

The Question of Palestine: An Analysis of the History of the Conflict Between Palestine and Israel, International Regulations, and the Role of International Authorities

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Abstract: The aim of this study is to analyze the significance and impact of historical events that have shaped the relationship between Palestine and Israel, beginning with the Balfour Declaration of 1917 and continuing to current developments. It seems that the major global powers continue to exert the same level of influence on the outcome of this conflict as they did in the past.

The scope of this paper is to also identify which international regulations are applicable to this situation and explore potential solutions that could be achieved through them. These legal frameworks have been established by state-created bodies, and their true importance will be determined by how effectively they are implemented.

International authorities responsible for enforcing these rules appear to be actively involved. The Principal Organs of the United Nations are addressing this issue, with a key development being the engagement of the International Court of Justice, which has issued strong statements through its reasoning and decisions.

Moreover, the involvement of the International Criminal Court is historically significant, as the Prosecutor Karim Khan has issued arrest warrants against representatives from both sides, citing serious charges. The ruling by this court will establish a significant precedent, showcasing its actual authority and autonomy.

Key words: conflict, international regulations, international authorities, International Court of Justice, International Criminal Court

JEL codes: K320, Q50

1. Introduction

The origins of the Palestine issue as an international concern trace back to the aftermath of World War I. Following the collapse of the Ottoman Empire, the League of Nations placed Palestine under British administration through the Mandates System. Although the mandate was intended to be temporary, guiding Palestine toward independence, this goal was never realized. The issuance of the Balfour Declaration in 1917 further complicated the situation by endorsing the establishment of a Jewish homeland in Palestine, leading to tensions, violence, and eventual conflict. The establishment of Israel in 1948, followed by wars and territorial disputes, has left Palestine's right to self-determination unresolved, making the conflict one of the most persistent

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and complex in modern history.

The United Nations (UN) has several organs responsible for upholding international law and ensuring peace and security. Two key organs engaged in addressing major international conflicts are the UN Security Council and the International Court of Justice (ICJ).

The Security Council is responsible for maintaining international peace and security, empowered under Chapter VII of the UN Charter to enforce sanctions or military actions. However, in the Israel-Palestine conflict, it has struggled to implement effective resolutions, with many either vetoed or ineffective, highlighting its inability to address the root causes of the crisis.

The ICJ, the principal judicial organ of the UN, provides advisory opinions and settles disputes between states. It has played a prominent role in addressing the legal aspects of the Israel-Palestine conflict. Recent advisory opinions have determined that Israel's policies — particularly the prolonged occupation and settlement in Palestinian territories — violate international law. The ICJ also recently handled a case brought by South Africa, accusing Israel of genocide in Gaza, which has further stressed the state's responsibility in the context of international humanitarian law.

In these instances, the responsibility of states to adhere to international regulations and the failure of international bodies to enforce these standards remain central issues.

The International Criminal Court (ICC) is a permanent judicial body established by the Rome Statute to ensure individual accountability for the gravest international crimes. It exercises jurisdiction over four core crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC serves as a court of last resort, intervening only when national legal systems are unwilling or unable to prosecute individuals responsible for such crimes. This system of individual responsibility ensures that leaders and perpetrators, regardless of rank or status, can be held accountable for their actions under international law.

2. Historical Facts Regarding the Conflict

The origins of the Palestine problem as an international issue, lie in events occurring towards the end of the First World War. These events led to a League of Nations decision to place Palestine under the administration of Great Britain as the Mandatory Power under the Mandates System adopted by the League. In principle, the Mandate was meant to be in the nature of a transitory phase until Palestine attained the status of a fully independent nation, a status provisionally recognized in the League's Covenant, but in fact the Mandate's historical evolution did not result in the emergence of Palestine as an independent nation (United Nations — Origins and Evolution of the Palestine Problem: 1917-1947 (Part I)).

The principle of self-determination, as outlined in the International Covenant on Human Rights, UN, was disregarded, and control over Palestine's political matters was assigned to the United Kingdom.

In 1917, under the British mandate, the Balfour Declaration was issued, endorsing the establishment of a Jewish presence in Palestinian territory following World War I. The declaration included the following provisions: "His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of the object, it being clearly understood that nothing shall be done which may prejudice the civil and religious' rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country" (Balfour Declaration – UK/Non-UN document).

Arab demands for independence and resistance to immigration led to a rebellion in 1937, followed by continuing terrorism and violence from both sides (UN — The Question of Palestine: History).

With the establishment of the United Nations in 1945, a new option emerged for Great Britain, which had lost control of the situation.

In November 1947, the UN General Assembly passed a resolution partitioning Palestine into two states, one Jewish and one Arab, with Jerusalem under a UN administration. The Arab world rejected the plan, arguing that it was unfair and violated the UN Charter. Jewish militias launched attacks against Palestinian villages, forcing thousands to flee. The situation escalated into a full-blown war in 1948, with the end of the British Mandate and the departure of British forces, the declaration of independence of the State of Israel and the entry of neighbouring Arab armies. The newly established Israeli forces launched a major offensive. The result of the war was the permanent displacement of more than half of the Palestinian population, referred to as The Nakba, which means “catastrophe” in Arabic (UN — The Question of Palestine: About the Nakba).

In the 1967 war, Israel occupied these territories (Gaza Strip and the West Bank) including East Jerusalem, which was subsequently annexed by Israel. The war brought about a second exodus of Palestinians, estimated at half a million. Security Council Resolution 242 (1967) formulated the principles of a just and lasting peace, including an Israeli withdrawal from territories occupied in the conflict, a just settlement of the refugee problem, and the termination of all claims or states of belligerency (UN — The Question of Palestine: History).

The Palestine Liberation Organization (PLO), formed in 1964, adopted a new Covenant in 1968 committing all Palestinians to continue the fight for their rights, claiming that the international community had so far proved unable to discharge the responsibility it had borne for almost half a century. The Covenant termed Israel an illegal State, leading to Israel’s refusal to deal with the PLO (United Nations — Origins and Evolution of the Palestine Problem: 1947-1977 (Part II)).

In 1974 the General Assembly reaffirmed the inalienable rights of the Palestinian people to self-determination, national independence, sovereignty, and to return. The following year, the General Assembly established the Committee on the Exercise of the Inalienable Rights of the Palestinian People and conferred on the PLO the status of observer in the Assembly and in UN conferences (UN — The Question of Palestine: History).

In 1987, a mass uprising against the Israeli occupation began in the Occupied Palestinian Territory (the intifada). Methods used by the Israeli forces resulted in mass injuries and heavy loss of life among the civilian Palestinian population. In 1988 the Palestine National Council meeting in Algiers proclaimed the establishment of the State of Palestine (UN — The Question of Palestine: History).

A series of subsequent negotiations culminated in the mutual recognition between the Government of Israel and the PLO, the representative of the Palestinian people, and the signing in 1993 of the Declaration of Principles on Interim Self-Government Arrangements (DOP or “Oslo Accord”), as well as the subsequent implementation agreements, which led to the partial withdrawal of Israeli forces, the elections to the Palestinian Council and the Presidency of the Palestinian Authority, the partial release of prisoners and the establishment of a functioning administration in the areas under Palestinian self-rule. In 2000 it was followed by the second intifada. Israel began the construction of a West Bank separation wall, located mostly within the Occupied Palestinian Territory, ruled illegal by the International Court of Justice. An unofficial Geneva peace accord was promulgated by prominent Israelis and Palestinians in 2003. In 2005, Israel withdrew its settlers and troops from Gaza while retaining control over its borders, seashore and airspace. After an armed takeover of Gaza by Hamas in 2007, Israel imposed a blockade (UN — The Question of Palestine: History).

Hamas is a Palestinian Islamic movement established in 1987 at the outset of the first intifada. Hamas is the Arabic acronym for *Harakat al-Muqawamah al-Islamiyya* or Islamic Resistance Movement (United Nations — Origins and Evolution of the Palestine Problem: 1989-2000 (Part V)).

The Annapolis process of 2007-2008 failed to yield a permanent status agreement. Escalating rocket fire and air strikes in late 2008 culminated in Israeli ground operation “Cast Lead” in Gaza. The UN Security Council adopted resolution 1860. Violations of international law during the Gaza conflict were investigated by the UN (“Goldstone report”). In 2011 President Mahmoud Abbas submitted the application of Palestine for membership in the UN. On 29 November 2012 Palestine was granted non-member observer State status in the UN. The conflict continued on the following years and in 2017, the US Administration announced recognition of Jerusalem as the capital of Israel, and subsequently, the US and certain other embassies were moved to Jerusalem. On 15 May 2023, following a request by the General Assembly, the UN commemorated the 75th anniversary of the Nakba for the first time. In October of 2023, another escalation between Gaza and Israel began (UN — The Question of Palestine: History).

Palestine is now a “Permanent Observer State” at the UN, enjoying the status that allows it to participate in all of the Organization’s proceedings, except for voting on draft resolutions and decisions in its main organs and bodies, from the Security Council to the General Assembly and its six main committees (UN News — Palestine’s status at the UN explained).

3. UN Organs and the International Regulations Violated — The Responsibility of the State

3.1 Security Council of the United Nations

The Security Council takes the lead in determining the existence of a threat to the peace or an act of aggression. It calls upon the parties to a dispute to settle it by peaceful means and recommends methods of adjustment or terms of settlement. Under Chapter VII of the UN Charter, the Security Council can take enforcement measures to maintain or restore international peace and security. Such measures range from economic sanctions to international military action. The Council also establishes UN Peacekeeping Operations and Special Political Missions (United Nations — Maintain International Peace and Security).

There have been numerous Security Council resolutions addressing the Israel-Palestine conflict, particularly following the escalation in October 2023. Many of these resolutions have either been vetoed or failed to pass, while others that were adopted were temporary or limited in scope. Despite their differences, they all share a common trait: their inability to provide an effective solution. This ineffectiveness stems from the fact that the resolutions either avoid or fail to address the root cause of the conflict. Instead, vague or politically charged terminology is often used, which ultimately hinders progress toward a meaningful resolution.

In a human-created catastrophe, the United Nations' most authoritative body, despite being fully empowered by the UN Charter to take decisive action, remains incapable of exercising that power effectively.

3.2 International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the UN. The Court has two functions:

- a) To give advisory opinions on legal questions referred to it by authorized UN organs and specialized

agencies.

- b) To settle, in accordance with international law, legal disputes submitted by States (Introduction - UN Documentation: International Court of Justice).

Regarding the Israel-Palestine conflict, the ICJ has been able to fulfill both of these roles, which I will separately explain further below.

(1) Summary of the Advisory Opinion of 19 July 2024 - ICJ

The General Assembly, in accordance with Article 96 of the Charter of the United Nations, decides to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions:

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?

I will present a summary of the court's opinion, highlighting its crucial points.

The Court assesses the conformity of Israel's policies and practices in the Occupied Palestinian Territory, as identified in question (a), with its obligations under international law. In particular, the Court's analysis examines, in turn, the questions of the prolonged occupation, Israel's policy of settlement, the annexation of the Palestinian territory occupied since 1967, and its adoption of related legislation and measures that are allegedly discriminatory. The Court appraises whether and, if so, how Israel's policies and practices affect the right of the Palestinian people to self-determination after those other questions are considered (Summary of the Advisory Opinion of 19 July 2024 - ICJ).

1) Prolonged Occupation

The Court notes that question (a) pertains to the legal consequences arising from Israel's prolonged occupation of the Occupied Palestinian Territory, which has lasted for more than 57 years.

As an occupying power, Israel assumes powers and duties over the occupied territory, including the obligation to administer it for the benefit of the local population. Occupation is a temporary measure to address military necessity and cannot transfer sovereignty to the occupying power.

2) Israeli Settlements and International Law

In its Wall Advisory Opinion, the Court found that Israel's settlement policy violates the sixth paragraph of Article 49 of the Fourth Geneva Convention, which prohibits the transfer of the occupying power's civilian population into the occupied territory.

There is extensive evidence of Israel's policy of incentivizing the relocation of Israeli individuals and businesses into the West Bank, as well as supporting industrial and agricultural development by settlers.

The construction of settlements is supported by infrastructure that integrates them into Israeli territory, involving the confiscation or requisitioning of large areas of land. These policies benefit Israeli settlers to the detriment of Palestinians, violating Articles 46, 52, and 55 of the Hague Regulations.

3) Exploitation of Natural Resources

The Court recalls that, under Article 55 of the Hague Regulations, the occupying power is considered the administrator and usufructuary of natural resources in the occupied territory, obligated to preserve these resources.

Israel's exploitation of natural resources, diverting them to settlers, breaches its obligation under international law. The Court concludes that this policy violates the Palestinian people's right to permanent sovereignty over their resources.

4) Extension of Israeli Law to Occupied Palestinian Territory

The Court recalls that Article 43 of the Hague Regulations requires the occupying power to respect the law in force in the occupied territory, except when absolutely prevented from doing so.

Israel has largely replaced local law with its military law in the West Bank and applied full Israeli domestic law in East Jerusalem, treating the area as part of its national territory. This substitution of legal authority violates Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention.

5) Forced Transfers

The Court observes that large-scale land confiscation and restricted access to natural resources deprive Palestinians of their means of subsistence, pressuring them to leave the territory.

The Court recalls Article 49 of the Fourth Geneva Convention, which prohibits the forcible transfer or deportation of protected persons from occupied territory. Forced transfers can occur without physical coercion, when individuals have no choice but to leave.

The Court also finds that Israel's failure to prevent or punish settler violence against Palestinians, along with its excessive use of force, violates its legal obligations.

6) Annexation and Permanent Control

The Court understands annexation as the forcible acquisition of territory by the occupying power, with the intent to permanently integrate it into its own territory. Under occupation law, control of occupied territory must be temporary.

The Court concludes that Israel's policies and practices, including settlement expansion, infrastructure construction, resource exploitation, and the application of Israeli law in East Jerusalem and the West Bank, display an intent to permanently control the Occupied Palestinian Territory, amounting to annexation.

7) Systemic Discrimination and Segregation

The Court finds that Israel's restrictions on Palestinians in the Occupied Palestinian Territory constitute systemic discrimination based on race, religion, or ethnicity, violating Articles 2(1) and 26 of the ICCPR (International Covenant on Civil and Political Rights), Article 2(2) of the ICESCR (International Covenant on Economic, Social and Cultural Rights), and Article 2 of CERD (Convention on the Elimination of All Forms of Racial Discrimination).

The Court further observes that Israel's laws and measures maintain a near-complete separation between settlers and Palestinians in the West Bank and East Jerusalem, violating Article 3 of CERD.

I would like to examine the court's discussion on the violation of Article 3 of CERD. This legal provision states: "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction". The Court does not explicitly use the terms "racial segregation" or "apartheid" in its opinion on the questions posed by the General Assembly. However, by stating that Article 3 of CERD has been violated, it implies an accusation of such breaches under international law. According to Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid, the crime of apartheid appears to encompass racial segregation, as it specifies: "For the purpose of the

present Convention, the term ‘the crime of apartheid’, which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them...”. We can look to the list of inhuman acts outlined in the aforementioned convention that result in apartheid. The accusation of apartheid is a grave charge against the State of Israel. While the Court may not explicitly refer to the crime of apartheid, whatever the reason may be, it does not alter the fact that Israel is accused of violating Article 3.

As part of question (b) referred to the Court by the General Assembly are the legal consequences that arise for all States and the United Nations from the status of occupation of the State of Israel.

A summary of the obligations outlined by the Court for all States are as follows:

- Cooperation with the UN: All States must cooperate with the United Nations to implement the necessary measures to end Israel’s illegal presence in the Occupied Palestinian Territory and to fully realize the Palestinian people’s right to self-determination.
- Non-recognition of changes: Member States are obligated not to recognize any changes to the physical, demographic, institutional, or legal status of the territory occupied by Israel since 5 June 1967, including East Jerusalem, unless agreed upon through negotiations between the parties to the conflict.
- Distinction in dealings with Israel: Member States must distinguish in their interactions with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967.
- Non-recognition of unlawful situations: All States are obligated not to recognize as legal the situation arising from Israel’s unlawful presence in the Occupied Palestinian Territory.
- Non-assistance in maintaining the illegal situation: States are obligated not to provide any aid or assistance that would maintain the situation created by Israel’s illegal presence in the Occupied Palestinian Territory.
- Ensure the right to self-determination: All States must ensure that any impediments resulting from Israel’s illegal presence in the Occupied Palestinian Territory, which obstruct the Palestinian people’s right to self-determination, are removed.
- Compliance with international humanitarian law: All States parties to the Fourth Geneva Convention are obligated to ensure Israel’s compliance with international humanitarian law, as set out in the Convention, while respecting the Charter of the United Nations and international law.

A summary of the obligations outlined by the Court for the United Nations are as follows:

- Non-recognition by international organizations: The duty of non-recognition of the situation arising from Israel’s unlawful presence in the Occupied Palestinian Territory also applies to international organizations, including the United Nations, given the serious breaches of erga omnes obligations under international law.
- United Nations’ obligation to distinguish: The United Nations, like all States, is obligated to distinguish in its dealings between the territory of Israel and the Occupied Palestinian Territory.
- Responsibility of the General Assembly and Security Council: It is for the General Assembly and the Security Council to determine the precise modalities required to end Israel’s unlawful presence in the Occupied Palestinian Territory, based on the present Advisory Opinion.
- Urgency for the United Nations to act: The United Nations as a whole is urged to intensify its efforts to bring the Israeli-Palestinian conflict to a swift conclusion, establishing a just and lasting peace in the

region.

- Support for Palestinian self-determination: The realization of the Palestinian people's right to self-determination, including the creation of an independent and sovereign State alongside Israel, with secure and recognized borders for both States, is essential for regional stability and security in the Middle East.

Each one can conduct an analysis of whether the states or UN bodies have fulfilled the above-mentioned obligations or where they have failed in implementing these obligations, and for what reasons this might have happened.

(2) Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) Request for the indication of provisional measures.

On 29 December 2023, South Africa filed in the Registry of the Court an Application instituting proceedings against Israel concerning alleged violations in the Gaza Strip of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the "Genocide Convention" or the "Convention"). The Application contained a Request for the indication of provisional measures, whereby South Africa, "request[ed] the Court, as a matter of extreme urgency, pending the Court's determination of this case on the merits, to indicate the following provisional measures in relation to the Palestinian people as a group protected by the Genocide Convention" (Summary of the Order of 26 January 2024 - ICJ). The provisional measures requested by South Africa are detailed in the Summary of the Order issued on 26 January 2024 by the ICJ, as well as in the Order of 28 March 2024 and the Summary of the ICJ's Order of 24 May 2024, which included requests for modifying the Order of 26 January 2024.

About the requests of South Africa, the Court states in the Order of 26 January 2024: "As to whether the acts and omissions complained of by the Applicant appear to be capable of falling within the provisions of the Genocide Convention, the Court recalls that South Africa considers Israel to be responsible for committing genocide in Gaza and for failing to prevent and punish genocidal acts. South Africa contends that Israel has also violated other obligations under the Genocide Convention, including those concerning "conspiracy to commit genocide, direct and public incitement to genocide, attempted genocide and complicity in genocide".

In the Court's view, at least some of the acts and omissions alleged by South Africa to have been committed by Israel in Gaza appear to be capable of falling within the provisions of the Convention". In the same summary the Court notes statements made by the UN and other officials, including the UNRWA Commissioner-General, highlighting dehumanizing language and concerns of genocidal rhetoric from Israeli officials. Citing statements by Israeli leaders and UN reports, as well as alarm raised by Special Rapporteurs and the UN Committee on Racial Discrimination, the Court concludes that some of South Africa's claimed rights, such as protecting Palestinians in Gaza from acts of genocide, are plausible.

In this case: "The Court considers that, with regard to the situation described above, Israel must, in accordance with its obligations under the Genocide Convention, in relation to Palestinians in Gaza, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group" (Summary of the Order of 26 January 2024 - ICJ). Within the scope of this paper, the full list of provisional measures cannot be provided but a comprehensive list of the provisional measures decided by the Court is available in the three ICJ Orders

referenced above.

I believe it is essential to cite Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide: “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group”.

The definition of Genocide is made up of two elements, the physical element — the acts committed; and the mental element — the intent. Intent is the most difficult element to determine. To constitute genocide, there must be a proven intent on the part of perpetrators to physically destroy a national, ethnical, racial or religious group. Cultural destruction does not suffice, nor does an intention to simply disperse a group, though this may constitute a crime against humanity as set out in the Rome Statute. It is this special intent, or *dolus specialis*, that makes the crime of genocide so unique. To constitute genocide, it also needs to be established that the victims are deliberately targeted — not randomly — because of their real or perceived membership of one of the four groups protected under the Convention. This means that the target of destruction must be the group, as such, or even a part of it, but not its members as individuals (UN - Genocide Convention-FactSheet-ENG).

4. International Criminal Court — The Individual Responsibility

The Court’s founding treaty, called the Rome Statute, grants the ICC jurisdiction over four main crimes: genocide, crimes against humanity, war crimes and aggression.

The Court may exercise jurisdiction in a situation where genocide, crimes against humanity or war crimes were committed on or after 1 July 2002 and:

- the crimes were committed by a State Party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court; or
- the crimes were referred to the ICC Prosecutor by the United Nations Security Council (UNSC) pursuant to a resolution adopted under chapter VII of the UN charter (ICC – How the court works).

Israel signed the Rome Statute on 30 December 2000 but has not ratified it, while Palestine ratified the statute on 2 January 2015 (UN - Rome Statute of the International Criminal Court). In this case, the jurisdiction of the court is confirmed.

The ICC is intended to complement, not to replace, national criminal systems; it prosecutes cases only when States do not are unwilling or unable to do so genuinely. The Office of the Prosecutor must determine whether there is sufficient evidence of crimes of sufficient gravity falling within the ICC’s jurisdiction, whether there are genuine national proceedings, and whether opening an investigation would serve the interests of justice and of the victims. After gathering evidence and identifying a suspect, the Prosecution requests ICC judges to issue:

- 1) an arrest warrant: the ICC relies on countries to make arrests and transfer suspects to the ICC; or
- 2) a summons to appear: suspects appear voluntarily (if not, an arrest warrant may be issued) (ICC – How the court works).

On 20 May 2024 the Office of the ICC Prosecutor Karim A.A. Khan KC issued arrest warrants on representatives of the State of Israel and Hamas.

About the representatives of Hamas, the office of the Prosecutor states as follows: “On the basis of evidence

collected and examined by my Office, I have reasonable grounds to believe that Yahya SINWAR (Head of the Islamic Resistance Movement (“ Hamas”) in the Gaza Strip), Mohammed Diab Ibrahim AL-MASRI, more commonly known as DEIF (Commander-in-Chief of the military wing of Hamas, known as the *Al-Qassam Brigades*), and Ismail HANIYEH (Head of Hamas Political Bureau) bear criminal responsibility for the following war crimes and crimes against humanity committed on the territory of Israel and the State of Palestine (in the Gaza strip) from at least 7 October 2023”. Overall, the court’s analysis is as follows: Asserts that war crimes occurred during an international armed conflict between Israel and Palestine, and a parallel non-international conflict between Israel and Hamas. Crimes against humanity were part of a widespread, systematic attack on Israeli civilians by Hamas and other armed groups. Evidence includes interviews, CCTV footage, and statements, showing reasonable grounds to believe that SINWAR, DEIF, and HANIYEH are criminally responsible for the killing of civilians and hostage-taking on 7 October 2023. They are charged as co-perpetrators and superiors under the Rome Statute. The investigation also points to inhumane treatment and sexual violence against hostages.

About the representatives of the State of Israel: “On the basis of evidence collected and examined by my Office, I have reasonable grounds to believe that Benjamin NETANYAHU, the Prime Minister of Israel, and Yoav GALLANT, the Minister of Defence of Israel, bear criminal responsibility for the following war crimes and crimes against humanity committed on the territory of the State of Palestine (in the Gaza strip) from at least 8 October 2023”. Overall, the court’s analysis is as follows: The Office asserts that the alleged war crimes took place during both an international conflict between Israel and Palestine, and a parallel non-international conflict between Israel and Hamas, along with other Palestinian armed groups. Crimes against humanity were committed as part of a widespread and systematic attack on Gaza’s civilian population, driven by state policy, and these violations are ongoing. The Office presents evidence, including survivor testimonies, eyewitness accounts, and verified media, showing that Israel intentionally deprived Gaza civilians of essential resources such as food, water, and medical supplies. This was executed through a total siege of Gaza, including closing border crossings, restricting aid, cutting off water, and limiting electricity. These actions, combined with other attacks on civilians and aid workers, aimed to starve and collectively punish the Gazan population, while eliminating Hamas and securing the return of hostages. The result has been severe suffering, malnutrition, and a growing number of deaths, especially among children and vulnerable groups. The Office highlights that famine is present in some areas of Gaza, with conditions rapidly deteriorating. It seeks to hold Israeli leaders Netanyahu and Gallant criminally responsible as co-perpetrators under the Rome Statute for these actions, which violate international humanitarian law, specifically the use of starvation as a method of war.

The comprehensive list of violations under Article 7 (“Crimes against humanity”) and Article 8 (“War crimes”) of the Rome Statute will not be included in this paper. However, they can be accessed on the official ICC website (ICC — Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine) and are detailed within the Rome Statute itself.

As a judicial institution, the ICC does not have its own police force or enforcement body; thus, it relies on cooperation with countries worldwide for support, particularly for making arrests, transferring arrested persons to the ICC detention center in The Hague, freezing suspects’ assets, and enforcing sentences (ICC — How the court works).

What makes this case unique is that it marks the first time the ICC has issued arrest warrants against representatives of a so-called democratic state and moreover while the conflict is still ongoing. This gives the court an opportunity to demonstrate its authority and independence, as the outcome will set a significant precedent

for future cases.

5. Conclusions

The League of Nations, which after World War I denied Palestine the right to self-determination, consists of the same states that today are unable to provide a solution to the situation that has reached catastrophic proportions. The International Court of Justice (ICJ) rightly attributes responsibility to states and United Nations bodies regarding this conflict.

The ICJ holds Israel accountable for the occupation of Palestinian territories since 1967, attempting annexation through the application of Israeli laws in these territories, the forced transfer of the local population, or leaving them no option but to flee. Israel also allowed the settlement of its civilians and businesses in these territories and exploited natural resources for its own benefit. According to the ICJ, Israel's actions in the Palestinian territories constitute serious violations of international law, even amounting to violations of Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which addresses racial segregation and apartheid.

Additionally, when South Africa submitted a request for provisional measures against Israel for violating the Genocide Convention, the court assessed that these claims were valid and that Israel must take steps to comply with the convention and hold accountable anyone who might violate it.

The killing, hostage-taking, or any form of inhumane treatment of the civilian population is condemnable, regardless of the circumstances or who commits these acts. The ICC's decision to issue arrest warrants, prepared by Prosecutor Karim Khan, against Hamas representatives and Israeli officials for committing war crimes and crimes against humanity is commendable. The intricacy of the circumstances surrounding the issuance of these warrants adds to the optimism regarding the decisions. The court is under significant pressure to reach a ruling that will establish its authority and autonomy.

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UN - Genocide Convention-FactSheet-ENG

ICC – How the court works

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