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When International Courts and UN Bodies Compete: Gaza's Genocide Finding and Law's Authority Crisis

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This article examines a fundamental paradox in international law's treatment of genocide: institutions with the most substantial evidence often possess the weakest enforcement power, while those with enforcement mechanisms systematically favour state interests over victim protection. The UN Human Rights Council (UNHRC) Commission's September 2025 determination that Israel committed genocide in Gaza exemplifies this crisis. When the International Court of Justice (ICJ), International Criminal Court (ICC), and UN monitoring bodies reach different conclusions about

identical conduct in Gaza using different legal standards, international law faces a legitimacy crisis. Can the system function when these institutions operate without coordination? The answer determines whether international justice evolves toward coherence or fragments into competing spheres where powerful states choose which authority to acknowledge.

The UNHRC Commission's September 2025 genocide determination crystallizes this paradox, demonstrating how competing judicial and quasi-judicial authorities undermine international law's coherence in addressing mass atrocities and genocide specifically.

On 16 September 2025, the UNHRC's Commission of Inquiry determined that Israel had committed genocide in Gaza. This finding arrived twenty months after South Africa initiated genocide proceedings at the International Court of Justice in December 2023, and fifteen months after ICC Prosecutor Karim Khan sought arrest warrants for Israeli and Hamas leaders in May 2024. Three institutions examining identical conduct in Gaza have produced markedly different outcomes on different timelines using different evidentiary standards: the ICJ addressing state responsibility, the ICC pursuing individual criminal accountability, and the UNHRC Commission conducting real-time monitoring

The Evidence Problem

The Commission's 72-page analysis incorporates extensive victim testimonies, satellite imagery, medical assessments, and Israeli military intelligence data showing 83% of Palestinian casualties were civilians. Applying the International Court of Justice's *only reasonable inference* standard from *Bosnia v. Serbia*, the Commission systematically eliminated alternative explanations to conclude that genocidal intent was the only reasonable interpretation.

Yet Israel maintains it is conducting war in self-defence under international law, while the United States categorically rejects the findings. This reveals the authority legitimacy paradox in genocide cases: truth-finding institutions that conduct comprehensive investigations lack enforcement mechanisms, creating systems where evidentiary accuracy generates findings that powerful actors simply ignore, thereby undermining the authority that comprehensive methodology should confer.

The Three-Track Problem in Genocide Cases

International law's approach to genocide operates through three parallel institutional tracks with minimal coordination, a structural feature specific to mass atrocity prevention and accountability. The International Court of Justice, International Criminal Court, and UN Human Rights monitoring mechanisms each examine genocide allegations using distinct mandates, evidentiary standards, and timelines.

UNHRC's commission apply a *reasonable grounds test* for real-time monitoring during ongoing atrocities. The International Court of Justice adopts a stricter, *fully conclusive standard* from the Corfu Channel case for state responsibility, requiring years-long proceedings. The International Criminal Court prosecutes individuals *beyond a reasonable doubt*, facing jurisdictional and cooperation challenges. The Gaza situation, thus, demonstrates this fragmentation acutely.

South Africa initiated genocide proceedings against Israel at the ICJ in December 2023. The Court issued provisional measures finding claims as *plausible genocide* but has not yet reached final determination. ICC Prosecutor Karim Khan sought arrest warrants for Israeli and Hamas leaders in May 2024, pursuant to which, ICC issued arrest warrants in November 2024 against Israeli's Prime Minister, and former Defence Minister. The ICC determined *prosecutable genocide*; however, the arrest remains pending. On the other hand, the UNHRC's Commission concluded genocide had occurred in September 2025, based on *comprehensive investigation*.

Three institutions examining identical conduct in Gaza have thereby produced markedly different conclusions: *plausible genocide* requiring provisional measures, *prosecutable genocide* pending arrest warrants, and *concluded genocide* based on comprehensive investigation.

The Coordination Crisis

This fragmentation reflects deeper structural problems that scholarship on global legal pluralism identifies as inherent to post-Westphalian governance. Traditional hierarchical models cannot accommodate political realities where major powers systematically protect allies through Security Council vetoes.

The Commission joins growing international bodies concluding that Israel is committing genocide in Gaza. However, critics argue that only international courts can make final determinations, a process requiring years while systematic killings continue. This creates a legal architecture where prevention urgency conflicts with prosecution deliberateness.

When multiple institutions examine the same alleged genocide using different standards and timelines, competing institutional authorities create contradictory narratives about the status of ongoing atrocities. The Gaza case exemplifies this: states exploit institutional fragmentation by pointing to the ICJ's ongoing proceedings to argue genocide remains plausible, not proven, while simultaneously rejecting ICC jurisdiction and dismissing UNHRC findings as antisemitic lies inspired by Hamas. When such authority fragmentation becomes productive, institutions develop coordination mechanisms. The Commission's reliance on ICJ precedents demonstrates this principle, though coordination remains informal rather than institutionalised.

The Prevention Revolution

The international community faces a stark choice between decisive actions like sanctions, arms embargoes, and prosecutions, or perpetuating the gap between commitments and political realities.

Current mechanisms focus on reactive prosecution rather than the Genocide Convention's proactive prevention mandate. This fundamentally misreads international obligations, prioritising accountability over protection. With 153 state parties, the Convention requires parties to employ all means reasonably available to prevent genocide.

The ICJ's Bosnia precedent established that prevention obligations have extraterritorial scope, creating duties for states with the capacity to influence. This transforms seemingly non-binding Commission findings into legally operative determinations triggering Article I prevention obligations.

UK legal challenges over arms licensing illustrate how prevention obligations translate into accountability. In *Al-Haq v. Secretary of State for Business and Trade*, Palestinian organisations argued that continued F-35 component exports violated the Genocide Convention, even after the government suspended other licenses in September 2024. Though the High Court rejected the challenge in June 2025, ruling F-35 exports were executive matters, the case forced a partial arms embargo, demonstrating how prevention duties create concrete legal pressure.

Constitutional Solutions

Scholarship on international law's legitimacy crisis reveals how legitimacy increasingly derives from process quality rather than formal authority. The Commission's methodology demonstrates this through extensive victim interviews, systematic

analysis, and transparent standards, creating legitimacy without binding enforcement power.

This represents a shift from hierarchical to network-based models. Rather than establishing institutional hierarchies, the system must develop coordination mechanisms preserving specialisation while ensuring coherent application of legal standards.

The Commission's determination carries significant moral weight given Chair Navi Pillay's distinguished career, including presidencies of the International Criminal Tribunal for Rwanda and the International Criminal Court. Yet moral authority without enforcement creates opportunities for categorical rejection, weakening systemic credibility.

The path forward requires embracing what constitutional theorists recognise as heterarchical governance, where multiple authorities coordinate through sophisticated procedures rather than hierarchical subordination. This transforms competitive fragmentation into productive pluralism through three mechanisms.

First, systemic integration protocols require institutions to address how determinations relate to parallel proceedings explicitly. When the ICJ issues provisional measures while UN Commissions investigate identical conduct, both should articulate how their different standards contribute to comprehensive accountability rather than competing for exclusive authority.

Second, graduated authority recognition acknowledges that institutions serve complementary functions. UN Commissions excel at real-time fact-finding, ICJ proceedings establish binding state responsibility, and ICC prosecutions ensure individual accountability. Rather than dismissing Commission findings as non-binding, states should recognise them as authoritative evidence triggering positive obligations under existing treaties.

Third, procedural constitutionalisation creates formal networks through systematic judicial dialogue and cross-referencing. The Commission's reliance on ICJ Bosnia precedents demonstrates this principle, but coordination should become institutionalised through formal protocols ensuring consistent application of the fundamental tenets across institutional boundaries.

Recent cases like *Sudan v. UAE* at the ICJ regarding alleged Genocide Convention violations demonstrate the growing importance of these coordination mechanisms. As scholarship on constitutional pluralism demonstrates, legitimacy in complex legal

systems increasingly emanates from procedural sophistication rather than formal authority.

Conclusion

The September 2025 determination represents a constitutional moment that can catalyse systemic evolution. The international community's response determines whether international law evolves toward constitutional pluralism or fragments into competing regimes, undermining the global rule of law.

Success requires reconceptualising authority in post-hierarchical international law, transforming complexity into strength through coordination mechanisms. Prevention of genocide and international legal order hang in the balance. The system must develop resilience through productive pluralism that harnesses competing authorities to strengthen coherence. The Commission's determination demonstrates this evolution, but success depends on whether the international community embraces coordination over competition in pursuing justice.

Author Bio

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