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# Gaza War in International Law

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( بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ )

{ وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ } . بقرة ۱۹۰

( In the name of Allah )

{ Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors } . (2:190 Quran)

( به ناوی خودای به خشنده و میهره بان )

{وه له پیناو خوی گه وره کوشتاری نه و که سانه بکه ن که کوشتارتان نه که ن به لام دستدریژی مه که ن به تایبه تی له مانگه  
هرامه کان (أشهر الحرم)، که (ذو القعدة و ذو الحجة و موحه رهم و رجه به) یا خود به وهی که نه و که سانه بکوژن که  
شهریان نه کردووه له نافرته و منال و پیرو پیروی که نیسه و کلیسه، وه له داربرین و نازهل کوشتن و شیواندنی لاشه ی  
کوژراوان نه مانه هه مووی ده ستردیژی و به پاستی خوی گه وره نه و که سانه ی خویش ناوی که ده ستردیژی نه که ن } . بقرة

۱۹۰

## **Abstract**

This research examines the historical, political, and legal dimensions of the Gaza-Israel conflict through the lens of international law. It traces Gaza's long history from its ancient origins to modern geopolitical,

the study highlights the evolution of control over the territory and its centrality in regional disputes. The research also focuses on the implications of the Abraham Accords and the intensifying humanitarian crisis following the Israeli military operations in Gaza city since the war started.

It examines Israel's actions under The international humanitarian law , and the laws of occupation, and examining whether these actions constitute serious breaches of Peremptory norms of international law, like the prohibitions against annexation, denial of self-determination, racial discrimination, and apartheid.

It investigates the legal obligations of the other countries under the principle of era omnes, emphasizing the duty of non-recognition, non-assistance, and cooperation to end the unlawful occupations. It uses legal documents like The Geneva conventions, Hague regulations, and the Genocide Convention,

By situating the Gaza-Israel conflict within the broader framework of international legal norms, This paper examines state responsibility, accountability, and justice in prolonged occupations.

## **Research Problem**

Despite the existence of strong international legal frameworks meant to protect civilians and ensure accountability, Gaza continues to face prolonged occupation, repeated military aggression, and severe humanitarian conditions, raising serious questions about the effectiveness and enforcement of international law.

## **Aknowledgement**

**First** and foremost, I would like to express my deepest gratitude to Almighty God for granting me the strength, wisdom, and perseverance to complete this research.

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# 1-The Reasons of Israel's Occupation of Gaza

## 1.1- The History of Gaza

The History of Gaza city stretches back thousand of years, and it has been ruled by many different civilizations, empires, dynasties :

The earliest known inhabitants of Gaza were the Canaanites, around 2000 BCE. Gaza was an important city in Canaan, and it was mentioned in various ancient texts. <sup>(1)</sup>

Then Gaza became one of the five major cities of the Palestine Pentapolis around the 12<sup>th</sup> century BCE. They were Aegean people who settled along the southern coast of Canaan. <sup>(2)</sup>

Gaza was often under The Egyptian New kingdom empire period (c. 1550–1077 BCE), as Egypt sought control of the Levant. It was a strategic city for Egypt's control over trade routes and military campaigns. <sup>3</sup>

Byzantines (395 – 638 CE): After the division of the Roman Empire, Gaza became part of the Eastern Roman (Byzantine) Empire. It continued to thrive as a Christian city under Byzantine rule, with churches and monastic centers. <sup>4</sup>

Islamic Period (638 CE – 1099 CE) In 638 CE, Gaza was conquered by the forces of Caliph Umar ibn al-Khattab, . The city came under control of the Rashidun Caliphate, marking the beginning of over a millennium of Muslim rule. <sup>5</sup>

Gaza became part of the Umayyad Caliphate in (661-750) after the Rashidun period. The Umayyads ruled from Damascus, and Gaza prospered under their control. <sup>6</sup>

In 1099, during the First Crusade, the Crusaders took control of Gaza, The Crusaders held Gaza for several decades, and it became part of the Kingdom of Jerusalem. <sup>7</sup>

Ottoman Empire (1517 – 1917) Ottomans: In 1517, the Ottoman Empire took control of Gaza after defeating the Mamluks. Gaza became part of the Ottoman province of Syria. The

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<sup>1</sup> Islamicity. (n.d.). Timeline of Gaza: 3500 BCE to October 7th, 2023. Islamicity.org. <https://www.islamicity.org/102932/timeline-of-gaza-3500-bce-to-october-7th-2023/>

<sup>2</sup> Anera. (n.d.). Gaza primer: What is Gaza, who lives there, and why is it under blockade? Anera.org. <https://www.anera.org/blog/gaza-primer/>

<sup>3</sup> Scanderbeg, A. L. (n.d.). The impact of ancient Egyptian rule on Palestine. Medium. <https://scanderbegal.medium.com/the-impact-of-ancient-egyptian-rule-on-palestine-361019168fd6>

<sup>4</sup> Sadeqi, M. (2015). Christian Topography of Byzantine Gaza. International Journal of Humanities and Social Science, 5(12). [https://www.ijhssnet.com/journals/Vol\\_5\\_No\\_12\\_December\\_2015/3.pdf](https://www.ijhssnet.com/journals/Vol_5_No_12_December_2015/3.pdf)

<sup>5</sup> Islam the Guide. (n.d.). Palestine. <https://www.islamtheguide.com/palestine/>

<sup>6</sup> Embassy of Palestine in Hungary. (n.d.). History of Palestine: Ommayyet era. <https://en.palestine.hu/palestine-the-holy-land/history-of-palestine/#Ommayyet>

<sup>7</sup> Palestinian History Tapestry. (n.d.). Khirbet el-Mafjars mosaics. PalestinianHistoryTapestry.org. <https://www.palestinianhistorytapestry.org/tapestry/0260-khirbet-el-mafjars-mosaics/>

Ottomans ruled Gaza for about 400 years, during which it was a strategic military and trade center. The total population of Palestine estimated 300 000 (295 000 Arab – 5000 Jewish)

British Mandate (1917 – 1948) British: During World War I, In 1916 A secret meeting had already taken place between Britain and France known as the “Sykes- Picot Agreement”, which decided how the territories belonging to the Ottomans would be divided after the war. in 1917, British mandate entered Palestine, Gaza became part of the British Mandate of Palestine, under which the British administered the region until 1948.<sup>8</sup>

The British Mandate of Palestine was coming towards its end in 1948. On the 14<sup>th</sup> May 1948, the day before the British withdrawal, the Jewish leaders declared ‘The Independent State of Israel’. 15<sup>th</sup> May 1948, war started between the established Israeli State and the neighboring Arab countries. The war ended with the establishment of the ‘Armistice Lines of 1949’, also called ‘Green Line’. Palestine was divided into three parts, the land that the Jews occupied during the war, which constitute the current Israeli State, and the West Bank, including East Jerusalem, was left to the Jordanian Administration, and the Gaza Strip was left to the Egyptian Administration.<sup>9</sup>

Israeli Occupation (1967 – 2005) Israel: On the 5<sup>th</sup> June 1967, war erupted, and within six days, Israel occupied the West Bank, including East Jerusalem and captured the Gaza Strip From Egypt, It was administered as part of Israeli-occupied territories until 2005.<sup>10</sup>

Palestinian Authority and Hamas (2005 – Present) Palestinian Authority (PA): After the Israeli withdrawal in 2005, Gaza came under the control of the Palestinian Authority.<sup>11</sup>

In 2007, The Gaza Strip has been controlled by Hamas, after winning the Palestinian legislative elections and defeating the Palestinian Authority forces. Since then, following the military takeover of Gaza by Hamas, the Israeli authorities significantly intensified existing movement restrictions, virtually isolating the Gaza Strip from the rest of the occupied Palestinian territory (oPt), and the world.

## 1.2-The reasons of Israel’s occupation of Gaza

### The Abraham Accords and Israel’s war on Gaza :

What is The Abraham accords and When were the Abraham Accords first signed?

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<sup>8</sup> ARIJ. (n.d.). 40 years of Israeli occupation: Introduction. ARIJ.org.  
<https://www.arij.org/atlas40/intro.html#:~:text=40%20Years%20Of%20Israeli%20Occupation&text=In%201516%2C%20the%20Ottoman%20Turks,of%20his%20son%20Ibrahim%20Pasha>

<sup>9</sup> ARIJ. (n.d.). 40 years of Israeli occupation: Introduction. ARIJ.org.  
<https://www.arij.org/atlas40/intro.html#:~:text=40%20Years%20Of%20Israeli%20Occupation&text=In%201516%2C%20the%20Ottoman%20Turks,of%20his%20son%20Ibrahim%20Pasha>

<sup>10</sup> Britannica. (n.d.). Israel's disengagement from Gaza. Britannica.com.  
<https://www.britannica.com/event/Israels-disengagement-from-Gaza>

<sup>11</sup> Btselem. (2007, July 24). Siege on Gaza. Btselem.org.  
[https://www.btselem.org/gaza\\_strip/20070724\\_siege\\_on\\_gaza](https://www.btselem.org/gaza_strip/20070724_siege_on_gaza)

The Abraham Accords refer to a series of agreements aimed at normalizing relations between Israel and several Arab nations. The Abraham Accords were signed for the first time on September 15, 2020, during a formal ceremony held at the White House in Washington, D.C., under the auspices of then-U.S. President Donald Trump. These accords supposed to represent a significant step in fostering peace and cooperation in the Middle East. It was the first peace agreements in decades, President Donald trump brought Israel, UAE, Bahrain, Sudan together, Trump's son-in-law and senior advisor, Jared Kushner, played a pivotal role in negotiating the deal.<sup>12</sup>

The United Arab Emirates (UAE) became the first Gulf Country to Normalize Relations with Israel, On August 13, 2020, the UAE announced it would normalize relations with Israel, becoming the first Gulf country to do so. The U.S. offered diplomatic incentives, security guarantees, and advanced arms sales (e.g., the F-35 fighter jets) to the UAE in exchange for normalization with Israel,<sup>13</sup>

Soon after the UAE, Bahrain also signed an agreement to normalize its ties with Israel on the same day. They have agreed to open an era of friendship and cooperation, widening the circle of peace, and enduring resolution of the Israeli-Palestinian conflict, The Kingdom of Bahrain and the State of Israel have agreed to seek agreements in the coming weeks regarding investment, tourism, direct flights, security, as well as reaching agreement on the reciprocal opening of embassies, In recognition of this appreciation,<sup>14</sup>

The third country to sign the Abraham Accords was Sudan. On October 23, 2020, Sudan and Israel agreed to normalize their relations as part of the broader Abraham Accords. As part of the deal, Sudan would be removed from the U.S. list of state sponsors of terrorism, which had been a major obstacle to Sudan's international relations. In exchange, Sudan agreed to normalize ties with Israel. He specifically mentioned that Saudi Arabia was expected to be one of those countries. However, Saudi Arabia has not formally joined the Abraham Accords as of now. While Saudi Arabia has not signed the agreements, it has played a significant, behind-the-scenes role in supporting and influencing the normalization efforts.<sup>15</sup>

In 2020, Morocco became the fourth Arab country to establish diplomatic relations with Israel, following the announcement of their intent to normalize ties on December 10, 2020. The official signing of the normalization agreement took place on December 22, 2020, in Rabat,. As part of the deal, the United States recognized Morocco's sovereignty over the disputed

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<sup>12</sup> Britannica. (n.d.). Abraham Accords. Britannica.com. <https://www.britannica.com/topic/Abraham-Accords>

<sup>13</sup> U.S. Department of State. (2020, September 15). Abraham Accords: UAE-Israel treaty signed. [https://www.state.gov/wp-content/uploads/2020/09/UAE\\_Israel-treaty-signed-FINAL-15-Sept-2020-508.pdf](https://www.state.gov/wp-content/uploads/2020/09/UAE_Israel-treaty-signed-FINAL-15-Sept-2020-508.pdf)

<sup>14</sup> U.S. Department of State. (2020, September 15). Bahrain-Israel normalization agreement signed. [https://www.state.gov/wp-content/uploads/2020/09/Bahrain\\_Israel-Agreement-signed-FINAL-15-Sept-2020-508.pdf](https://www.state.gov/wp-content/uploads/2020/09/Bahrain_Israel-Agreement-signed-FINAL-15-Sept-2020-508.pdf)

<sup>15</sup> Associated Press. (2020, October 23). Trump says Sudan to join in recognizing Israel [Video]. YouTube. <https://youtu.be/Fnh9VMFNJKQ>

Western Sahara region. However, similar to other normalization agreements, it faced significant criticism from Palestinian leaders, who regarded it as a betrayal of their cause.<sup>16</sup>

### 1.3- Palestinians Left out in the Cold

Despite the political dynamics between Arab nations, the Arab population most disparaged by the agreement is the Palestinians. While Saudi Arabia's foreign minister, Prince Faisal bin Farhan al-Saudi, claimed that Saudi Arabia will only normalize peace with Israel after Israelis and Palestinians make a "permanent and full peace deal," recent news suggests a softening of that stance<sup>17</sup>.

Palestinians certainly have a reason to fear that Saudi Arabia and Israel's relationship is warming, despite the absence of Palestinian-Israeli peace. Neglected by the Emiratis in their quests for arms, the Saudis in their desires for regional security, and the other Gulf states in their indifference to the Palestinian cause, the Palestinians and their pursuit of independence have been dealt yet another blow in the form of the Abraham Accords.

The accords are celebrated as a breakthrough in regional diplomacy but have faced criticism for potentially serving political agendas rather than addressing underlying issues, such as the Palestinian-Israeli conflict. Gaza, a narrow coastal strip with a population of over 2 million, has been at the heart of the Israeli-Palestinian conflict, it faces ongoing isolation, military conflicts, and severe humanitarian crises.<sup>18</sup>

Since 2007, Gaza has been under a land, air, and sea blockade by Israel and Egypt<sup>19</sup>, resulting in widespread poverty, unemployment exceeding 45%<sup>20</sup>, and crumbling infrastructure, including limited access to clean water, electricity, and healthcare. Repeated military conflicts, such as those in 2008-2009, 2012, 2014, 2021, and the most recent conflict, which started after 7<sup>th</sup> October 2023, have caused severe civilian casualties and extensive destruction. Gaza's political isolation is worsened by the international classification of Hamas as a terrorist

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<sup>16</sup> U.S. Department of State. (2020, December 22). Joint declaration: United States, Morocco, and Israel. <https://www.state.gov/wp-content/uploads/2021/01/Joint-Declaration-US-Morocco-Israel.pdf>

<sup>17</sup> Hendrix, S., Rubin, S., & Mekhennet, S. (2020, November 23). Israeli prime minister visits Saudi Arabia. The Washington Post. [https://www.washingtonpost.com/world/israeli-prime-minister-visits-saudi-arabia-meets-with-crown-prince-and-pompeo-say-local-media/2020/11/23/63f3cab4-2d5f-11eb-9dd6-2d0179981719\\_story.html](https://www.washingtonpost.com/world/israeli-prime-minister-visits-saudi-arabia-meets-with-crown-prince-and-pompeo-say-local-media/2020/11/23/63f3cab4-2d5f-11eb-9dd6-2d0179981719_story.html)

<sup>18</sup> Palestinian Center for Policy and Survey Research. (2020, September). Public Opinion Poll No. (77). <https://www.pcpsr.org/sites/default/files/Poll%2077%20English%20full%20text%20September2020.pdf>

<sup>19</sup> Associated Press. (2011, May 25). Egypt to reopen Gaza Strip crossing for first time since 2007. The Guardian. <https://www.theguardian.com/world/2011/may/25/egypt-to-reopen-gaza-strip-crossing>

<sup>20</sup> United Nations. (2012, April 3). Gaza unemployment reaches 45 per cent, says UNRWA. United Nations. <https://www.un.org/unispal/document/auto-insert-196386/>

organization, restricting aid and diplomacy, while divisions with the Palestinian Authority further weaken efforts for unity and governance.<sup>21</sup>

The Abraham Accords have been criticized by Palestinian leaders and factions, who see them as a betrayal of their cause. Historically, Arab nations had conditioned normalization with Israel on resolving the Palestinian issue and achieving a two-state solution as outlined in the Arab Peace Initiative (2002). Gaza continues to face a blockade by Israel and Egypt, and the accords did not address this issue or provide relief to the 2 million residents suffering from poverty, unemployment, and limited access to basic necessities.<sup>22</sup>

The normalization agreements coincided with increased military tensions between Gaza-based factions and Israel, as the accords were perceived as emboldening Israel's policies toward Palestinians. Palestinians fear that normalization with Israel, without addressing their rights, reduces the incentive for peace talks, as the accords ignore issues like statehood, the right of return, and settlement expansion. They also feel the accords break Arab unity, which once tied peace with Israel to resolving the Palestinian issue, reducing international pressure on Israel to follow international laws and UN resolutions.

Palestinian Authority President Mahmoud Abbas described the accords as a “stab in the back” and a departure from the Arab consensus. Hamas rejected the accords outright, labeling them as “treason” and a “free gift” to Israel that disregards Palestinian rights. Hamas stressed that such agreements would not bring peace or stability to the region but rather embolden Israel to expand settlements and continue its blockade of Gaza.<sup>23</sup>

In 1993, the Palestinian Authority was formed and became responsible for administering the West Bank and Gaza Strip under Israeli sovereignty. This situation encouraged the separation of Gaza, which came under Hamas rule. This state of affairs resulted from the despair of the Palestinian people, who saw no hope in fulfilling the promises they once hoped for through the Oslo Accords. The rise of right-wing extremism led by Netanyahu and Israel's withdrawal from the Oslo Accords contributed to the rejection of any prospect of a Palestinian state. The ongoing arbitrary arrests, the killing of Palestinian resistance youth, the expansion of settlements on Palestinian lands, and the recognition of Jerusalem as Israel's eternal capital all supported by the United States and several Different countries deepened the crisis.

This situation led to Hamas carrying out an operation in October 7<sup>th</sup> 2023 within the Israeli settlement areas, which were unlawfully built on Gaza's land. This provided Israel with a strong justification to invade Gaza under the pretext of rescuing Israeli hostages and destroying Hamas. Since then, tens of thousands, mostly women and children have been killed. Many people remain trapped under rubble or on roads, with rescue teams unable to reach them. The

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<sup>21</sup> U.S. Department of State. (n.d.). Foreign terrorist organizations. U.S. Department of State. <https://www.state.gov/foreign-terrorist-organizations/>

<sup>22</sup> Encyclopaedia Britannica. (2025, February 20). Arab Peace Initiative. <https://www.britannica.com/topic/Arab-Peace-Initiative>

<sup>23</sup>

destruction of homes, schools, universities, places of worship, hospitals, and Palestinian administrative buildings

Israel has continued its genocidal war on the Gaza Strip despite a United Nations Security Council resolution calling for an immediate ceasefire. Bringing international condemnation, with officials and institutions labeling the attacks and blocking of aid deliveries as a deliberate attempt to destroy a population.

In 21 November 2024, the International Criminal Court (ICC) Unanimously issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant for war crimes and crimes against humanity in Gaza. Israel also faces a genocide case at the International Court of Justice for its deadly war on Gaza.<sup>24</sup>

## **2- Attitude of Int'l Law & Humanitarian Law**

### **2.1- International Humanitarian Law and Prolonged Occupation**

Before assessing the legality of occupation under state responsibility and peremptory norms, an IHL-centered discussion is necessary. The distinction between prolonged and temporary occupation should not be seen as legally significant, despite its role in shaping various criteria.

#### **Fundamental Tenets of Occupation Law**

Occupation law, derived from both conventional and customary IHL, applies in full regardless of the occupation's legality or the force used to establish it. The debate over prolonged occupation has created unnecessary complexities, particularly regarding the scope of an occupying power's duties and responsibilities. It is pertinent to affirm that IHL/occupation law continues to apply in its entirety.

The main part of occupation law is found in the 1907 Hague Regulations (HRs),<sup>25</sup> the Fourth Geneva Convention (GC4),<sup>52</sup> Additional Protocol I to the four Geneva Conventions (API),<sup>53</sup> and drawing from these instruments customary IHL.<sup>26</sup> The 1907 HRs obligate the OP to 'take all the measures in his power to Restore, and ensure, as far as possible, public order and safety, while respecting, Unless absolutely prevented, the laws in force in the country'.<sup>27</sup> The OP

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<sup>24</sup> > "I would like to acknowledge that the ideas and materials used in this paper are the result of my own work, with guidance and support provided by my supervisor, [Dr. Ibrahim Ahmed Abed]."

<sup>25</sup> Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277) [1907 Hague Regulations]. Many Hague Regulations provisions are reflective of customary IHL.

<sup>26</sup> For the ICRC's study on customary IHL rules and practice, see ICRC, IHL Database: Customary IHL, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>.

<sup>27</sup> 1907 Hague Regulations, art. 43.

cannot act as sovereign. Relatedly, the HRs stipulate certain prohibitions against various types of irreversible changes (physical and otherwise) in occupied territories. With respect to property (both public and private), the ICRC summarizes the rules as follows:

In occupied territory:

- (a) movable public property that can be used for military operations may be confiscated;
- (b) immovable public property must be administered according to the rule of usufruct;
- and (c) private property must be respected and may not be confiscated; except where destruction or seizure of such property is required by imperative military necessity.<sup>28</sup>
- (b) The OP cannot transfer its own civilian population into occupied territory<sup>29</sup>
- (c) and is Prohibited from collective or individual forced transfers out of and within the Occupied territory.<sup>30</sup> Moreover, the HRs provide that '[f]amily honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected'.<sup>31</sup>
- (d) A variation of this particular provision is found in the GC4, stipulating that '[p]rotected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and Practices, and their manners and customs'.<sup>32</sup>
- (e) Under IHL, occupations are envisioned To be of a temporary nature and cannot transfer any sovereign rights in the territory to the OP. Most importantly, regardless of what the OP attempts to do with the Occupied territory, occupation law continues to apply.<sup>33</sup>
- (f) Protected Persons in occupied territory cannot renounce the rights they are guaranteed by GC4.<sup>34</sup>

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<sup>28</sup> ICRC, IHL Database, Customary IHL, 'Rule 51. Public and Private Property in Occupied Territory'. On movable public property, see 1907 Hague Regulations, art. 53. On immovable public property, see 1907 Hague Regulations, art. 55. On private property, see 1907 Hague Regulations, art. 46 (and the exceptions and limits in arts. 52 & 53.)

<sup>29</sup> Ibid, 'Rule 130. Transfer of Own Civilian Population into Occupied Territory' (i.e. settlements). This is drawn from the 1949 GC4 art. 49 para. 6 and identified as a 'grave breach' in 1977 AP1 art. 85(4)(a).

<sup>30</sup> Ibid, 'Rule 129. The Act of Displacement'. This is drawn from the 1949 GC4 art. 49 para. 1 and also identified

as a 'grave breach' in both 1949 GC4 art. 147 and 1977 AP1 art. 85(4)(a).

<sup>31</sup> 1907 Hague Regulations, art. 46.

<sup>32</sup> 1977 GC4 art. 27, para. 1

<sup>33</sup> 1949 GC4 art. 47; Jean S. Pictet, Commentary: The Geneva Convention Relative to the Protection of Civilian Persons in the

Times of War (ICRC, 1958) 275; ICRC, 'Expert Meeting: Occupation and Other Forms of Administration of Occupied Territory' (March 2012), <https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>

<sup>34</sup> GC4 art. 4; John Cerone, 'Expert Opinion on the Non-Renunciation of Rights Under International Humanitarian Law' Norwegian Refugee Council (June 2017), <https://www.nrc.no/globalassets/pdf/legal-opinions/cerone.pdf>.

The OP cannot not curtail its IHL obligations, even in the event of annexation. These rules inspired the IHL parts of the abovementioned assessments that group together what would ordinarily constitute singular IHL violations to determine an occupation's Legality. A doctrinal evaluation of these rules is required to assess whether an OP is Meeting its IHL obligations. Due to the prominence of duration in debates, attention should be given to Terms of art denoting duration. These terms are drawn across all three UN reports. While prolonged occupations are not explicitly prohibited by IHL, several of its rules imply that occupations are meant to be temporary or short-term.<sup>35</sup>

It has been argued for the international community 'to Promulgate clear time limitations for the duration of an occupation, thereby offering A solution to the problem identified in, but not resolved by, Article 6 of the Fourth Geneva Convention'.<sup>36</sup>

However, the better approach would be an assessment as to Whether the occupation is 'unlawfully prolonged' by assessing whether the OP 'seeks To permanent transform the international status, government or demographic Character of a foreign territory'.<sup>37</sup>

## **2.2- Assessing the Legality of Occupations, including for Serious Breaches of Peremptory Norms**

Pertinent analysis that has been largely overlooked is whether occupation gives rise To serious breaches of peremptory norms such as the prohibitions on annexation, the denial of the right to self-determination of peoples, racial discrimination, apartheid, as well as other norms. Other than Emesis and, to a lesser extent, some others, the abovementioned debates have not undertaken such an analysis.

### Identifying the Peremptory Norms :

It is first necessary to identify the peremptory norm, assess whether a serious breach has occurred, and then determine the legal consequences for the occupying state, as well as for third states and other actors. In the case of the oPt/State of Palestine, there are four peremptory norms are of particular concern: annexation, denial of the right to self-determination, racial discrimination, and apartheid with the possibility of others Peremptory norms (jus cogens) occupy the highest rank in the hierarchy of international law. Here, we focus on those peremptory norms that create era omnes obligations.<sup>38</sup>

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<sup>35</sup> ICRC Expert Meeting (2012), at 36 (including 'prohibition of populations transfers, prohibition against requiring allegiance to the occupant, limitation on the use of the resources of the occupied territory').

<sup>36</sup> Naftali et al (2005) 613; 1949 GC4 art. 6; 1977 AP1 art. 3(b); Scobbie (2015) (that art. 6 'did not survive the adoption of [1977 AP1 art. 3(b)]').

Azarova (2017).

<sup>37</sup> Azarova (2017).

<sup>38</sup> Emesis (2020), 1071-1081; Albanese (2022), paras. 10(a)-(b); Wilde (2022a); Wilde (2022b).

**Annexation** is explicitly prohibited under international law, including under Article 2(4) of the UN Charter's prohibition on the use of force and the general principles of international law, such as the principle of territorial integrity and the principle of non-intervention. The illegality of annexation has been reaffirmed by numerous UN organs. Under *jus ad bellum* (The right to war), the use of force by a state is only lawful in self-defense as authorized by the UN Security Council and as a measure of last resort. However, the mere use of force does not automatically equate to annexation, annexation may occur either through direct military action or through indirect measures, such as the establishment of settlements, the imposition of laws and regulations, or the granting of citizenship to residents of the occupied territory. Annexation is considered null and void under international law, and states that engage in annexation may face sanctions or other legal repercussions.<sup>39</sup>

Under International humanitarian law (IHL) governs the conduct of **occupation**, occupations are not identified as 'lawful' nor 'unlawful' in line With the 'strict separation of *jus in Bello*(the law governing conduct during war) From *jus ad bellum* (the law governing the resort to force). and, as such, international law does not differentiate between a lawful and unlawful occupant when imposing obligations on the occupying power regarding its treatment of the occupied population. However, breaches of peremptory norms by the occupying state—such as through annexation, denial of self-determination, racial discrimination, or apartheid—trigger legal consequences under state responsibility doctrines..<sup>40</sup>

The right to self-determination is a cornerstone of international law, enshrined in Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). It is recognized as essential for the effective protection and realization of individual human rights<sup>41</sup>

The principle of equal rights and self-determination of peoples guarantees the right of all peoples to freely determine their political status and pursue their economic, social, and cultural development without external interference. This principle also imposes a duty on all States to respect this right, in accordance with the provisions of the UN Charter.<sup>42</sup>

**The right to self-determination** can be implemented through various means, including the establishment of a sovereign and independent State, free association or integration with an independent State, or any other political status freely determined by a people.<sup>43</sup>

**Racial discrimination** is defined and prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The ICERD prohibits discrimination on grounds of race and terms akin to it such as Color, descent, and national or

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<sup>39</sup> UN Charter, art. 2(4).

<sup>40</sup> Ferraro (2012), at 135.

<sup>41</sup> UN Human Rights Commission, 'General Comment 12: Article 1 (The Right to Self-determination of Peoples)' UN Doc. HRI/GEN/1/Rev.9, (1984), para. 1.

<sup>42</sup> UNGA Res. 2625 (XXV).

<sup>43</sup> Ibid.

ethnic origin. ICERD state parties are obligated to condemn and eradicate all practices of racial segregation and apartheid within their jurisdictions.<sup>44</sup>

The International Convention on the Suppression and Punishment of the Crime of **Apartheid**, while distinct from ICERD, further clarifies the concept of apartheid. It categorizes apartheid as a crime against humanity, emphasizing its distinct nature as a system of institutionalized racial discrimination aimed at establishing and maintaining racial domination by one group over another. This convention focuses on the outcomes of such discriminatory practices, highlighting the establishment and maintenance of racial power structures.<sup>45</sup>

IHL rules are inspired by preemptory norms, reflecting the challenges of their time (post-World Wars Geneva Conventions and the anticolonial anti-imperial Additional Protocols). IHL rules prohibit annexation by, for example, prohibiting demographic changes and the unlawful appropriation of property for settlements.<sup>46</sup> The OP continues to be bound by conventional and customary IHL, which continue to apply regardless of the unlawful situation.<sup>47</sup> Certain IHL rules are also meant to prevent discrimination based on race and other similar distinctions, whether through general provisions,<sup>48</sup> the prohibition on settlements,<sup>49</sup> or others.<sup>50</sup> Similar protections were included in API,<sup>51</sup> wherein policies and practices of racial discrimination and apartheid were included as grave breaches.<sup>52</sup> API also integrated language pertinent to self-determination with respect to anti-colonial struggles.<sup>53</sup>

The International Court of Justice (ICJ) and the International Law Commission (ILC) recognize the prohibition of annexation,<sup>54</sup> the denial of the right to self-determination,<sup>55</sup> racial discrimination, and apartheid,<sup>56</sup> as peremptory norms. These norms create obligations *erga omnes*, meaning they are owed to the international community as a whole.<sup>57</sup>

It's important to note that racial discrimination and apartheid can also be "composite acts," a series of actions or omissions that constitute a wrongful act under international law.<sup>58</sup> Such a breach begins with the first action or omission and continues as long as the actions persist.<sup>59</sup>

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<sup>44</sup> ICERD, art. 3.

<sup>45</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243, art. 2.

<sup>46</sup> Bothe (2017) 4-5

<sup>47</sup> 1949 GC4, art. 47; Pictet (1958) 275; Sassoli (2015) 1406; Bothe (2017) 5.

<sup>48</sup> 1949 GC4, arts. 3, 13 & 27; Pictet (1958) 119, 206-207

<sup>49</sup> 1949 GC4, art. 49, para. 6; Pictet (1958) 283.

<sup>50</sup> 1949 GC4, arts. 64 & 66; Pictet (1958) 335 & 340.

<sup>51</sup> 1977 API, arts. 9(1) & art. 75.

<sup>52</sup> 1977 API, art. 85(4)(c).

<sup>53</sup> 1977 API, art. 1(4);

<sup>54</sup> ARSIWA ILC Commentaries, 98, 112 n.640 & n.644, 114-115 (including aggression, which annexation falls under).

<sup>55</sup> *Ibid.*, 85, 111, 112 n.641, 113, 113 n.651, 114, 120, 127.

<sup>56</sup> *Ibid.*, 33, 62-63, 85, 112, 112 n.640, 113 fn 651.

<sup>57</sup> ILC Peremptory Norms, 89. Annexation is not mentioned, but is considered as falling under the prohibition on aggression. See, generally, ARSIWA ILC Commentaries.

<sup>58</sup> ARSIWA ILC Commentaries, 62 (on art. 15).

<sup>59</sup> *Ibid.*

### 2.3- Legal Consequences for Internationally Wrongful Acts, including Serious Breaches of Peremptory Norms

The legal framework governing state responsibility provides a clear set of consequences for offending states and third for internationally wrongful acts, including those that constitute serious breaches of peremptory norms (*jus cogens*). Unlike the rules governing International Humanitarian Law (IHL), the rules on state responsibility establish more specific and stringent obligations for third states in response to such unlawful acts, particularly those involving serious breaches of peremptory norms.<sup>60</sup>

When a state commits a serious breach of peremptory norms<sup>61</sup>, the resulting unlawful situation triggers a set of obligations for third states. These obligations are known as *\*erga omnes\** obligations, third states are obligated to:

**Non-recognition:** Third states must refrain from recognizing the legality of the act or its consequences.

**Non-aid or assistance:** Third states must not provide any form of aid or assistance to the state responsible for the serious breach.

**Cooperation:** Third states must cooperate to bring the unlawful situation to an end through lawful means.<sup>62</sup>

Third states are obligated not to recognize, nor aid or assist, annexation<sup>63</sup>. They have a collective obligation of non-recognition to situations of ‘attempted acquisition of sovereignty over territory through the denial of the right of self-determination of people’, which ‘not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition’.

#### **Third states can invoke responsibility of the offending state only if:**

(1) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or

(2) the obligation breached is owed to the international community as a whole<sup>64</sup>.

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<sup>62</sup> ARSIWA art. 41; Crawford (2013) 380. See, generally, Martin Dawidowicz, ‘The Obligation of Non Recognition of an Unlawful Situation’ in James Crawford, Alain Pellet & Simon Olleson (eds.), *The Law of International Responsibility* (OUP, 2010) 677;

<sup>63</sup> ARSIWA ILC Commentaries, at 114 (as in the case of Kuwait and with reference to the Friendly Relations Declaration).

<sup>64</sup> ARSIWA, art. 48(1).

### **They can then claim from the offending state:**

- (1) cessation of the ... act, and assurances and guarantees of non-repetition ... ; and
- (2) performance of the obligation of reparation ... in the interest of the injured State ...<sup>65</sup>

. If the internationally wrongful act amounts to a serious breach of a peremptory norm, the obligations of non-repetition, non-aid and assistance, and the obligation to cooperate are demanded. As for the offending state, they are required to cease the act (if continuing)<sup>66</sup>, offer assurances and guarantees of non-repetition<sup>67</sup>, and make full reparation<sup>68</sup>.

## **2.4- The Situation in the Occupied Palestinian Territories**

Palestine, in this context, refers to the oPt/State of Palestine, the part of historic Palestine occupied by Israel in 1967. This section provides a summary of the occupation-to-annexation shift, while also covering more recent findings on serious breaches of peremptory norms in Palestine.<sup>69</sup>

### **Occupation-to-Annexation in Palestine**

International law does not distinguish between different forms of annexation—whether officially declared by law (de jure) or carried out in practice without an official declaration (de facto), both are illegal.<sup>70</sup> The distinction between de jure and de facto annexation has become a dominant topic of discussion, particularly since the ICJ Wall advisory opinion, even within civil society<sup>71</sup>. However, this distinction is not legally relevant.<sup>72</sup> Findings of de facto annexation are not actually annexations in the true sense of the word. This idea is confusing and doesn't make sense legally.<sup>73</sup>

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<sup>65</sup> Ibid, art. 48(2).

<sup>66</sup> Ibid, art. 30(a).

<sup>67</sup> Ibid, art. 30(b).

<sup>68</sup> Ibid, art. 31.

<sup>69</sup> Of course, as mentioned, there are also several other situations of prolonged occupation. It would be beyond the scope of this paper to give these situations proper discussion. However, in light of the request of an ICJ Advisory opinion, it is an opportune time for practitioners and scholars – particularly from those states suffering from prolonged occupation – to apply this analysis (and others) to their situations.

<sup>70</sup> Omar Dajani, 'Israel's Creeping Annexation' (2017) 111 AJIL Unbound 51-56.

<sup>71</sup> See the language in ICJ Wall Advisory Opinion, paras. 74-78.

<sup>72</sup> Imseis (2020), 1073 ('The question of whether or not occupied territory may be considered annexed is a factual one not requiring formal declarations of annexation to be satisfied under international law').

<sup>73</sup> As shared with me by Luigi Daniele, 'it has ended up normalizing the abyss between facts and legal

Israel's annexation of East Jerusalem in 1967 is a significant event that marked a shift from occupation to annexation in Palestine. Immediately after occupying the Gaza Strip and the West Bank, including East Jerusalem, Israel unilaterally annexed approximately 70 square kilometers of the West Bank, which it declared as 'East Jerusalem,' into its municipal borders<sup>74</sup>. This was further solidified in 1980 through the "Basic Law: Jerusalem as Capital of Israel," where the Israeli Knesset extended Israeli domestic law to the entire city of Jerusalem. It is important to note that the international community has never recognized Israel's annexation of East Jerusalem.<sup>75</sup>

Throughout its occupation of the Palestinian territories, Israel has consistently denied the applicability of the Fourth Geneva Convention, instead adopting a selective or "pick and choose" approach to the rules of international humanitarian law (IHL). The Israeli Supreme Court, sitting as the High Court of Justice in the occupied Palestinian territory (oPt), has endorsed this approach in a manner described as draconian.<sup>76</sup>

Successive Israeli governments have articulated long-term objectives regarding the West Bank, with a particularly focus on Area C.<sup>77</sup> For instance, a draft plan recently circulated proposes the transfer of authority from the Israeli Civil Administration, which governs the occupied Palestinian territories (oPt), to Israeli civilians. Over time, annexation has transpired in a calculated, incremental, and sometimes chaotic manner. While a formal legal instrument or unilateral declaration regarding annexation remains a formality, there is ample evidence in the form of bills and laws demonstrating Israel's overarching goals. These include the formal annexation of East Jerusalem, military zone designations, settlement expansion, national park declarations, land expropriation under claims of "State land,". Restrictions on Palestinian movement, and the division of the West Bank into Areas A, B, and C under the Oslo Accords.<sup>78</sup> The construction of the separation Wall further reinforces territorial fragmentation. These policies collectively demonstrate Israel's broader annexationist objectives.<sup>79</sup>

The occupation-to-annexation threshold has been crossed long ago with East Jerusalem and into the remainder of the West Bank. In such circumstances, the situation of occupation does not cease, nor does the application of occupation law. The international community has rejected annexation, but how they have reacted as third states is a different matter altogether. Yet, the

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<sup>74</sup> 161 UNSC Res. 242, 1(i) (22 November 1967).

<sup>75</sup> 162 The former US Trump administration recognized Jerusalem as capital of Israel, although not clearly stating what part(s) of Jerusalem. 'Statement by President Trump on Jerusalem', White House (6 December 2017), <https://www.whitehouse.gov/briefings-statements/statement-president-trump-jerusalem/>. This did not change under Joe Biden's presidency.

<sup>76</sup> 163 Theodor Meron, 'The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary Of the Six-Day War' (2017) 111:2 American Journal of International Law 357 (2017); Israel Ministry of Foreign Affairs, 'Is the West Bank 'Occupied' or 'Disputed' Territory,' [https://www.gov.il/en/departments/ministry\\_of\\_foreign\\_affairs/govil-landing-page#Settlements1](https://www.gov.il/en/departments/ministry_of_foreign_affairs/govil-landing-page#Settlements1)

‘facts on the ground’ are clear. Israel has, through various means and measures, annexed the oPt, in whole or in parts, and, as such, committed a serious breach of that peremptory norm. Further, these means and measures have also led to other serious breaches, including, amongst possible others, the denial of the right to self-determination, and the prohibition of racial discrimination and apartheid.

### **3- Genocide Crime in Gaza**

#### **3.1- Public Statement: Scholars Warn of Genocide in Gaza**

Israel’s current military offensive on the Gaza Strip since 7<sup>th</sup> October 2023, is unprecedented in scale and severity, and consequently in its ramifications for the population of Gaza. Following the incursion by Palestinian armed groups on 7 October 2023, the Gaza Strip has been subjected to incessant and indiscriminate bombardment by Israeli forces. “Between the 7<sup>th</sup> of October, 2023, and the 28<sup>th</sup> of March, 2025.”<sup>80</sup>, there have been 50,208 Palestinians killed and 113,119 Palestinians injured in Israeli attacks on Gaza, Authorities in Gaza have updated the death toll from Israel’s war on the enclave to 61,709, including 17,881 children, having added thousands who are missing and now presumed dead.

The head of the Gaza Government Information Office told a news conference that the bodies of 76 percent of the Palestinians killed in the conflict have been recovered and brought to medical centers. However, at least 14,222 people are still believed to be trapped under the rubble or in areas inaccessible to rescuers.<sup>81</sup> Huge swathes of neighborhoods and entire families across Gaza have been obliterated. On March 18, 2025, Israeli Prime Minister Benjamin Netanyahu announced the resumption of large-scale military operations in Gaza, ending a fragile ceasefire that had been in place since January 19, 2025. The breaking of the ceasefire represents a dangerous escalation of an already illegal and potentially genocidal siege, leading to a destructive assault that could result in further suffering and loss of life. This action threatens to repeat the horrors of the past, with devastating consequences for the civilian population.<sup>82</sup>

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<sup>80</sup> Gaza Health Ministry. (2025, March 28). Death toll update in Gaza Strip.

<sup>81</sup> Al Jazeera. (2025, February 3). <https://www.aljazeera.com/news/2025/2/3/gaza-death-toll-rises-close-to-62000-as-missing-added>

<sup>82</sup> Al Jazeera. (2025, March 18). Al Jazeera. <https://www.aljazeera.com/news/2025/3/18/israel-launches-gaza-assault-killing-hundreds-and-shattering-ceasefire>

Knowing that this would be practically impossible for many. Palestinians who did start to evacuate south reported that civilians and ambulances were targeted and hit by Israeli airstrikes on the designated “safe route”, killing at least 70 Palestinians who were fleeing to seek refuge. The International Committee of the Red Cross (ICRC) explicitly stated that such actions contravene (Violating) international humanitarian law.<sup>83</sup>

There has also been an escalation of violence, arrests, expulsions, and destruction of whole Palestinian communities in the occupied West Bank and Jerusalem. Since 7th October, Israeli settlers, with the backing (emboldened by the support) of the army and police, have attacked and shot Palestinian civilians at point-blank range (as documented in the villages of a-Tuwani and Qusra), have invaded their homes and assaulted residents. A number of Palestinian communities have already been forced to abandon their homes, after which settlers arrived and destroyed their property. Between 7 – 15 October 2023, Al-Haq documented the killing by Israeli military and settlers of 55 Palestinians in the West Bank, and the injury of 1,200 Palestinians there. These acts of violence represent a grave violation of international law and a clear escalation of the conflict.<sup>84</sup>

### 3.2- Indicators of Genocidal Intent in Israeli Statements

Israeli officials’ statements since 7<sup>th</sup> October 2023 suggest a potential genocidal intent behind the ongoing attacks on the Gaza Strip. Language used by Israeli political and military figures appears to reproduce rhetoric and tropes associated with genocide and incitement to genocide. Dehumanizing descriptions of Palestinians have been prevalent. Israeli Defense Minister Yoav Gallant declared on 9 October that “we are fighting human animals and we act accordingly”<sup>85</sup>. He subsequently announced that Israel was moving to “a full-scale response” and that he had “removed every restriction” on Israeli forces, as well as stating: “Gaza won’t return to what it was before. We will eliminate everything.” On 10<sup>th</sup> October 2023, the head of the Israeli army’s Coordinator of Government Activities in the Territories (COGAT), Maj. Gen. Ghassan Alian, addressed a message directly to Gaza residents: “Human animals must be treated as such. There will be no electricity and no water, there will only be destruction. You wanted hell, you will get hell”<sup>86</sup>. The same day, Israeli army spokesperson Daniel Hagari

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<sup>83</sup> International Committee of the Red Cross [ICRC]. (2023, October 13). The horrific attacks in Israel cannot justify the limitless destruction of Gaza... [Post]. X. <https://x.com/ICRC/status/1712848835196719140>

<sup>84</sup> World Health Organization [@WHO]. (2023, October 13). The order to evacuate 22 hospitals treating more than 2,000 inpatients in northern Gaza is a death sentence for the sick and injured. We call for the immediate reversal of evacuation orders to protect health and reduce suffering. [Post]. X. <https://x.com/WHO/status/1713277138437038573>

<sup>85</sup> HuffPost. (2023, October 24). <https://bit.ly/3ZOdkfz>

<sup>86</sup> Times of Israel, October 2023, [https://www.timesofisrael.com/liveblog\\_entry/cogat-chief-addresses-gazans-you-wanted-hell-you-will-get-hell/](https://www.timesofisrael.com/liveblog_entry/cogat-chief-addresses-gazans-you-wanted-hell-you-will-get-hell/).

acknowledged the wanton and intentionally destructive nature of Israel’s bombing campaign in Gaza: “The emphasis is on damage and not on accuracy.”<sup>87</sup>

Since 2007, Israel has defined the (Gaza Strip) as a whole as an “enemy entity”<sup>88</sup>. On 7 October, Prime Minister of Israel Benjamin Netanyahu said that Gazans would pay an “immense price” for the actions of Hamas fighters. He explicitly rejected the notion that civilians are unaware or uninvolved, stating, “It is an entire nation out there that is responsible. It is not true this rhetoric about civilians not being aware, or not involved. It’s absolutely not true.”<sup>89</sup>. Israeli Minister of Energy and Infrastructure Israel Katz who added: “All the civilian population in Gaza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world.” These statements clearly indicate a policy of collective punishment and disregard for the safety of the civilian population.<sup>90</sup>

The Israeli public discourse surrounding the conflict in Gaza has shown signs of incitement to genocide.<sup>91</sup>. On national television, security correspondent Alon Ben David reporting on the Israeli military’s plan to destroy Gaza City, Jabaliyya, Beit Lahiya, and Beit Hanun. And Israeli Minister of Finance Bezalel Smotrich called Palestinians “repugnant”, “disgusting” and called for “wiping out” the entire Palestinian village of Huwara in the West Bank. Public statements in Israel, particularly from figures of authority, raises serious concerns about the potential for escalation and the need for international scrutiny to prevent further harm to the Palestinian population<sup>92</sup>.

### **3.3 - From Nakba to Now: Genocidal Evidence and International Recognition**

On 12<sup>th</sup> October 2023, a group of United Nations Special Rapporteurs condemned<sup>93</sup> “Israel’s indiscriminate military attacks against the Palestinian people of Gaza, a population over 2.3 million people, nearly half of whom are children. They have lived under unlawful blockade for 16 years, and already gone through five major brutal wars, which remain unaccounted for”.

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<sup>87</sup> Common Dreams. (2023, October 31). <https://www.commondreams.org/news/israel-gaza-bombing>

<sup>88</sup> Tran, M., & agencies. (2007, September 19). The Guardian. <https://www.theguardian.com/world/2007/sep/19/usa.israel1>

<sup>89</sup> Blumenthal, P. (2023, October 13). HuffPost. [https://www.huffpost.com/entry/israel-gaza-isaac-herzog\\_n\\_65295ee8e4b03ea0c004e2a8](https://www.huffpost.com/entry/israel-gaza-isaac-herzog_n_65295ee8e4b03ea0c004e2a8)

<sup>92</sup> I24NEWS. (2023, March 1). <https://www.i24news.tv/en/news/middle-east/palestinian-territories/1677684228-palestinian-village-huwara-should-be-wiped-out-by-israel-says-smotrich>

<sup>93</sup> United Nations Human Rights Office. (2023, October 12). <https://www.ohchr.org/en/press-releases/2023/10/israeloccupied-palestinian-territory-un-experts-deplore-attacks-civilians>

The UN experts warned against Israel’s blockade of Gaza, “which is denying essential supplies such as food, water, electricity and medicines. Such actions will precipitate a severe humanitarian crisis in Gaza, where its population is now at inescapable risk of starvation. Intentional starvation is a crime against humanity”. On 14<sup>th</sup> October 2023, The UN Special Rapporteur on the situation of human rights in the occupied Palestinian territory has also warned against a repeat of “Nakba” (catastrophe) on a larger scale, comparing the situation to the displacement of Palestinians in 1948 and 1967. <sup>94</sup>

The Palestinian people constitute ” national group for the purposes of the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention).The UN recognizes Palestinians as a protected group under the Genocide Convention. The targeting of Palestinians in Gaza because of their identity. The Palestinian population of Gaza appears to be presently subjected by the Israeli forces and authorities to widespread killing, bodily and mental harm, and unviable conditions of life – against a backdrop of Israeli statements which evidence signs of intent to physically destroy the population.

Article II of the Genocide Convention provides that “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.” <sup>95</sup>

Article I of the Convention on the Prevention and Punishment of the Crime of Genocide states that : “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.” <sup>96</sup>

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<sup>94</sup> United Nations Human Rights Office. (2023, October 14). <https://www.ohchr.org/en/press-releases/2023/10/un-expert-warns-new-instance-mass-ethnic-cleansing-palestinians-calls>

<sup>95</sup> United Nations. (1948). Convention on the Prevention and Punishment of the Crime of Genocide, Article 2. <https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948/article-2>

<sup>96</sup> United Nations. (1948). Convention on the Prevention and Punishment of the Crime of Genocide, Article 1. <https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948/article-1>

The International Court of Justice has clarified that a state's obligation to prevent genocide, and the corresponding duty to act, arises as soon as the state learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, Once a state has knowledge of this risk, it is obligated to take action to deter those suspected of planning genocide, using any available means that could prevent the crime.

All states should immediately act under Article VIII, and should call upon the competent organs of the United Nations, particularly the United Nations General Assembly (UNGA), to take urgent action under the Charter of the United Nations appropriate for the prevention and suppression of acts of Genocide. We note specifically the role of the General Assembly here, given that the Security Council is compromised by the United States and the United Kingdom (both permanent veto-holding members) sending military forces to the eastern Mediterranean in support of Israel.

We recall that in 1982, the General Assembly (GA) condemned the massacre of Palestinian civilians in the Sabra and Shatila refugee camps as an act of (Genocide) . We note also that the State of Palestine is entitled to initiate proceedings before the International Court of Justice (ICJ) under Article IX of the Genocide Convention to prevent further genocidal acts.<sup>97</sup>

Finally, we call on all relevant UN bodies, such as the Office on Genocide Prevention and the Responsibility to Protect, as well as the Office of the Prosecutor of the International Criminal Court (ICC), to intervene immediately, These bodies should conduct necessary investigations and initiate appropriate warning procedures to protect the Palestinian population from genocide.

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<sup>97</sup> United Nations General Assembly. (1982, December 16). The United Nations Digital Library. <https://digitallibrary.un.org/record/605931>

## **4- Prisons Violation in Gaza**

### **4.1- The Israeli Prison System is a systematic network of torture camps and human rights violations**

Since the horrific Hamas-led attack on southern Israel on 7<sup>th</sup> October 2023, we have been hearing everyday of more and more crimes and atrocities, Tens of thousands of civilians killed, the destruction of entire neighborhoods, over a million people turned refugees in one fell swoop, civilians were seized (taken hostage) and held as bargaining chips. The situation in the West Bank, marked by escalating violence from Israeli settlers, forced displacement of Palestinians, and increasing violence by Israeli armed forces. Countless human-made tragedies that the mind cannot countenance and the heart cannot contain. Amid this tragic reality, state mechanisms are undergoing terrifying systemic transformation, in a cynical exploitation of the loss, fear and vengefulness sweeping the country.

This report concerns the treatment of Palestinian prisoners and the inhuman conditions they have been subjected to in Israeli prisons since 7 October. B'Tselem collected testimonies from 55 Palestinians incarcerated in Israeli prisons and detention facilities during this time (some of which we have provided as part of our research). Thirty of the witnesses are residents of the West Bank, including East Jerusalem; 21 are residents of the Gaza Strip; and four are Israeli citizens. They spoke with B'Tselem after they were released from detention, the overwhelming majority of them without being tried. Their testimonies uncover a systemic, institutional policy focused on the continual abuse and torture of all Palestinian prisoners. This includes frequent acts of severe, arbitrary violence; sexual assault; humiliation and degradation; deliberate starvation; forced unhygienic conditions; sleep deprivation; prohibition on, and punitive measures for, religious worship; confiscation of all communal and personal belongings; and denial of adequate medical treatment. These descriptions appear time and again in the testimonies, in horrifying detail and with chilling similarities. The prisoners' testimonies lay bare the outcomes of a rushed process in which more than a dozen Israeli prison facilities, both military and civilian, were converted into a network of camps dedicated to the abuse of inmates. Such spaces, in which every inmate is intentionally condemned to severe, relentless pain and suffering, operate in fact as torture camps.<sup>98</sup>

Over the years, Israel has incarcerated hundreds of thousands of Palestinians in prisons, which have always served, above all, as a tool for oppressing and dominating the Palestinian population. The stories presented in this report are the story of thousands of Palestinians, residents of the Occupied Territories and citizens of Israel, who have been arrested since the beginning of the war, as well as Palestinians already in prison on 7 October, who experienced the massive increase in hostility from prison authorities since that day. And Thousands of Palestinians are detained without trial.

The circumstances and pretexts for arrest varied. Among the prisoners, both male and female, are physicians, academics, lawyers, students, children and political leaders. Some were jailed simply for expressing sympathy for the suffering of Palestinians. Some were imprisoned over suspicions, substantiated or not, The only thing they have in common is being Palestinian. These People found themselves on their way to detention, handcuffed and blindfolded, For an unknown period of time, Since the war started, at least 60 Palestinian prisoners have died in Israeli custody, 48 of them were from the Gaza Strip. Some perished in detention camps, while others died on their way, likely due to extreme Violence at the hands of soldiers transporting them from the Gaza Strip to Israel.<sup>12</sup> Another 12 deaths are suspected to involve abuse and denial of medical care. Their systematic abuse, are a gross violation of multiple norms and obligations under Israeli law, international human rights law, the rules of war and international humanitarian law. Equally important, Israel's actions have trampled basic morality underfoot, along with the most protected human rights of those held in state custody. Many thousands of Palestinians are held behind bars, most without trial, and all in Inhuman conditions.<sup>99</sup>

#### **4.2- Prison protocols**

As soon as the war broke out, the IPS declared a new “lockdown” policy designed to reduce the movement of Palestinian prisoners to a minimum and cut them off From the outside world as much as possible<sup>100</sup>. From 7 October 2023 to early April 2025, Israel arrested thousands of Palestinians in the Gaza Strip, the West Bank and inside Israel. While just before the war, the total number of Palestinians in Israeli prisons was 5,192, in April 2025 it had climbed to 9,792. Israeli prisons were overcrowded even before 7 October.

With Palestinian prisoners held in cramped conditions. The surge in the number of inmates made matters worse, producing inhuman conditions in prison cells pushed beyond capacity, where many prisoners were forced to sleep on the floor. “Routine life” was abruptly disrupted, and minimal living conditions provided to the prisoners Until then were scaled back until they were effectively denied.<sup>101</sup>

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<sup>101</sup> See Temporary Order – “Reduced Routine Operations During War,” dated 16 October 2023 (extended Periodically since). Prison conditions, including movement of Palestinian detainees, were scaled back to a minimum, such that prisoners are allowed out of their cells only for showering rather than throughout the day; they Have no access to the canteen; all personal belongings have been confiscated; access to radio and television Has been denied, and lights remain off through most of the day.

The testimonies reflect these drastic changes:

- A. Overpopulation and crowding in cells**
- B. No sunlight and no air to breathe**
- C. Roll call and cell searches**
- D. Denying access to and contact with the outside world**
- E. Restrictions on religious worship**
- F. Confiscation of personal possessions**
- G. Living in darkness**

### **Physical and psychological abuse**

The prohibition on torture in international law

The prohibition on torture is one of the cornerstones of international law. Unlike other accepted norms in this legal field, the prohibition on torture is absolute,<sup>102</sup> and no state may derogate from it or suspend it in times of peace, war or emergency.<sup>103</sup> Over the years, this prohibition has been established as a customary rule incumbent on all countries, organizations and persons in the world, irrespective of the applicability of any particular international treaty.<sup>104</sup> Various instruments, including ones signed by Israel, contain an explicit and absolute prohibition on any type of torture.<sup>105</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Israel signed in 1986 and ratified in 1991,<sup>106</sup> requires States parties to take steps to prosecute and punish perpetrators.<sup>107</sup> The ICCPR also contains an explicit provision to this effect.<sup>108</sup>

Torture has been defined as both a crime against humanity<sup>109</sup> and a war crime<sup>110</sup> In the Rome Statute, the constitution of the International Criminal Court in The Hague.<sup>111</sup> The UN Security Council resolutions that established the international criminal tribunals for the former

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<sup>102</sup> According to Art. 16.2 of the CAT; Art. 7 of the ICCPR stipulates: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>103</sup> See Judgement of the International Criminal Tribunal for the former Yugoslavia Trial Chamber decision regarding the impossibility of derogating from this provision, para. 144 of the decision <https://www.icty.org/x/cases/furundzija/tjug/en/>

<sup>105</sup> Art. 32 of the Fourth Geneva Convention, Art. 37 of the Convention states

<sup>106</sup> Article 1, United Nations. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

<sup>107</sup> Ibid., Art. 2 of the Convention.

<sup>108</sup> Arts. 7 and 10 of the ICCPR respectively concern punishment in general and punishment particular to individuals deprived of their liberty.

<sup>109</sup> Art. 7(1)(f) of the Rome Statute. Art. 7(2) defines torture

<sup>110</sup> Art. 8(2) of the Rome Statute.

<sup>111</sup> According to the Rome Statute, the ICC has jurisdiction to consider four categories of international crimes: The crime of genocide, crimes against humanity, war crimes, and the crime of aggression.

Yugoslavia and Rwanda<sup>112</sup> included torture as one of the Geneva Convention violations under the tribunals' jurisdiction.<sup>113</sup>

To supplement this, common Article 3 of the Geneva Conventions, which reflect humanitarian law in relation to armed conflicts, and Additional Protocol II to these conventions, prohibit torture and cruel treatment. Article 119 of the Fourth Geneva Convention prescribes: "In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health." Thousands of Palestinians classified by Israel's prison system as "security prisoners" are incarcerated in Israeli prisons at any given moment.<sup>114</sup> This classification brings with it a slew of restrictions and stringent conditions concerning how and where the prison sentence is served, incarceration conditions and security arrangements.<sup>115</sup>

Institutional violence against Palestinian prisoners by prison authorities has increased significantly since 7 October. Testimonies attest to physical, sexual, psychological and verbal violence, directed at all Palestinian prisoners and perpetrated in an arbitrary, menacing fashion, usually under a shroud of anonymity. Acts of violence against prisoners are carried out by soldiers, IPS guards and IPS special forces. The scope of violence emerging from the testimonies clarifies that these are not isolated, random incidents, but rather an institutional policy integral to the treatment of prisoners. This conduct, its various elements and the many officials directing and practicing it, raises genuine concern that serious criminal offenses are being committed under Israeli law, as well as grave breaches of Israel's international law obligations that may amount to war crimes and even crimes against humanity.<sup>116</sup>

- A. Physical violence and intimidation
- B. Sleep deprivation
- C. Violence during transfers and travel
- D. Sexual violence

### 4.3- Sexual violence

The prohibition on sexual violence is derived from the prohibition on torture and the duty to protect the human dignity of the prisoners. The International Criminal Tribunal for the former Yugoslavia interpreted Article 27 of the Fourth Geneva Convention, which establishes the

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<sup>112</sup> S.C. Res. 955, annex, art. 4, UN Doc. S/RES/955 (Nov. 8, 1994).

<sup>113</sup> S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993); see William A. Schabas, "The Crime of Torture and the International Criminal Tribunals," *Case Western Reserve J. Int'l L.*, 37(2), (2006): 349.

<sup>114</sup> According to the IPS Ordinance, a security prisoner is a prisoner who committed an offense for nationally motivated reasons and/or belongs to a declared terrorist organization and/or is the subject of a Shin Bet security threat report (Commission Order 04.05.00).

<sup>115</sup> See IPS Commission Ordinance No. 03.02.00 "Rules for Security Prisoners" (15 March 2002).

duty to protect – at all times – the human dignity of the prisoners, as including a duty to refrain from sexual violence, in its Ruling in Delalic.<sup>117</sup>

Various testimonies revealed repeated use of sexual violence, in varying degrees of Severity, by soldiers or prison guards against Palestinian detainees as an additional Punitive measure. The witnesses described blows to the genitals and other body Parts of naked prisoners; the use of metal tools and batons to cause genital pain; the photographing of naked prisoners; penises being grabbed; and strip-searches For the sake of humiliation and degradation. The testimonies also reveal cases of gang sexual violence and assault committed by a group of prison guards or soldiers. One particularly grave testimony, quoted at length below, reports the attempted anal rape of a Palestinian detainee by several prison guards. Similar Incidents were mentioned in other testimonies.

#### **4.4- Deaths behind bars**

At least 60 people died in Israeli custody. Forty-eight of them were detainees from Gaza, some of whom died in detention camps set up by the military and others before they even got there, apparently due to extreme violence by soldiers during their transfer from Gaza to Israel.<sup>127</sup> B'Tselem knows of another 12 Palestinians from the West Bank or from Israel who died in IPS custody, some in circumstances that raise grave suspicion of deliberate abuse and denial of medical care. The police opened at least one criminal investigation against prison guards who were involved in the death of an IPS inmate. However, as far as we are aware, no one has been prosecuted for these actions.<sup>118</sup>

Witnesses referred to three deaths in testimonies given to B'Tselem. The information and details we have regarding each of these cases is presented below.

On 18 November 2023, the guards came for roll call along with special forces who were masked and holding batons with bits of iron sticking out of them. The guards counted us. The method was that the guard called out an inmate's first name and he replied with his last name, while we squatted.

That day, when roll call was over, one of the guards called Thaer's name again and Thaer answered, "Abu 'Asab." Then the guard said again, "Thaer," and Thaer again said, "Abu 'Asab." Then the special forces came in with the batons and guns and started hitting us. Each one grabbed one inmate and beat him. They hit us in every part of our body. We didn't move, we just screamed and screamed while they hit us non-stop. My head started bleeding and I saw that the inmates next to me were also bleeding from the head. That lasted about seven minutes, and then they moved away to the door of the cell.

Then about eight of them came back in and hit all of us, but they hit Thaer the hardest. He tried to protect his head with his hand, but pretty soon he had to let go because of the blows. They kept on hitting him on the head and the rest of his body until he fell down on the floor. After that, they left and closed the cell door. We called Thaer's name over and over, but he didn't respond. There was blood trickling from his head and his skin went dark. I think he had internal bleeding. We called out to the guard and shouted for an hour, but he didn't respond. Eventually, a guard came who also served as a medic. He asked me to lift up Thaer's shirt. When I lifted it, I saw his stomach was swollen and looked dark. The guard-medic called an officer. A lot of officers arrived and forced the remaining seven of us to squeeze into the corner with the toilet — a space of one square meter. After they crammed us in there, they took Thaer and left. Five minutes later, a guard came, opened the toilet door and told us that Thaer was dead.

The next day, the Shin Bet came and took us one by one for Interrogation. My interrogation lasted about fifteen minutes. In it, they claimed we'd caused trouble and killed Thaer, which was why we were all injured. They said it was us who attacked each other, not the guards. The interrogator asked me how we killed Thaer. I told him what happened—that the guards beat us and killed him, and I explained how it happened.

After we all went back to the cell, the prison commander, who was known as “Abu Yusef”, came and opened the door. He laughed and said we'd killed Thaer and wanted to frame the prison for it.

From the testimony of M.A., Hebron District | Full testimony

[https://www.btselem.org/publications/202408\\_welcome\\_to\\_hell/testimony\\_ashraf\\_al\\_muhtasab](https://www.btselem.org/publications/202408_welcome_to_hell/testimony_ashraf_al_muhtasab)

## Conclusion

### Results

1. **Continued Occupation:** Despite disengagement claims, Israel maintains control over Gaza, meeting the legal definition of occupation and triggering responsibilities under international law.
2. **Serious Violations:** Evidence of blockade, military attacks, and systemic abuses may constitute breaches of peremptory norms, including potential crimes of apartheid and genocide.
3. **International Inaction:** Many third-party states have failed to uphold their legal duties, with geopolitical interests often overriding obligations to support Palestinian rights.

## Recommendations

1. **Ensure Accountability:** International courts and bodies must investigate and prosecute violations of international law in Gaza.
2. **Fulfill Third-State Duties:** States should stop supporting unlawful acts and take active steps to end the occupation through sanctions and diplomatic pressure.
3. **Refocus on Rights and Justice:** Global efforts must prioritize Palestinian self-determination, human rights, and legal integrity over political convenience.