20territory.> (Accessed: 17 May 2024).

- v. **Emergency Assistance:** In addition to addressing the underlying causes of the humanitarian crisis, immediate emergency assistance is needed to save lives and alleviate suffering. This could involve airlifting supplies, establishing temporary humanitarian corridors, and deploying medical teams to provide urgent medical care to those in need. Coordination among humanitarian actors, governments, and local authorities is essential to ensure the effective delivery of emergency assistance.<sup>17</sup>
- vi. **Protect Humanitarians:** Humanitarian workers and aid convoys operating in Gaza face significant risks, including attacks, harassment, and obstruction from various parties to the conflict. Protecting the safety and security of humanitarian personnel is paramount to ensure the continuity of aid delivery operations. This may involve providing security escorts, implementing safety protocols, and advocating for respect for international humanitarian law to prevent attacks on humanitarian workers and facilities.<sup>18</sup>

**Issue 2:- Whether the Court should issue further provisional measures to address the humanitarian crisis in the Gaza Strip and the protection of civilian populations and infrastructure.**

This issue involves deciding if this court should implement additional provisional measures to address the humanitarian crisis in Gaza and protect civilians and infrastructure. The court will assess the effectiveness of previous measures, the severity of the crisis, and the necessity of further actions. Compliance with international humanitarian laws and the implications of non-compliance will also be considered.

The court opines that various factors would determine the decision to issue additional provisional measures aimed at responding to the humanitarian crisis in the Gaza Strip and safeguarding civilian populations and infrastructure. One of the factors is the **extent of the crisis**, according to the understanding of the court, the extent of the crisis can be defined as the situation, dire as well as an urgent need for immediate action to avert increased misery alongside the loss of lives, the severity and immediacy of the humanitarian crisis in Gaza might assume importance. Therefore, this court's likelihood of issuing more interim measures would be

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<sup>17</sup> Al Jazeera (2023) *Gaza's two biggest hospitals cease operations as who warns of rising deaths*, Al Jazeera. Available at: <https://www.aljazeera.com/news/2023/11/13/gazas-two-biggest-hospitals-cease-operations-as-who-warns-of-rising-deaths#:~:text=More%20than%20half%20of%20the%2035%20hospitals%20in,Hamas%E2%80%99s%20October%207%20attacks%20on%20southern%20Israeli%20communities.> (Accessed: 17 May 2024).

<sup>18</sup> Al Jazeera (2024) *Israeli forces attacked 'known aid worker locations' in gaza: Rights group*, Al Jazeera. Available at: <https://www.aljazeera.com/news/2024/5/14/israeli-forces-attacked-known-aid-worker-locations-in-gaza-rights-group> (Accessed: 17 May 2024).



higher.

After looking at the reports, it has been noted that “*Israel’s military operations in response to Hamas’s attack have resulted in colossal human suffering*,” UN Secretary-General António Guterres said in January. As of February, Israel’s retaliation has killed 27,748<sup>19</sup> People and injured more than 66,800 others, according to the Hamas-run Gaza Ministry of Health. (These figures could not be independently verified, but outside sources have also reported similar numbers.)<sup>20</sup>

Another important factor is the **effectiveness of the previous measures**, according to this court additional measures may be necessary if previous provisional measures have been put in place without adequately addressing the crisis or protecting civilian populations and infrastructure. After the United Nations Resolution 2728<sup>21</sup> Which called for an immediate cease-fire stating the unconditional release of all the hostages and an end to barriers to humanitarian aid. But as per the reports, senior Israeli officials said that they would ignore the call for a cease-fire, arguing that it was imperative to pursue the war until it has dismantled the military wing of Hamas, and there has been no apparent shift in the military campaign. Israel’s air force continues to pound Gaza with strikes, and Hamas is still launching attacks.<sup>22</sup>

Following the order passed by the court on January 26, 2024, stating six provisional measures including for Israel to refrain from acts under the Genocide Convention, prevent and punish the direct and public incitement to genocide, and take immediate and effective measures to ensure the provision of humanitarian assistance to civilians in Gaza. Crucially, the Court also ordered Israel to preserve evidence of genocide and to submit a report to this Court, within one month, of all measures taken in line with its order.<sup>23</sup> This order foresaw Israel’s compliance, but still, between the January 26 ruling and February 24, Israeli attacks have killed at least 3,523 Palestinians, according to the Palestinian Ministry of Health. An average of 120 Palestinians were killed every day. At least 5,250 Palestinians were injured in Israeli attacks. Israel laid siege

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<sup>19</sup> (5 March 2024) *Gaza\_casualties\_info-graphic\_5\_march\_2024\_final - ocha opt*. Available at: [https://www.ochaopt.org/sites/default/files/Gaza\\_casualties\\_info-graphic\\_5\\_March\\_2024.pdf](https://www.ochaopt.org/sites/default/files/Gaza_casualties_info-graphic_5_March_2024.pdf) (Accessed: 16 May 2024).

<sup>20</sup>Bouri , C. and Roy , D. (2024) *The Israel-Hamas war: The Humanitarian Crisis in Gaza*, Council on Foreign Relations. Available at: <https://www.cfr.org/in-brief/israel-hamas-war-humanitarian-crisis-gaza> (Accessed: 17 May 2024).

<sup>21</sup> (20 March 2024) *Resolution 2728 (2024) /, United Nations*. Available at: <https://digitallibrary.un.org/record/4042189?v=pdf>. (Accessed: 16 May 2024).

<sup>22</sup> Bigg, M.M. (2024) *Days after U.N. cease-fire resolution, has anything changed in Gaza?*, *The New York Times*. Available at: <https://www.nytimes.com/2024/03/29/world/middleeast/un-ceasefire-resolution-israel-gaza.html> (Accessed: 17 May 2024).

<sup>23</sup> *Cour Internationale de Justice - International Court of Justice ...* Available at: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf> (Accessed: 16 May 2024).

on al-Amal Hospital and Nasser Hospital<sup>24</sup> in Khan Younis, a tactic repeated from the earlier phase of the war when Gaza's largest medical facility, al-Shifa Hospital, was crippled by siege and shelling. Israel has said hospitals were being used as command centres by Hamas but it has yet to provide concrete proof for its claims. Numerous cases of torture, killings, and torching of civilian homes have been reported which is evidence of non-compliance.<sup>25</sup>

According to Human Rights Watch Israel had failed to comply with specific measures in this court's order by obstructing basic aid to Gaza and using starvation as a weapon of war. The Israeli government is starving Gaza's 2.3 million Palestinians, putting them in even more peril than before the World Court's binding order," said Omar Shakir, Israel and Palestine director at Human Rights Watch.<sup>26</sup> After taking a close look at the reports, the court thinks that the Israeli government has simply ignored this court's ruling, and in some ways even intensified its repression, including further blocking lifesaving aid.

The court also considers **compliance with International Laws**, considering Israel and the state of Palestine, which is recognized by most countries as comprising the West Bank, Gaza, and East Jerusalem, are ratified parties of the four Geneva Conventions of 1949<sup>27</sup>. Israel has not ratified the first and second protocols of the conventions, which in 1977 further regulated the protection of civilians, property, and the environment during war. One of the prominent provisions in Article 75 of Protocol I<sup>28</sup>, requires that persons held by a combatant power shall be treated humanely in all circumstances and provides a detailed list of prohibited conduct. A plurality of Supreme Court justices in the 2006 decision stressed Article 75's customary application.

The court notes that International humanitarian law is based on some key principles that consider military necessity during an armed conflict against the need to protect non-combatants. The key principles are:-

- i. Rules of international humanitarian law (IHL) try to regulate conflict to minimize human suffering. IHL reflects a balance between the military necessity in a conflict

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<sup>24</sup> Al Jazeera (2024) *Israeli siege turns Gaza's Nasser Hospital into 'a place of death'*, Al Jazeera. Available at: <https://www.aljazeera.com/news/2024/2/22/israeli-siege-turns-gazas-nasser-hospital-into-a-place-of-death> (Accessed: 17 May 2024).

<sup>25</sup> Al Jazeera (2024) *Has Israel complied with ICJ order in Gaza genocide case?*, Al Jazeera. Available at: <https://www.aljazeera.com/news/2024/2/26/has-israel-complied-with-icj-order-in-gaza-genocide-case> (Accessed: 17 May 2024).

<sup>26</sup> *Israel: Starvation used as weapon of war in Gaza* (2024) Human Rights Watch. Available at: <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza> (Accessed: 17 May 2024).

<sup>27</sup> *The Geneva Conventions of 1949: Origins and current significance* (2009) ICRC. Available at: <https://www.icrc.org/en/doc/resources/documents/statement/geneva-conventions-statement-120809.htm> (Accessed: 17 May 2024).

<sup>28</sup> *IHL*. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75>. (Accessed: 17 May 2024).

and the need for humanitarian protection<sup>29</sup>. International humanitarian law is founded upon the following principles:

- a. the distinction between civilians and combatants.
  - b. the prohibition of attacks against those *hors de combat*.
  - c. the principle of proportionality.
  - d. the notion of necessity.
  - e. the principle of humanity.
- ii. The **principle of distinction** underpins many rules of IHL and holds that only fighters may be directly targeted. It is meant to protect civilians in armed conflict. The principle of distinction is set out in **Article 48**<sup>30</sup> and **Article 52**<sup>31</sup> Of **Additional Protocol 1 to the Geneva Conventions**. The Conventions define who is a combatant and a military object that can be lawfully attacked. Any direct attack against a civilian or civilian object is not only a violation of IHL but also a grave breach. After examining the reports, it is obvious that Israelis not complying with this principle, as the reports state that there is a direct attack on the Hospitals of Gaza, which is civilian property.
- iii. The **prohibition to attack any person *hors de combat*** (those who are sick and wounded, prisoners of war) is a fundamental rule of IHL. For example, while soldiers could be targeted lawfully under normal circumstances, it is prohibited to target them if they surrender or are wounded and no longer pose a threat. Additionally, they may be entitled to more protection if they meet the criteria of a prisoner of war. After examining the reports, it is obvious that Israelis not complying with this principle, as the reports state that there is a direct attack on the Hospitals of Gaza, which risks the lives of people who are wounded and sick.
- iv. The **principle of proportionality** limits potential harm to civilians, the principle demands that the least amount of harm is caused to civilians, and when harm cannot be avoided, it needs to be proportional to the military advantage. The proportionality principle is most prevalent in Article 51(5)(b)<sup>32</sup> Of Additional Protocol I concerning

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<sup>29</sup> *Basic principles of IHL*, Diakonia International Humanitarian Law Centre. Available at: <https://www.diakonia.se/ihl/resources/international-humanitarian-law/basic-principles-ihl/> (Accessed: 17 May 2024).

<sup>30</sup> *IHL*. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48> (Accessed: 17 May 2024).

<sup>31</sup> *IHL*. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-52> (Accessed: 17 May 2024).

<sup>32</sup> *IHL*. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51> (Accessed: 17 May 2024).

the conduct of hostilities. This article prohibits attacks when the civilian harm would be excessive concerning the military. According to this court, Israel has failed to comply with this as well, as according to reports there have been 27,748 civilian casualties in Gaza.

- v. A dominant notion within the framework of IHL is military necessity, often the principle that clashes most with humanitarian protection. Military necessity permits armed forces to engage in conduct even when such action will result in destruction and harm. The concept of military necessity acknowledges that under the laws of war, winning the war or battle is a legitimate consideration. However, the concept of military necessity does not give the armed forces the freedom to ignore humanitarian considerations altogether and do what they want. The principle must be interpreted in the context of specific prohibitions and under the other principles of IHL. This court observes that Israel cannot take the defence of **the notion of necessity** because they have failed to comply with other rules and principles of IHL.
- vi. The **principle of humanity**, and its absence during the battle of Solferino<sup>33</sup> 1859, was the central notion that inspired the founder of the International Committee of the Red Cross (ICRC), Henry Dunant. The principle stipulates that all humans have the capacity and ability to show respect and care for all, even their enemies. According to this court, Israel has failed to comply with this as well, as they did not respect the protection of civilians which led to so many casualties.

After carefully examining all the aspects, reports, and ongoing scenarios, this court holds that there is an urgent need to issue further provisional measures to address the humanitarian crisis in the Gaza Strip and the protection of civilian populations and infrastructure. It further holds that Israel has failed to comply with this court's order passed on January 27, 2024. This court also notes that Israel has failed to comply with the principles of International Humanitarian Laws (IHL).

The court directed Israel to comply with this order and the order passed on January 26, 2024<sup>34</sup>, in which the court has established the measures Israel needs to follow. Further, it is advised that if Israelis are found not to have complied with this court's legally binding orders, South Africa or any United Nations Security Council (UNSC) member state may refer the matter to the

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<sup>33</sup> *The battle of solferino (24 June 1859)* (1998) ICRC. Available at: <https://www.icrc.org/en/doc/resources/documents/misc/57jnv.htm> (Accessed: 17 May 2024).

<sup>34</sup> *Cour Internationale de Justice - International Court of Justice ...* Available at: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf> (Accessed: 16 May 2024).

UNSC, which would then vote on whether to require Israel to abide by the provisional measures. If Israel still fails to comply with this court's orders, Israel could face United Nations sanctions, which could include economic or trade sanctions, arms embargoes, and travel bans. The **United Nations Charter** also allows the UNSC to go a step further and intervene with force. This court also reminds Israel that an adverse verdict from the court might prevent Israel's allies from sending weapons as happened in the Netherlands, where a court blocked the supply of equipment for the F35 fighter jets used to bomb Gaza.<sup>35</sup>, because this court believes that addressing the causes of the conflict and working towards a sustainable political solution is essential for the long-term improvement of the situation in Gaza.

### **Issue 3:- Whether Hamas should also be held accountable by the court for the ongoing conflict and humanitarian crisis in the Gaza Strip.**

This issue examines whether Hamas should be held accountable by this court for the ongoing conflict and humanitarian crisis in the Gaza Strip. The court will evaluate evidence of Hamas's actions, including rocket attacks, use of human shields, and aid diversion, and assess its obligations under international humanitarian law. The extent of Hamas's responsibility for exacerbating the crisis will also be considered.

The court thinks that the International Humanitarian Laws (IHL) have been violated by both the state actors and non-state actors, hence, therefore, both of them, Israel and Hamas, should be held accountable for this ongoing humanitarian crisis. This court has briefly dealt with how Israel should be held accountable for a breach of International Humanitarian Laws (IHL), but this court also observes the accountability of Hamas in breaching the IHL.

It is important to note that Hamas is particularly a de facto governing authority in Palestine (namely, over Gaza) with control over its militant forces, and is obligated as part of the state of Palestine to comply with the Geneva Conventions and its three protocols.<sup>36</sup> The court considers evidence before it to determine whether Hamas has violated international law, including humanitarian law and human rights law. This involves assessing actions such as indiscriminate rocket attacks targeting civilians on October 7, 2023, the use of humans as shields, and other violations of the laws of war.

It is important to note that according to reports, evidence indicates that:-

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<sup>35</sup> Wright, G. (2024) *Dutch court orders halt to F-35 jet parts exports to Israel*, BBC News. Available at: <https://www.bbc.com/news/world-europe-68272233> (Accessed: 17 May 2024).

<sup>36</sup> *What international law has to say about the Israel-Hamas war*, Council on Foreign Relations. Available at: <https://www.cfr.org/article/what-international-law-has-say-about-israel-hamas-war> (Accessed: 17 May 2024).

- i. A significant amount of allowed humanitarian aid to Gaza is diverted to Hamas for its terrorist infrastructure.<sup>37</sup>
- ii. On October 7, Hamas unilaterally and barbarically breached a ceasefire that had generally been held through October 6.<sup>38</sup>
- iii. In this context, Israel has rejected international calls for a ceasefire since they are not accompanied by surrender and hostage release by Hamas.<sup>39</sup>
- iv. All military actions (including those against healthcare facilities) are subject to legal counsel with only intelligence-flagged targets hit, and Israel, in general, is entitled to act in legitimate self-defense.<sup>40</sup>

The court considers the civilian casualties faced by Israel, according to Israeli official sources, 1,400 people have been killed in Israel, the vast majority in the Hamas attacks on 7 October. And at least 212 Israeli and foreign nationals are being held captive in Gaza, the Israeli authorities have stated.<sup>41</sup> Based on this it holds that IHL, or the laws of war, has existed in some form for thousands of years, but the modern version is set out in the Geneva Conventions of 1949, alongside other treaties, and customary international law. It binds states, including Israel, as well as non-state armed groups that are involved in the conflict, including Hamas, even though they cannot formally ratify the treaties.<sup>42</sup>

According to reports, Al Qassam, the armed wing of Hamas, and other Palestinian armed groups committed serious violations of international law on a wide scale on 7 and 8 October. These included attacks directed against civilians, willful killing and mistreatment of civilians, wanton destruction of civilian objects, and the taking of hostages, which amounted to war crimes. Accounts that members of Palestinian armed groups committed rape, sexual assault, and torture require further investigation ability under international law.<sup>43</sup>

After observing all the reports, pieces of evidence, and ongoing scenarios, the court holds

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<sup>37</sup> Reis, S.P. and Wald, H.S. (2024) *The Hamas massacre of Oct 7, 2023, and its aftermath, medical crimes, and The Lancet Commission report on Medicine, nazism, and the Holocaust*, *Israel journal of health policy research*. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC11010344/#CR17> (Accessed: 17 May 2024).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Israel-Palestine: Gaza death toll passes 5,000 with no ceasefire in Sight* / *UN News, United Nations*. Available at: <https://news.un.org/en/story/2023/10/1142687> (Accessed: 17 May 2024).

<sup>42</sup> *How does international humanitarian law apply in Israel and Gaza?* (2023) *Human Rights Watch*. Available at: <https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza> (Accessed: 17 May 2024).

<sup>43</sup> *Un report calls for Accountability, justice for violations by all parties in opt and Israel* / *ohchr*. Available at: <https://www.ohchr.org/en/press-releases/2024/02/un-report-calls-accountability-justice-violations-all-parties-opt-and-israel> (Accessed: 17 May 2024).

Hamas also accountable for its actions which triggered the conflict resulting in a widespread humanitarian crisis and the loss of dozens of lives. It directs Hamas to immediately resolve its issues with Israel diplomatically and peacefully initiate an immediate cease-fire and advises the international organizations to mediate the path of peace in this conflict. Further, it directs Hamas to join hands with Israel and other international organizations in the restoration of peace in this humanitarian crisis and immediately take measures to protect civilians.

## **II. CONCLUSION**

Palestine, in the Eastern Mediterranean's Southern region, holds significant religious importance for Judaism, Christianity, and Islam, with Jerusalem being a focal point for all three faiths. In 1917, the UK issued the Balfour Declaration supporting a Jewish homeland in Palestine. Post-World War I, Britain administered the region, which was divided into Palestine and Transjordan (now Jordan). The 1947 UN partition plan proposed separate Jewish and Arab states and an internationally administered Jerusalem. Israel declared statehood in 1948, leading to war and expanded territory beyond the UN plan, displacing many Palestinians.

In 1967, Israel captured territories including the Sinai Peninsula, Gaza Strip, West Bank, East Jerusalem, and Golan Heights. The Camp David Accords and the 1979 Egypt-Israel Peace Treaty saw Egypt recognize Israel. The First Palestinian Intifada led to the rise of Hamas. The Oslo Accords established the Palestinian Authority (PA) and mutual recognition between Israel and the Palestine Liberation Organisation (PLO). Tensions flared in 2000 with the Second Intifada, resulting in Israel building the West Bank barrier. In 2006, Hamas took control of the Gaza Strip. The UN granted non-member observer state status to Palestine in 2012, condemning Israel's West Bank settlements.

In May 2021, conflicts in Gaza escalated. In December 2022, the UN sought an ICJ advisory opinion on Israel's occupation. On October 7, 2023, Hamas attacked Southern Israel, leading to heavy casualties and hostages. Israel responded with airstrikes and a ground invasion, causing over 33,000 Palestinian deaths and a humanitarian crisis in Gaza.

In December 2023, South Africa accused Israel of genocide at the ICJ. South Africa cited Israel's intent to eradicate Palestinians, while Israel denied this, claiming military necessity and international law compliance. The ICJ acknowledged its jurisdiction and some of South Africa's claims, ordering Israel to allow humanitarian aid. The conflict continues with significant casualties and international calls for humanitarian pauses.

South Africa argues whether allowing humanitarian aid into Gaza by Israel can help put to rest allegations of genocide and solve the existing and ongoing humanitarian crisis. This issue deals

with questions like allegations of genocide, facilitation of humanitarian aid, the effectiveness of those humanitarian aids, further actions required, and most importantly the stand of humanitarian laws in this conflict.

The Court has observed that while Israel's facilitation of humanitarian aid into the Gaza Strip is a critical step, it does not mitigate allegations of genocide or fully address the humanitarian crisis, including starvation and famine. The Court emphasizes that addressing these allegations requires a comprehensive approach beyond aid, including protecting civilians, upholding human rights, and ensuring accountability. Israelis were reminded of their legal obligations to avoid using starvation as a weapon, minimize civilian casualties, and facilitate the return of displaced civilians. The Court also underscores the need for increased humanitarian aid, lifting restrictions, and international pressure, ending the blockade, and ensuring the safety of humanitarian workers to address the crisis effectively.

South Africa argues that what is happening there right now is characterized by severe shortages of basic commodities caused by the continued hostilities and blockades. So, the question is whether further provisional measures ought to be issued by the Court aimed at addressing the humanitarian crisis in the Gaza Strip as well as preserving civilian populations and infrastructure. Advocates of South Africa's allegations believe that such measures should be directed at ensuring immediate delivery of humanitarian assistance thus guaranteeing safety for persons and they raise the issue that urgent action is required from the court to save people and to ensure international laws are complied with by Israel.

The Court observes that various factors, including the extent of the humanitarian crisis and the effectiveness of previous measures, determine the need for additional provisional measures in the Gaza Strip. Israel's military actions have caused significant civilian suffering, and the Court notes Israel's failure to comply with previous orders and international humanitarian laws. The Court directs Israel to comply with its orders to protect civilians and facilitate humanitarian aid. If Israel continues non-compliance, the matter may be referred to the UN Security Council, potentially leading to sanctions or intervention. The Court emphasizes the need for a sustainable political solution to the conflict.

This court observes whether Hamas should be held accountable by the court for the ongoing conflict and humanitarian crisis in the Gaza Strip. The issue revolves around determining Hamas's responsibility for actions such as indiscriminate rocket attacks, using civilians as shields, and diverting humanitarian aid, which contributes to the crisis. This court evaluates evidence and legal obligations to determine Hamas's accountability alongside other involved



parties like Israel.

This court holds both Israel and Hamas accountable for violating International Humanitarian Laws (IHL), contributing to a humanitarian crisis. While Israel's actions are scrutinized, including civilian casualties and military operations, Hamas is also implicated in breaching IHL through indiscriminate rocket attacks, using civilians as shields, and diverting humanitarian aid. The court emphasizes that both state and non-state actors are bound by IHL, condemning Hamas for actions amounting to war crimes, such as attacks on civilians and mistreatment of captives. The ruling underscores the need for accountability and adherence to IHL to prevent further humanitarian crises and loss of life.

In my opinion, the International Court of Justice (ICJ) should address the issues in these ways.

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