

**JUS COGENS LIMITS ON THE VETO POWER: A CASE STUDY OF PALESTINE-  
ISRAEL CONFLICT**

A dissertation submitted in partial fulfillment of  
requirements for the degree of  
LLM in International Law



**Submitted by**

Salma Akram

Reg. No. 437-FSL/LLMIL/S21

**Supervised by**

Beenish Aslam Sheikh

**DEPARTMENT OF LAW**

**FACULTY OF SHARI'AH AND LAW**

**INTERNATIONAL ISLAMIC UNIVERSITY ISLAMABAD PAKISTAN**

**FALL 2023**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

|   |            |
|---|------------|
| <b>Table of Contents</b>  |            |
| <b>Dedication.....</b>  | <b>i</b>   |
| <b>Declaration.....</b>   | <b>ii</b>  |
| <b>Acknowledgement.....</b>   | <b>iii</b> |
| <b>List of Abbreviations.....</b>   | <b>iv</b>  |
| <b>List of Cases.....</b>   | <b>v</b>   |
| <b>Abstract.....</b>  | <b>vi</b>  |
| <b>Introduction.....</b>  | <b>1</b>   |
| <b>Literature Review.....</b>   | <b>5</b>   |
| <b>Method of Research.....</b>  | <b>15</b>  |
| <b>Chapter One: The Origin and History of Veto Power</b>  |            |
| 1.1 Introduction.....   | 17         |
| 1.2 Overview of Veto used by the permanent members of the Security Council of the United Nations.....   | 17         |
| 1.3 The Process of Formulation of UN Charter.....   | 17         |
| 1.3.1 The Original Rationale Behind the Creation of Veto Power versus the Practical Use of Veto Power.....  | 21         |
| 1.4 The issue of Palestine a Brief Introduction.....  | 22         |
| 1.4.1 The pattern of United States of America vetoes towards the Palestine-Israel conflict.....   | 26         |
| 1.5 Discussion on the Application of International Law at the Occupied Palestinian Territory.....   | 27         |
| 1.5.1 The legal requirements of Crime against Humanity under the International Criminal Law and its commission regarding Palestine-Israel conflict..... | 28         |
| 1.5.2 The Application of the Geneva Conventions of 1949 to the Palestine-Israel conflict.....   | 35         |
| 1.6 Conclusion.....   | 38         |
| <b>Chapter Two: <i>Jus Cogens</i> /Peremptory Norms</b>   |            |
| 2.1 Introduction.....   | 40         |
| 2.2 Historical Evolution of <i>Jus Cogens</i> Norms.....  | 40         |
| 2.2.1 Core Elements of <i>Jus Cogens</i> Norms.....   | 42         |

|       |  |    |
|-------|--|----|
| 2.3   | Hierarchical Superiority of <i>Jus Cogens</i> Norms (Theoretical Framework).....   | 42 |
| 2.4   | The Prohibitions of Crime against Humanity and War Crimes are Peremptory Norms Protected as <i>Jus Cogens</i> .....                                    | 46 |
| 2.5   | The Obligations of the Security Council to Respect <i>Jus Cogens</i> Norms.....  | 50 |
| 2.5.1 | Security Council Resolution will be Void if it conflicts with Norm of <i>Jus Cogens</i> .....  | 53 |
| 2.5.2 | The Veto should be used in a way that is consistent with <i>Jus Cogens</i> norms....   | 55 |
| 2.5.3 | The Vetoes related to the Situation in Palestine are not Consistence with the Peremptory Norms of General International Law ( <i>Jus Cogens</i> )..... | 56 |
| 2.6   | Conclusion.....  | 57 |

### **Chapter Three: Case Studies\_ Veto Used Related to the Situation in Palestine**

|         |  |    |
|---------|--|----|
| 3.1     | Introduction.....  | 59 |
| 3.2     | The History of the Resolutions vetoed by the United States regarding Palestine-Israel conflict.....  | 59 |
| 3.3     | Vetoes which Blocked the Condemnation of occurrence of Crime against Humanity and Grave Breeches of Geneva Conventions of 1949.....                    | 61 |
| 3.3.1   | Blocking the Condemnation of Crime.....  | 63 |
| 3.3.1.1 | Vetoed the Excessive Use of Force, Illegal Settlements, Deprivation of enjoyment of Economic and Social Rights due to Curfews.....                     | 63 |
| 3.3.1.2 | Vetoed the extrajudicial killing of UN employees, Acts of terrorism, and Violence against Civilians.....   | 66 |
| 3.3.1.3 | Vetoed the Attack on Beit Hanoun.....  | 69 |
| 3.3.1.4 | Vetoed the killing of Civilians, Use of Disproportionate Force, Use of Lethal Force against Civilians.....   | 73 |
| 3.3.1.5 | Vetoed the killing of Children, Civilians, Journalist, Medical and Humanitarian personnel, Commission of Crime against Humanity against Civilians..... | 78 |
| 3.4     | How Veto Hampered the Security Council's ability to Pass Resolutions related to the situation in Palestine.....  | 84 |
| 3.5     | Conclusion.....  | 86 |

**Chapter Four: Recommendation and Conclusion**

Conclusion.....87  
Recommendations.....88  
Bibliography.....91

## **DEDICATED TO**

Dedicated to the people of Palestine who suffered the worst Human Rights violations due to unequal veto power which protects only the national interest of the permanent members of the Security Council.

## DECLARATION

I Salma Akram, a student of LLM International Law solemnly declare that the exertion of this thesis has been written by me. Moreover, it is based upon my own opinions and I was inspired by the views of others, which have been mentioned in the research along with their names. I declare that this work has not been used or published for any professional qualifications.

-----

Author signature

## **ACKNOWLEDGMENT**

All veneration be to Allah, the Exalted, the Merciful, the Compassionate, and His undying benedictions be upon Muhammad, the last of the messengers and the Guide to the path of salvation. Foremost, my humble self is indebted to my supervisor Beenish Aslam Sheikh, Assistant Professor of Law, faculty of Shariah and Law, for her continuous support in my research, her motivation, interest, eagerness, and immense knowledge. I am greatly thankful to her for her patience, insightful guidance, and valuable comments on my research.

It is the outcome of the supplications of my parents Safia bibi and Muhammad Akram, sisters Sumaira Akram, and Sadia Akram, and brothers Saeed Akram and Sajjad Akram, that I went through the hardship of this degree. Their moral, spiritual, financial, and emotional support helps me to move forward in my life. They infused in me the courage and confidence to pursue LLM.



## **LIST OF ABBREVIATION**

|                 |  |
|-----------------|--|
| <b>UN:</b>      | United Nations   |
| <b>CAH:</b>     | Crime Against Humanity   |
| <b>PLO:</b>     | Palestine Liberation Organization  |
| <b>OPT:</b>     | Occupied Palestine Territory   |
| <b>U.S.:</b>    | United States  |
| <b>P5:</b>      | Permanent Members of the Security Council  |
| <b>R2P:</b>     | Doctrine of Responsibility to Protect  |
| <b>NATO:</b>    | North Atlantic Treaty Organization   |
| <b>U.S.S.R:</b> | Union of Soviet Socialist Republics  |
| <b>GDP:</b>     | Gross Domestic Product   |
| <b>UK:</b>      | United Kingdom   |
| <b>ICC:</b>     | International Criminal Court   |
| <b>ICTY:</b>    | International Criminal Tribunal for the Former Yugoslavia  |
| <b>IDF:</b>     | Israel Defense Forces  |
| <b>ISF:</b>     | Israel Security Forces   |
| <b>IHL:</b>     | International Humanitarian Law   |
| <b>IHRL:</b>    | International Human Rights Law   |
| <b>AD I:</b>    | Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) |
| <b>VCLT:</b>    | Vienna Convention on Law of Treatise 1969  |
| <b>ILC:</b>     | International Law Commission   |
| <b>ICJ:</b>     | International Court of Justice   |
| <b>EU:</b>      | European Union   |
| <b>NGO:</b>     | Non-Governmental Organizations   |
| <b>UNSC:</b>    | United Nations Security Council  |
| <b>UNICEF:</b>  | United Nations International Children Emergency Fund   |
| <b>IPS:</b>     | Israel Prison Service  |

## LIST OF CASES

1. Kadi v. Council of European Union and Commission of the European Communities (Case T-315/01(2009))
2. The Prosecutor v. Jean-Pierre Bemba Gombo
3. The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (ICC-01/04-10/07OA8)
4. Prosecutoe v. Momcilo Perisic (Case IT-96-23/1)
5. Palestinian Society for the Protection of Human Rights and the Environment v. The Government of Israel (Case HCJ 769/02)
6. Legality of the Threat or Use of nuclear weapons
7. The Oscar Chinn Case (United Kingdom v. Belgium)
8. Southwest Africa Case (Liberia v. South Africa)
9. Smith v. Socialist People's Libyan Arab Jamahiriya
10. Democratic Republic of Congo v. Rwanda
11. Kenya section of the International Commission of Jurist v. The Attorney-General and others
12. Prosecutor v. Zoran Kupreki (Case no: IT-95-16-7)
13. The Prosecutor v. Willian Samoei Ruto and Joshua Arab Sang (Case no: ICC-01/09-01/11-1598)
14. Miguel Castro-Castro Prison v. Peru
15. Almonacid- Arellano and others v. Chille
16. United States of America v. Gray Lee Sampson (Case 01-10384-MLW)
17. Physicians for Human Rights and Others v. Prime Minister of Israel and others (Case no: C-225/95)
18. Prosecutor v. Dusko Tadic (Case no: IT-94-1-AR72)
19. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)
20. Democratic Republic of Congo v. Rwanda
21. Prosecutor v. Krajisnik (Case no: IT-00-39)
22. Case no: 1 HCJ 5100/94

## ABSTRACT

The Security Council is the organ of the United Nations, which derives its power from the provisions of the UN Charter. Article 27(3) of the UN Charter provides a privileged power a veto to the permanent members of the Security Council. The basic purpose of the incorporation of veto power is to create unanimity among the great powers. The Big Five used that power to stop Resolutions aimed at preventing the commission of war crimes and crimes against humanity. Such use of veto not only encourages the commission of a crime against humanity and grave breaches of the Geneva Conventions of 1949 but also provides a green light to perpetrators. On the other hand, these crimes have attained the status of *Jus Cogens* norms under International Law.

*Jus Cogens* norms enjoyed the superior hierarchy under the international law framework and can only be derogated with the norm of same status. The superior hierarchy of *Jus Cogens* norms binds the p5 to not exercise the vote of veto when there is an ongoing violation of *Jus Cogens* norms.

The research, through critical analysis, finds that the veto power of permanent members of the Security Council is not *absolute fiat*. This research analyzes the exercise of veto power by presenting the case study of the Palestine-Israel conflict. There are legal restrictions on the exercise of uncontrolled veto power as International Law is composed of rules that have a legal hierarchy with other rules, as the *Jus Cogens* norms enjoyed the superior hierarchy. The UN Charter is also binds to respect the superior hierarchy of *Jus Cogens* norms.

Based upon the critical analysis the research suggests that there is legal restriction on the exercise of veto power in the form of *Jus Cogens* norms. By the application of *Jus Cogens* norms, the exercise of veto power can be restricted especially when there is an ongoing commission of a crime against humanity and grave breaches of the Geneva Conventions of 1949.

## INTRODUCTION

### **Thesis statement**

The veto power of the permanent members of the Security Council is not *absolute fiat* but coupled with *Jus Cogens* restrictions, therefore, it is requisite to reassess the use of veto power in the context of crime against humanity and grave breaches of the Geneva Convention of 1949 in the scenario of the Palestine-Israel conflict.

### **Statement of Problem**

This research mainly focuses on the issue of exercise of veto power during an ongoing commission of crime against humanity (Here in after referred as CAH) and grave breeches of the Geneva Conventions of 1949. As a case study, this research focusing exclusively on Palestine-Israel conflict. Article 27(3) of the UN Charter provides privileged power to the permanent members of the Security Council (hereinafter referred as p5). Which is used by the p5 to block the substantive resolutions of the United Nations Security Council (hereinafter referred as UNSC) when there is an ongoing violation of *Jus Cogens norms* especially the commission of CAH and grave breaches of the Geneva Conventions of 1949. Such use of veto stopped the condemnation, investigation, and prosecution of crimes especially in the case of the Palestine-Israel conflict.

The unrestricted use of Veto creates a problem under the framework of International Law when it contradicts *Jus Cogens* norms, from which no derogation is permitted as these are the peremptory norms of General International Law. *Jus Cogens* are the highest form of Customary International Law and these norms enjoyed a superior hierarchy with other rules. The Veto power derives its validity from the UN Charter which itself is bound to respect the *Jus Cogens* norms. so, it can be inferred that the use of Veto power on any Resolution of the Security Council which contains the condemnation of *Jus Cogens* violation violates International Law and hence, is void.

### **Introduction**

The p5 (France, China, Russia, the United States of America, and the United Kingdom) have veto power under Article 27(3) of the Charter of the UN.<sup>1</sup> The Article provides extra power to p5, a concurrent vote, which they can use on all matters other than procedural matters under the UNSC. This means that if any one of the permanent members cast a negative vote on any matter the

---

<sup>1</sup> The Charter of the United Nations, Article 27(3), available at: <https://www.un.org/en/about-us/un-charter/full-text>.

Security Council will stop to proceed with that matter any further, especially with the issues mentioned under Chapter VI of the Charter of the UN.<sup>2</sup>

The p5 have recently misused this privileged power and stopped the procedure of passing of resolution which condemn the ongoing commission of CAH and grave breaches of the Geneva Conventions 1949. These vetoes prevent those actions which were intended to lessen or stopped the commission of these crimes. The language of the UN Charter strictly prohibits such use of veto.<sup>3</sup>

The veto power of the UNSC derives its validity from the Charter of the United Nations, and Article 39 of that Charter provides a very wide range of discretionary powers to the Security Council.<sup>4</sup> The UN has been established through a Treaty that defines its powers and provides a framework to the organization and to the Security Council, which established that the discretionary powers of the UNSC are subject to UN Charter limitations. Security Council cannot exercise its powers beyond those limitations as these apply to the internal division of powers as well. The Charter of the UN provides powers to the Security Council that are not absolute fiat.<sup>5</sup>

Article 53 of the VCLT defines the *Jus Cogens* norms. The *Jus Cogens* norms are composed of three basic elements, one is a norm of general International Law, from which no derogation is permitted and third it received recognition and acceptance from the International Community of States which believes that no derogation has been allowed from these norms.<sup>6</sup> The *Jus Cogens* norms enjoy hierarchical superiority with other norms under the International Law framework. The higher status of these norms is because of their supreme importance for the welfare of the whole of the community of the world.

The superior status is derived from the wording of Article 53 of the VCLT. It is believed that a treaty will lose its validity if contradict with the norm of *Jus Cogens* and the CAH and grave breaches of the Geneva Conventions of 1949 are recognized *Jus Cogens* norms.<sup>7</sup>

---

<sup>2</sup> The Charter of the United Nations, Article 27(3). All the matters under Chapter VII shall be decided with concurring vote of all permanent members and with affirmative vote of nine members of the Security Council.

<sup>3</sup> Jennifer Trahan, *Questioning Unlimited Veto Use in Face of Atrocity Crimes*, 2020.

<sup>4</sup> Jennifer Trahan, "Why the Veto Power Is Not Unlimited: A Response to Critiques of, and Questions About, Existing Legal Limits to the Veto Power in the Face of Atrocity Crimes" 54 (2022).

<sup>5</sup> ICTY, Appeal Chamber, Prosecutor v Dusko Tadic, Case No. IT-94-1-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (October 2, 1995).

<sup>6</sup> "Vienna Convention on the Law of Treaties," 1969, art. 53.`

<sup>7</sup> Thomas Kleinlein, "Jus Cogens as the Highest Law: Peremptory Norms and Legal Hierarchies," *Neth. Year. Int. Law* 2015 46 (2016): 173–218, [https://doi.org/DOI 10.1007/978-94-6265-114-2\\_7](https://doi.org/DOI 10.1007/978-94-6265-114-2_7).

The United Nations bodies are also bound to respect *Jus Cogens* norms, as in that context it is decided in Council of the European Union and Commission of the European Communities versus Kadi by the European court of First Instance that the *Jus Cogens* norm have a binding authority, due to their superior hierarchy under the international law framework. So, it is valid to say that these norms are also binding upon the bodies of United Nation.<sup>8</sup> If these norms are binding upon the United Nations, then surely, they bind the Security Council as well.

The Security Council is bound by the *Jus Cogens* norms as the Security Council acquired its powers from the UN Charter. So, it has only those powers which have been granted to it by the UN Member States. It follows then that the Security Council is bound by the *Jus Cogens* as the international creature cannot acquire more powers than its creature (*Nemo plus iuris transferre potest quam ipse habet*).<sup>9</sup>

The issue of Palestine is as old as the United Nations organization itself. The conflict started when the British mandate authorized the division of Palestine territory into the Arab State and Jewish State.<sup>10</sup> As Per U.N. Resolution 181, Palestine was split in half, with 45% of the land going to the Palestinians and 55% going to Jews. Jerusalem was placed under a separate international jurisdiction.<sup>11</sup> In May 1948, the Jews formally proclaimed the establishment of the state of Israel, while the Palestinians objected to losing their homeland. Conflict broke out, with neighboring Arab nations siding with the Palestinians. The Israeli army won. With its victory, Israel increased its territory by 30%, and more than 700,000 Palestinian refugees fled or were ejected from their homes.<sup>12</sup>

Despite the United Nations mediating a cease-fire in the 1948 conflict between Israel and the Arab nations, the region remained insecure.<sup>13</sup> In anticipation of a future confrontation, both sides strengthened their military capabilities. While this was going on, many Palestinians joined

---

<sup>8</sup> European Court of Justice, Kadi v. Council of the European Union and Commission of the European Communities 2005 E.C.R. II-03649, Case T-315/01 (2009).

<sup>9</sup> Shamala Kandiah Thompson, Karin Landgren, and Paul Romita, "The United Nations in Hindsight: Challenging the Power of the Security Council Veto," *Just Security*, April 28, 2022, <https://www.justsecurity.org/81294/the-united-nations-in-hindsight-challenging-the-power-of-the-security-council-veto/>.

<sup>10</sup> Benny Morris, *A History of First Arab- Israeli War: 1948*, 2008, <https://www.jstor.org/stable/j.ctt1np9bm>.

<sup>11</sup> The UN General Assembly, "UN Doc. A/RES/181(II)," 1947, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/038/88/PDF/NR003888.pdf?OpenElement>.

<sup>12</sup> Morris, *A History of First Arab- Israeli War: 1948*.

<sup>13</sup> Dr Mohsin Muhammad Saleh, *A Methodical Study of the Palestinian Struggle* (Al Falah Foundation, 2003).

resistance groups because they were fed up with the refugee issue and the decline of their political and economic standing. The Palestine Liberation Organization (hereinafter referred to as PLO), which was founded in 1964 because of the merger of several of these groups, started to support the refugees.<sup>14</sup>

Many wars have been witnessed during the early stages of the conflict, which includes the war of 1956, 1967, and the war of 1973. The most significant war was in 1967 in which Israel took the control of Sinai Peninsula, the Golan Heights, Gaza, the West Bank, and East Jerusalem.<sup>15</sup> Such occupation of Israel is not permanent according to International Law but Israel retains it till now. Apart from occupation, Israel also planned to change the demography of the region, starting the settlements of Jewish communities in occupied territory. which not only increases the tension among the inhabitants of Gaza and the West Bank but also speeds up the refugee crisis. The tension increased among the Israeli troops and inhabitants of the Occupied Palestinian Territory (hereinafter referred to as OPT) which resulted in blockade restrictions imposed by Israel. The blockade placed a drastic impression on the economy and inhabitants' lives. Many peace talks were made to mediate the issue but all vein and the issue is still present.<sup>16</sup>

The role of the Security Council is the most important aspect of the Palestine issue. The Security Council has many powers to settle the issues, it has the authority to send peacekeeping operations, it can put financial sanctions, and can also authorize military action. Under Chapter Seven of the UN Charter, the Security Council can decide by analyzing the situation what measures are required to be taken to maintain the peace of the conflicted zone and these actions of the Security Council have binding force over the member states.<sup>17</sup> From the start of the conflict till now, many Resolutions have been presented before the Security Council, but no action has been taken. One reason is the support of the U.S. to Israel and in all Resolutions which called for Israel to end the illegal occupation, the United States cast a veto and hence stopped the Council from taking any actions. While on the other side, Palestinians experienced the worst Human Rights violation which amounts to war crimes and crimes against humanity. The US has vetoed 83 UN

---

<sup>14</sup> Nur Masalha, *Palestine: A Four Thousand Year History*, n.d., <https://www.goodreads.com/en/book/show/36645450>.

<sup>15</sup> Gudrun Kramer, *A History of Palestine: From the Ottoman Conquest to the Founding of the State of Isarel* (Princeton University Press, 41 William Street, Princeton, New Jersey 08540, 2008).

<sup>16</sup> Amnesty International, "Chapter 3: Israeli Settlements and International Law," January 30, 2019, <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>.

<sup>17</sup> United Nations, "Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Articles 39-51)" (United Nations, n.d.), <https://www.un.org/en/about-us/un-charter/chapter-7>.

Security Council Resolutions critical of Israel despite the ongoing Human Rights violations and grave breaches of the Geneva Convention of 1949.<sup>18</sup> This veto threat hampered the UN Security Council's ability to pass the Resolution and weaken peacekeeping.

Some legal obligations under certain treaties are relevant to States which are parties to them. They include the obligation to ensure respect for the 1949 Geneva Conventions in Common Article 1. They have similar obligations to ensure respect for the 1949 Geneva Conventions (and Protocols I and III for states parties to them). The 1949 Geneva Conventions prohibit war crimes known as grave breaches and violations of Common Article 3.

This research will analyze the veto use especially in the light of *Jus Cogens* norms and for reference the issue of Palestine is used. The focus is on the commission of war crimes and crimes against humanity in the occupied Palestinian territory while the veto is cast in Security Council Resolutions and hence, the veto facilitates the violations of the *Jus Cogens* norm. so, the case can be made that there is a need to revisit the use of veto power in the face of crime against humanity and the grave breaches of the Geneva Conventions of 1949.

### **Research Objectives**

1. To study and analyze the Palestine and Israel conflict with special reference to Resolutions vetoed by permanent members of the Security Council while an ongoing commission of a crime against humanity and grave breaches of the Geneva Conventions of 1949.
2. To analyze the *Jus Cogens* norms relationship with the veto use.
3. To analyze the hierarchical status of *Jus Cogens* norms in the context of crime against humanity and grave breaches of the Geneva Convention 1949.
4. To analyze the application of *Jus Cogens* limits on the unrestrained veto power
5. To reconsider the Veto Power use in the context of crime against humanity and grave breaches of the Geneva Conventions of 1949.

### **Literature review**

This research proposal deals with the issue of the use of veto power in the context of crime against humanity and grave breaches of the Geneva Convention 1949 in the region of Palestine. The literature review presented here is based on the books, articles from journals, web sources, and other literary sources available.

---

<sup>18</sup> United Nations Security Council, "United States Vetoes Security Council Draft Resolution on Events in Gaza, UN Doc. SC/8775," n.d., <https://www.un.org/unispal/document/auto-insert-208290/>.



The article, *Jus Cogens, the Veto and the Responsibility to Protect: A New Perspective* written by Hannah Yiu (2009)<sup>19</sup> has proposed the reformulation of the doctrine of Responsibility to Protect (hereinafter referred to as R2P) through the lens of *Jus Cogens* norms. The article appreciates the shift from humanitarian intervention towards the rights of States to intervene in situations where the states show unwillingness to protect their citizens. This article follows a tripartite structure, in the first part the doctrine R2P formulation is briefly discussed and the second portion argues that there is a need to reconstruct the doctrine R2P upon the *Jus Cogens* norms especially when there is the commission of genocide is involved. The genocide is chosen by the author for a reason, it is a heinous crime and secondly, it is a *Jus Cogens* norm. This article argues against the Security Council's paralysis when the veto is cast. The article suggests that the p5 need to refrain from the use of veto power especially when there are *Jus Cogens* norm violations involved. It is argued that the *Jus Cogens* approach provides legitimacy and legality to the situations when the Security Council fails to act, the international community can act per obligations under the doctrine R2P. it is proposed that the UNSC is bound by the *Jus Cogens* norms through the purpose and principles of the Charter as well as outside the Charter through the application of the principal *nemo plus iuris transferre potest quam ipse habet*, that an international creature cannot acquire more powers than its creators. The permanent five must restrict their veto power in situations of *Jus Cogens* violation as they are also restricted as the UNSC is bound to respect *Jus Cogens* norms. But all this needs the willingness of the Security Council as well as its members. In situations where the Security Council has violated *Jus Cogens* and abdicated its primary duty to protect, deference to its primacy in maintaining international peace and security will no longer be required, alternative sources of authorization for force by the General Assembly, will no longer be illegal because they will be a legal last resort. Action that is both legitimate and legal can undoubtedly be viewed positively. The *Jus Cogens/R2P* strategy, when applied correctly, has the power to avert additional Rwandas. Additionally, it can guarantee that the international community upholds its duty to protect. As it stands, however, the *Jus Cogens/R2P* approach is only of practical use where there is genocide or a prima facie case for it. This article provides a detailed discussion of the crime of genocide but neglects other manacles under the UN Charter and the Treaty Obligations. This article put restrictions on the uncontrolled veto power through the

---

<sup>19</sup> Hannah Yiu, "Jus Cogens, the Veto and the R2P: A New Approach," n.d., <http://www.austlii.edu.au/nz/journals/NZYbkIntLaw/2009/8.pdf>.

application of the R2P doctrine but left to discuss the analyses of the *Jus Cogens* norms restriction upon the veto power and also does not establish the *Jus Cogens* status of crime against humanity and grave breaches of Geneva Conventions of 1949.

The article **Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria written by Philippa Webb (2014)**<sup>20</sup> this article elaborates the use of veto by providing the circumstantial facts by narrating the Syrian conflict. The p5 provide new life to veto use while dealing with Syrian conflict and hence facilitated the commission of most heinous crimes of international law. such use of veto prevented the peace negotiations and create a hurdle in the way of adoption of others means which can brings back the peace of conflicted area. Apart from the drastic result of use of veto power the author demonstrates this power as weapon of accountability and proposes that this power which is granted to p5 under the UN Charter must be used to as a tool of liability. Which applied that one of the permanent members must use it against the one who authorized the violation of *Jus Cogens* norms and hence stopped the Council from taking legal actions. The author provides a new prospect of veto power and calls it a technique that is creating many problems as being misused by the P5 members and discusses its relevancy with the Syrian issue but on the other hand, encourages the concept of veto power as it provides room for transparency regarding the decision to validate the military incursion. The author of this study provides a balanced view of the use of veto power but it lacks the responsibility to act in case of commission of serious International Crimes. The article does not discuss the harmful aspect of veto power when it is exercised, and it encourages the commission of CAH and grave breaches of Geneva Conventions of 1949. This article also poverties to analyze how the veto promotes the serious violation of Human Rights and how that uncontrolled power can be restricted through the application of the *Jus Cogens* norms.

Another important article, **Questioning Unlimited Veto Use in the Face of Atrocity Crimes written by Prof. Jennifer Trahan (2020)**<sup>21</sup> provides a detailed debate on the use of veto power. The author clearly describes the early phase when veto power was made a part of the UN Charter, the author describes that the veto power was incorporated in the UN Charter just to create harmony among p5. The veto power makes the UNSC less effective in the maintenance of world

---

<sup>20</sup> Philippa Webb, “Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria,” *Oxford University Press* 19 (2014): 471–88.

<sup>21</sup> Trahan, *Questioning Unlimited Veto Use in Face of Atrocity Crimes*.

tranquility and security. The author raises the legal question under the articles and debates whether all the veto use is consistent with International Law. On that point, the author examines the cast of veto especially regarding the Syria conflict and presents the case as the cast of veto when there are ongoing commissions of atrocity crimes causes the violation of *Jus Cogens* norms. Such use of veto must be limited. While describing the restrictions the author argues that there are existing legal limits on the use of veto power when it is exercised during the ongoing commission of heinous crimes. The article argues that when the veto power is incorporated into the Charter, the International Law is not much conventional especially the concept of *Jus Cogens* norms. The permanent members consider the veto as an unrestrained power and they can use it with or without no reason. The article suggested that the veto power is not absolute. As the veto power derives its validity from the Charter of the UN, so, it must be following the purpose and principle of the UN Charter, and following the International Law obligations, especially the *Jus Cogens* norms. The author suggested that to stop the Security Council's paralysis, there is a need to reconsider these Hard Law obligations in International Law. The UNGA can pass a Resolution to confirm the status of these hard law obligations as the UN system cannot tolerate the exercise of veto which facilitates the continuing perpetrations of atrocities. Although this study provides a detailed picture of how to limit the veto power but collapses to highlight the legal limits on the veto power. This article also does not provide any case study to elaborate on the situation more effectively, especially during the commission of a CAH and grave breaches of Geneva Conventions of 1949.

**The Security Council Veto in the Context of Atrocity Crimes, Uniting for Peace and the Responsibility to Protect written by Ved P. Nanda (2020)**<sup>22</sup> This article has studied the background and legal bases for the R2P doctrine and the Uniting for Peace Resolution. Since the R2P doctrine was successfully put into action in Libya, Russia and China's opposition has been predicated on their complaints that NATO abused the doctrine by using force to impose regime change, an objective for which the doctrine was not intended. To stop the complete paralysis of the Security Council the 'uniting for peace Resolutions' can also be used as it has been successfully implemented in the Korean situation in 1951. It is high time to employ the Uniting for Peace mechanism to defend innocent people against atrocity crimes, especially in the Syrian situation. The Uniting for Peace Resolutions authorizes the General Assembly to make recommendations

---

<sup>22</sup> Ved P Nanda, "The Security Council Veto in the Context of Atrocity Crimes, Uniting for Peace and the Responsibility to Protect," *Case Western Reserve Journal of International Law*, 2020.

and authorize the use of force in situations where the Security Council fails to perform its duty to maintain international peace and security. The author argues that the General Assembly can also be responsible for the maintenance of international peace and security as its secondary obligations under the UN Charter. The author proposes that in all the thirteen Resolutions vetoed by Russia, the uniting for peace Resolutions can be invoked regarding the situation in Syria. Yet, there is no disagreement over the idea of a "credible draft Resolution" (which left the gap through which veto can be exercised in any scenario). This article provides a balanced approach and tries to put restrictions on veto power through the General Assembly powers but is left to discuss the legal restriction on the veto power from the International Law framework and does not discuss the hierarchical superiority of norms under the International Law.

**The veto problem in the UN written by Sushil Chandra Singh (2021)**<sup>23</sup> argues that the main reason behind the failure of the Security Council is the continued use of the veto by Russia. The Security Council's paralysis paved the way for the establishment of the Collective Measure Committee, the Interim Committee, and the Peace Observation Commission. The author explains briefly the reason for the incorporation of veto in the UN Charter which is completely different from its practical use. The author also discusses that the assignment of the duty of maintenance of international peace and security to the General Assembly does not resolve the problem as the General Assembly has its separate duties and is bound by time limitations, which can never be a substitute for performing the primary duty of maintenance of world peace of Security Council. The article suggested that if the number of permanent members can be increased, it can resolve the issue of Security Council paralysis. The author also believes that only small changes are required to be made in the veto provision so limiting the concurrence of the vote to only four permanent members can also prevent Russia from the continued use of the veto. The article explains the continued use of veto as a reason for the paralysis of the Security Council but lacks the legal limits on the use of veto power especially when veto power facilitates the commission of crimes against humanity and grave breaches of the Geneva Conventions of 1949.

**Veto Provision in the UN Charter written by Dilip Sinha (2019)**<sup>24</sup> provides a balanced study of the incorporation of veto provision in the UN Charter, the recruits of the supporters of the

---

<sup>23</sup> Sushil Chandra Singh, "The Veto Problem in the U.N.," *The Indian Journal of Political Science* 19, no. 2 (2021): 129–33.

<sup>24</sup> Dilip Sinha, "Veto Provision in UN Charter," *Indian Foreign Affairs Journal* 14, no. 4 (2019): 267–74.

rule of unanimity, and the practical use of the veto. The article discusses the political ties between the permanent members with other States and to their rescue they exercised the veto in the Security Council. The veto creates a problem in the smooth functioning of the Council but no attempt has been made to abolish this undemocratic power. There are many proposals submitted to reform the voting procedure of the Security Council but all are opposed. The author suggested that the only practical solution to this problem is the complete abolition of this undemocratic power as it promotes political interest and ties rather than supporting International Law. The article explains the rationale behind the incorporation of veto power in the UN Charter but lacks the exercise of veto power during the ongoing violation of *Jus Cogens* norms nor discusses the worst impacts of the exercise of veto power on Human Rights.

**Criticism of the UN Security Council Veto mechanism: Ramifications for Israel written by Michal Hatuel-Radoshitzky (2015)**<sup>25</sup> This study revealed that the Security Council structure and operational mechanism have been criticized especially because of veto power. The veto power hampered the ability of the Security Council to pass Resolutions and enforce peacekeeping in the conflicted zone. The study analyzes the issue of Palestine in light of Security Council Resolutions and considers that the perceived national interest of permanent members paralyzed the Security Council from fulfilling its main duties. In the Palestine issue, the United States cast 30 vetoes on draft Resolutions and stopped peacekeeping in the conflicted zone. Apart from the actual exercise of veto vote, the pocket veto also affects peacekeeping. To abolish the veto power many proposals have been introduced but none of them will have any legally binding force under International Law. The author suggests that to stop the unrestricted use of the veto, all states are required to refrain from voting under the Security Council based on their national interest, but the article fails to discuss the legal limits under the International Law framework that can restrict the uncontrolled veto power exercise.

**Role of United Nations in Conflict Resolution: A Case Study of Palestine issue written by Noman Gul, Dr. Rubeena Batool (2019)**<sup>26</sup> provides a new perspective on the role of the UN

---

<sup>25</sup> Michal Hatuel-Radoshitzky, "Criticism of the UN Security Council Veto Mechanism: Ramifications for Israel," 2015, <https://www.inss.org.il/publication/criticism-of-the-un-security-council-veto-mechanism-ramifications-for-israel/>.

<sup>26</sup> Noman Gul and Dr Rubeena Batool, "Role of United Nations in Conflict Resolution: A Case Study of Palestine Issue," 2019, <http://web.uob.edu.pk/uob/Journals/Balochistan-Review/data/BR%20Special%20Edition%20Vol%2044/324-335%20Role%20of%20United%20Nations%20in%20Conflict%20Resolution%20A%20Case%20Study%20of%20Palestine%20Issue,%20Noman%20Gul.pdf>.

in dispute Resolution. The article highlights that the UN is a non-sovereign organization that works with the cooperation of member states. Several of the Member States' fundamental principles are outlined in the UN Preamble. A few more of these goals include adhering to international standards and expanding collaboration in all areas. Conflict Resolution through peaceful methods is the primary responsibility of the UN. Military intervention is only permitted when all other diplomatic options have been exhausted and when the international community's peace and security are in danger. The constant submission to the pressures of the superpowers has added to Palestine's instability as a volatile region that has never been stable. Even after the end of the Cold War, the termination of numerous wars and peace accords had no impact on the maintenance of balance and stability. It's unclear where the US stands on Palestine from an international perspective. The United States had a significant role in the region, primarily to defend the Jewish community. To make the UN more progressive in conflict Resolution, developing countries must make fair contributions to the Security Council. The need of the time is to separate peacekeeping from peacebuilding. The national interest is the main culprit in the failure of the UN as since the cold war era the UN is not free from the demands of powerful forces. To mitigate the issue, it is important to have an impartial UN for it is required to see the aggressor and perpetrator from different aspects. In the structure and operations of collective security, it is required to extend the principle of Neutrality beyond the intent of aggression. The author suggests that to make the UN function properly it is extremely required that all states refrain from interfering with the procedure of the UN specially to protect their national interest and to achieve regional hegemony but the article does not highlight the plight of people against whom the permanent members exercised the veto power and stopped the international community to take any reasonable steps under the International Law Framework.

**The Veto: Problems and Prospects written by Thomas G. Weiss and Giovanna Kuele (2019)**<sup>27</sup> The author employed a very meek approach to discussing the problems and prospects raised by the veto power of the Security Council. The veto was incorporated in the Charter just to ensure the participation of the U.S. and U.S.S.R. in the new organization. But it served as the guardian of the national interest of great powers. The author defines the veto as the power that makes the world organization ineffective, especially in the case of Crimea and in the Iraq war in

---

<sup>27</sup> Thomas G Weiss and Giovanna Kuele, "The Veto: Problems and Prospects," *International Relations*, 2019, <https://www.e-ir.info/pdf/48075>.

2003. The author argues that any proposal which suggests the reforms of veto power is just unsubstantiated. The author also discusses the pros and cons of uniting for peace Resolutions. The veto, in particular, and permanent Security Council membership seem like *archaic vestiges*, but they will continue to exist since any proposed changes would create more issues than they would resolve. If it wasn't already obvious, the problems in Syria and Crimea show why Russia won't agree to waive the veto, and the ongoing conflicts in the Middle East clearly show why the US Senate won't support any such change. Following, three years of nyet to stop international action to stop Syria's shambles, there is now an intensifying conflict over Russia's annexation of Crimea. It brings to mind not only the Cold War but also the period when the UN Security Council was frozen by actual or threatened vetoes from permanent members. However, neither then nor now, were there any legal tricks or structural modifications. The veto in particular has sounded the death knell for Security Council reform. The author fails to discuss the paralysis of the Security Council in the Palestine conflict and the legal limits present in International Law over the use of veto power.

**The United Nations in Hindsight: Challenging the Power of the Security Council Veto** written by Shamala Kandiah Thompson, Karin Landgren, and Paul Romita (2022)<sup>28</sup> This article identifies the key problems caused by the Veto Power that have an impact on the UNSC's capacity. Vetoes limit the Council's capacity to address some of the most serious infringements of the UN Charter and International Law. In relation to Syria, the use of the veto has prevented the UNSC from condemning chemical weapons attacks, shut down a mechanism for looking into chemical weapons, and prevented a referral to the ICC. The use of the veto in relation to Ukraine has hindered inquiries, the establishment of criminal courts, and the denunciation of Russian enmity against that nation. Regarding the Palestinian issue, the veto has prevented condemnation of the building of illegitimate settlements and the use of violence against Palestinians. When the Security Council members couldn't agree on how to proceed with the situation in Ukraine, the UNSC submitted the matter to the UNGC in accordance with the Uniting for Peace Resolutions. The author encourages this act of the UNSC and considers this initiative to have unlocked the long-stalled reform conversation. The UNGC's recent actions may be a much-needed potshot in the direction of support and a prompt of its ability to act in the face of Council congestion at a time when worries have been raised about the Council's capacity to carry out its mandate in accordance

---

<sup>28</sup> Kandiah Thompson, Landgren, and Romita, "The United Nations in Hindsight: Challenging the Power of the Security Council Veto."

with the Charter and multilateralism is under great stress, but the article left to discuss the real concern that how the UNSC itself should do its work in maintaining the peace of the world when there is such exercise of veto power.

**The U.N. veto is a problem that won't go away written by Ishaan Tharoor (2015)<sup>29</sup>**

This article explains the veto "implies duties and a particular responsibility". It has been given to the five permanent members to foster cooperation between them so that the United Nations can forestall and resolve international conflicts, ensure effective compliance with International Law, and protect civilian populations. This article puts the responsibility on the P5 in the use of veto power but there is no deliberation on legal limits set by the *Jus Cogens* norm and the UN Charter, especially during the commission of heinous International Crimes like crime against humanity and grave breaches of Geneva Conventions of 1949.

**The Origin of UN Veto and Why it Should be Abolished written by Augusto Lopez-Claros (2022)<sup>30</sup>** This study highlights the history of the making of the UN from a different perspective. The author believes that the new organizations were founded on the principle of sovereign equality of states. To make sure the participation of the U.S. the policy has been shifted toward the political feasibility. To change the fate of a new organization from the League of Nations the veto vote is provided to only five permanent members. The author also discusses the critics of the voting mechanism of a new organization. The organization having veto power assigned to only the big five symbolizes the imperialistic organization in which the hegemony has been given to only five states. The veto itself was seen by many as weakening the organization's democratic legitimacy and as a behavior that could not be justified by any concept of just governance. The Security Council's permanent members refused to accept two-thirds majority restrictions, although its non-permanent members did. Most importantly—and with significant political and practical ramifications—some claimed that the system being established would make it impossible for the organization to resolve issues and/or conflicts between the big powers or between a great power and a smaller nation. Through veto, the permanent members have the privilege to violate every principle and purpose of the Charter and remain a member of the UN. The author believes that the problem can only be resolved if the UN adopted the voting mechanism

---

<sup>29</sup> Ishaan Tharoor, "The U.N. Veto Is a Problem That Won't Go Away," 2015.

<sup>30</sup> Augusto Lopez-Claros, "The Origins of the UN Veto and Why It Should Be Abolished," *Global Governance Forum*, 2022, <https://globalgovernanceforum.org/origins-un-veto-why-it-should-be-abolished/>.



which was adopted by the Bretton Woods Institution in 1944 where the voting right is linked with population size, global GDP share, and membership share equal to all. If this mechanism is adopted it will minimize the voting capacity of the big five as their economy shrines. The UN's veto authority has rendered the organization ineffective at a time when numerous global challenges demand an efficient, problem-solving body that will strengthen the ability to cooperate internationally. If it is left in place, i

t will not only make it more difficult for the organization to uphold its noble founding goals, but it will also inevitably taint what moral authority it still possesses and make it impossible for it to continue existing in an interdependent world.<sup>31</sup> This article provides a new perspective regarding the voting mechanism but that mechanism does not provide any legal barrier on the uncontrolled veto power as to restrict that power there is a need to apply legal limits upon the veto power like the *Jus Cogens* Norms can restrict the uncontrolled use of veto power.

### **Scope of Research**

In this research, the method used is the critical analysis. The veto power of the Security Council is critically analyzed with the *Jus Cogens* norms of International Law. For this research, the Reports of an Independent Commission of Inquiry of the Human Rights Council, the Security Council Resolutions with scholarly research articles, and reports of the International Law Commission are critically analyzed. This research is purely legal as all the different aspects are analyzed legally and the way out provided at the end of the research is legal. This research is based upon the time framework which ranges from 2001 to onward.

This research is significant as it highlights the *Jus Cogens* restraint over the Veto Power use especially in the context of crime against humanity and grave breaches of the Geneva Convention 1949. There is a trivial contribution to this topic under academic writing. This research will highlight the recommendation to revisit the Veto Power use in the context of crime against humanity and grave breaches of the Geneva Convention 1949.

### **Research Questions**

1. A) How to conceptualize the legal requirement of crime against humanity under the International Criminal Law and the application of the Geneva Conventions of 1949 regarding the Occupied Palestine Territory? (This issue has been addressed under Chapter

- 1), (B) How to establish the superior hierarchy of *Jus Cogens* norms under the International Law Framework? (This issue has been addressed under Chapter 2).
2. What is the content of *Jus Cogens* norms as to the crime against humanity and grave breaches of the Geneva Conventions of 1949? (This issue has been addressed under Chapter no 2)
3. How to put restrictions on the veto power especially examining the relation with *Jus Cogens* norms? (This issue has been addressed under Chapter no 2)
4. How veto hamper the UN Security Council to pass the Resolution and weaken peacekeeping? (This issue has been addressed under Chapter no 3)

### **Method of Research**

This research is based on a case study, of Palestine-Israel conflict. The main object behind providing the case study is to elaborate on the issue with the help of practical examples and to base the research upon some solid arguments. This research critically analyzes the exercise of veto power during the ongoing violation of *Jus Cogens* norms especially concerning the Palestine-Israel conflict. This is qualitative research as the issue is concerned with social sciences and this method is used to study the existing phenomena of veto power of the permanent members of the Security Council of the United Nations and its impact on the social life of the people of Palestine. In order to prove the superior hierarchy of *Jus Cogens* norms theoretical framework has been consulted and for that purpose an analysis of four legal hierarchies has been presented under this research.

The research method used for this study is doctrinal legal research as well as critical analytical legal research. The use of uncontrolled veto power is being analyzed in the light of *Jus Cogens* norms. To make it clear that the veto power violates International Law an analysis of Security Council Resolutions is discussed. The Resolutions analyzed in this research critically deal with the issue of Palestine and the time framework chosen for these analyses' ranges from 2001- to date. This research is purely legal and all the arguments and conclusions presented under this research are legal. This research is critical in nature as it provides a legal analysis of provisions of International Law, which are then critically analyzed with the unrestricted use of veto power.

The primary source of data used for this study is mostly collected from the Reports of the Independent Commission of Inquiry, Security Council Resolutions, the Reports of the International Law Commission, and the reports of government and non-government organizations. The research also incorporated the case laws decided by the national and international courts. The

case law analysis is provided as it supports the judicial approach. Conference papers, scholarly articles, law magazines, journals, commentaries, newspaper, and international jurisprudence is also consulted as a secondary source of data during this research.

## **Chapter 1: The Origin and History of Veto Power**

### **1.1 Introduction**

This Chapter addresses the issue no 1 and elaborate the legal requirements of CAH and its commission in OPT. This Chapter consists of two parts. The first part provides the introduction of veto power and then an analysis is provided which mainly defines and highlights the original rationale for the creation of veto power in the UN Charter versus the practical use of veto power under the UNSC. The second portion provides a brief overview of Palestine Israel conflict. It also provides an overview of above-mentioned crimes with special reference to the OPT. From a legal point of view, this portion discusses the application of the Rome Statute and the Geneva Convention in the OPT.

### **1.2 Overview of veto use by the permanent members of the Security Council of the United Nations**

The permanent members of UNSC (France, China, Russia, the United States of America, and the United Kingdom) have veto power under Article 27(3) of the UN Charter. This power has raised serious questions upon the ability of that Council. Through this power, any one among p5 can cast a negative vote and block an affirmative decision of the Council especially with the issues mentioned under Chapter VI of the Charter of the UN.<sup>32</sup> Hence, compromised the main duty of the UNSC.

In recent years, p5 has used this power to block Resolutions while an ongoing commission of CAH, and grave breaches of the Geneva Convention 1949 Such use of veto created problems under the International Law framework as such use facilitated the commission of above-mentioned crimes. Such use of veto is against the spirit and purpose of the UN Charter. This Chapter will analyze the origin and history of veto and provide an overview of veto use while there is an ongoing commission of a CAH and grave breaches of the Geneva Convention 1949 especially in the context of the Palestine Israel conflict.

### **1.3 The Process of Formulation of the UN Charter**

---

<sup>32</sup> The Charter of the United Nations, Article 27(3). The decision under the Security Council regarding all matters other than procedural shall be made by an affirmative vote of nine members and concurring vote of all permanent members specially to matters mention under chapter VI.

The Charter of the United Nations is the founding document, which provides a framework and defines the powers of the organization.<sup>33</sup> The members of UN are bound to follow the document of Charter. It came into force on 24 October 1945. This document prescribed a wide variety of powers to the United Nations to deal with a variety of issues.<sup>34</sup> Here, a brief history of the making of the UN Charter is discussed below.

The world faced the havoc of two World Wars in the first half of the 20<sup>th</sup> century. To save the world from another battle the international community sat together to find the way out and the US President put forward the idea of making an international organization named as United Nations. For that purpose, on January 1, 1942, the US, the UK, the Soviet Union, China, and 22 other nations allied with the establishment of an international organization.<sup>35</sup>

The US President had a visualization of the great powers as the policemen who can secure the international peace and security in the future. These great powers represent more than three-quarters of the total population of the world and if they stand together there is less possibility of an aggressor Nation that can initiate the third World War. The U.S. President's vision has been transformed into the reality by inserting Article 27 in the Charter of the United Nations.<sup>36</sup>

The arguments provided in favor of veto power by the permanent members are based upon the principle of unanimity which is sponsored by the Soviet Union and viewed as requiring consensus in all instances.<sup>37</sup> The USSR argued that without unanimity among great powers, there would be discord which undermines international peace and security. The idea of the USSR initiated the debate, in which members expressed their views in support as well as their apprehension over the incorporation of veto power.

A joint statement has been released by the permanent members which supports the idea of unanimity in the UNSC. In the joint statement, the permanent members show the onus for the

---

<sup>33</sup> Sydney D. Bailey and Sam Daws, *The United Nations: A Concise Political Guide*, 1994, <https://www.amazon.co.uk/United-Nations-Concise-Political-Guide/dp/0333629175>.

<sup>34</sup> United Nations, "The Charter of the United Nations," United Nations (United Nations), accessed September 19, 2023, <https://www.un.org/en/about-us/un-charter>.

<sup>35</sup> James A. Paul, *Of Foxes and Chickens: Oligarchy and Global Power in the UN Security Council 23* (2017).

<sup>36</sup> The American Presidency Project, "Franklin Delano Roosevelt," Fireside Chat, accessed February 16, 2023, Available at <https://www.presidency.ucsb.edu/documents/fireside-chat>.

<sup>37</sup> Memorandum by the Secretary of State to President Roosevelt, December 29, 1943, FRUS, 1944, General Vol. 1, accessed February 22, 2023, at <https://search.library.wisc.edu/digital/AG5OAT7XT7HRHX84>; see also Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the face of Atrocity Crimes* (New York, UK: Cambridge University Press, 2020), p. 37.

maintenance of international peace and security. while assuming such an obligation the permanent members take the pledge that they couldn't act in any manner that dangers the peace of the world just on the account of lack of concurrence among them. The permanent members also acknowledge that the only way to make the decision possible under the new organizations is to create unanimity among them.<sup>38</sup>

The Soviet Union supported the unanimity rule and considered that only permanent members could keep the UNSC in deep pockets with sufficient means and forces for the effective fulfillment of the duties of the Security Council. The Soviet Union considered that only these great powers could enrich the UNSC with those resources. The Soviet Union believes that world security can only be preserved from the havoc of another war when concurrence is created among the permanent members.<sup>39</sup>

The United States of America supports the incorporation of the unanimity clause and considers the concurrence mandatory for future peace as without this corporation the world's dream of peace would have been shattered if these great powers ever faced any war among themselves. Therefore, the espousal of this kind of system shows the realities of this world. The U.S. believes that the path will remain open for a new fight if a system is being devised before understanding the fundamental interests, and purposes of great powers among themselves.<sup>40</sup> An organization made without considering the above interest is just a creation on paper. The veto will not be the reason for war in the future rather it will be the first victim of that war. So, it is mandatory to create concurrence among the five great powers.<sup>41</sup>

The permanent members were also hopeful that they defeat the Axis powers in the Second World War. So, only they can save the world from any future danger of war and only they can equip the Security Council with an armed force that helps to ensure the international peace and

---

<sup>38</sup> Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council, 7 June 1945, United Nations Conference on International Organization, Doc. 852 III/1/37(1), 8 June 1945, p. 713. France was not party to this declaration since its participation in the conference was limited due to the ongoing war; see also Sydney D. Bailey and Sam Daws, *The Procedure of the UN Security Council*, (Oxford: Clarendon Press, 2005), available at <http://www.hamamoto.law.kyotou.ac.jp/kogi/2005kiko/Statement%20of%20four%20sponsoring%20states.pdf>.

<sup>39</sup> Foreign Relations, "Memorandum by the Under Secretary of State to President Roosevelt," accessed February 12, 2023, available at <https://search.library.wisc.edu/digital/AXMTXCUDJJGG3H8F/pages/ASSA6Z4LI3VRS78R>.

<sup>40</sup> Department of State, *Bulletin*, p. 338; Norman J. Padelford, "The Use of the Veto," *University of Wisconsin Press* 2, no. 2 (June 1948): 229.

<sup>41</sup> Senate Document 59, 79<sup>th</sup> Congress, First session, p. 8, 9; Padelford, 229.

security of the world. All the above reasons make them competent for the veto vote in the Security Council.

At the event of the finalization of the UN Charter, the fifty delegations of forty-eight countries gathered at the memorial opera house from April 25 to June 26. Considerable uneasiness is being shown by the delegates of other countries over the provision of veto power.<sup>42</sup>

Australia considers the incorporation of veto power as the supremacy of the UNSC with the big five and they can stop the Security Council from attaining any decision.<sup>43</sup> Peru considers the incorporation of veto as providing a right to permanent members which is based upon interest either political or economic which pauses the rule of reason and concession.<sup>44</sup> El Salvador shows unrest in the absence of procedures if no unanimity can be reached among the permanent members.<sup>45</sup> Belgium voiced that the incorporation of veto gave the liberty to five great powers to thwart the action of the organization, whenever they wished just by the exercise of veto power.<sup>46</sup> Cuba argued that the UNSC inaction may be construed as encouraging war.<sup>47</sup>

The insertion of veto in the UN Charter is being disparaged by the small and middle-sized states. They believed that big five failed to justify the veto implications. They see the insertion of veto as a paradox. Cuba expressed her concerns and argued that the incorporation of veto is unnecessary if the great powers truly reached unanimity.<sup>48</sup> Belgium believes that the principle of sovereign equality was dishonored by granting the right of veto to some states.<sup>49</sup> The other states believe that the allocation of veto power to only p5 under the Charter of the United Nations makes

---

<sup>42</sup> Bailey and Daws, *The United Nations: A Concise Political Guide*. The number fifty is frequently used, although forty-eight appears more accurate. The difference depends on whether one counts Ukraine and Byelorussia, which sent delegations, but were not in fact independent states.

<sup>43</sup> Verbatim Minutes of the Fourth Meeting of Commission III, Opera House, June 20, 1945, Doc. 1149. Australia has presented an amendment which deals with veto regarding peaceful settlement of disputes, but it was rule out.

<sup>44</sup> San Francisco, "Commission 3 / Committee 1 - Seventeenth Meeting," (Creation), [united-nations-conference-on-international-organization-uncio-1945.pdf](http://www.un.org/en/conference-on-international-organization-uncio-1945.pdf).

<sup>45</sup> Francisco; Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (Cambridge, United Kingdom ; New York, NY, USA Cambridge University Press, 2020), 43, <http://www.cambridge.org/9781108487016>.

<sup>46</sup> Francisco, "Commission 3 / Committee 1 - Seventeenth Meeting."

<sup>47</sup> Francisco, 7; United Nations, "The San Francisco Conference," United Nations (United Nations), accessed June 16, 2023, <https://www.un.org/en/about-us/history-of-the-un/san-francisco-conference>.

<sup>48</sup> Security Council Commission III, "Commission 3 / Committee 3 - Sixteenth Meeting," June 6, 1945, <https://search.archives.un.org/commission-3-committee-3-sixteenth-meeting-2>.

<sup>49</sup> Commission III, 5; Permanent Mission of Belgium to the UN, "Belgium and the United Nations: A Historical Perspective," in *Permanent Mission of Belgium to the UN*, 2015, <https://newyorkun.diplomatie.belgium.be/belgium-at-the-un/historical-perspective>.

the organization rigid, as it affects the ability of the organization to develop with time as the nature of power evolves under the international system in the future.<sup>50</sup>

As the discussion continued the permanent members made it crystal clear to other states that (it was either the Charter with veto or no Charter at all). To further support the stance of incorporation of veto power the United States declared in the San Francisco conference that the delegates of other countries can go home if they want but keep one thing in mind without veto there would be no Charter or no Organization. And as an example, the U.S. delegates tore up the draft in his hands.<sup>51</sup>

The issue for all the delegates in the San Francisco conference is not straightforward on the one hand, they see the veto power as inequitable on one side, and on the other hand, they know this bitter reality that the fate of a new organization depends upon the continued collaboration of great powers.<sup>52</sup> The other states realized that they must give up on the veto power for the creation of international organizations to assure the peace and security of the world.

On June 26, 1945, the UN Charter was signed.<sup>53</sup> The provision of veto power received thirty-three votes in favor, two against (Cuba and Colombia) with fifteen abstentions.<sup>54</sup> The above discussion makes it very clear that the purpose of the incorporation of veto power in the Charter of the UN is to create unanimity among the great powers. It has not been incorporated to condemn the commission of the violation of Human Rights or to support the political interest of States.

### **1.3.1 The Original Rationale Behind the Creation of Veto Power versus the Practical Use of Veto Power**

As mentioned above the purpose of the incorporation of veto power is to create unanimity among the p5 of the UNSC to ensure security of the world. It has never been inserted to use in a way antagonistic to tenets of International Law or principles or purposes of the UN Charter like to facilitate the commission of serious international crimes. On the contrary,

---

<sup>50</sup> "Research\_report\_3\_the\_veto\_2015.Pdf," accessed February 28, 2023, [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research\\_report\\_3\\_the\\_veto\\_2015.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf).

<sup>51</sup> Edward C. Luck, *UN Security Council: Practice and Promise*, 2006 Edward C. Luck (Antony Rowe Ltd, Chippenham, Wiltshire, 2006), 17.

<sup>52</sup> Luck, 21; Singh, "The Veto Problem in the U.N."

<sup>53</sup> United Nations Conference on International Organization, "Commission 3 / Verbatim Reports (3 May 1945)," (Creation), [united-nations-conference-on-international-organization-uncio-1945.pdf](https://www.un.org/Depts/under20/uncio/uncio1945.pdf).

<sup>54</sup> Jean Krasno and Mitushi Das, *The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council, in The UN Security Council and the Politics of International Authority*, 1st Edition (Routledge, n.d.).



the veto has been morphed into such contexts, blocking the Security Council Resolutions when there are ongoing above-mentioned crimes. Especially in the perspective of the Palestine-Israel conflict the US vetoed Resolutions to block the recognition of crimes against humanity, and war crimes, and blocked the criminal investigation. The use of veto in such a manner is far from the original rationale for the creation of veto power and it's not designed to be used in such a manner.

In practice there have been several types of veto apart from the veto on substantive matters, there is veto while making an amendment in the UN Charter, in selection of UN Secretary-General and also when the decision is made regarding selection of new members.<sup>55</sup> The most common problem is the hidden veto or silent veto which is used by permanent members to stop the members from presenting a Resolution in the UNSC. The Big Five used the veto power as a threat (to cast a veto in formal sessions) under the informal and private meetings, which in turn altered the decisions of the Security Council so many times that it would be impossible to determine.<sup>56</sup>

Another problem that arises in the practical use of veto power is that the p5 have political alignment, they use the veto power to protect their interest and, in some cases, it even ceases the drafting of a Resolution. Sometimes p5 used the veto privilege to shield the friendly states from the imposition of monetary penalties. These send the misleading message that governments with strong relations to the p5 are more likely to be exempt from the violation of crimes against humanity and war crimes.

#### **1.4 The Issue of Palestine: A Brief Introduction**

The Palestine issue started at the end of the 19th century when the United Nations adopted Resolution 181 which is known as the Partition Plan, which divides the British Mandate Palestine into Arab and Jewish states.<sup>57</sup> In this way, the Israel state came into existence in 1948 against the will of the people of Palestine which initiated the first Arab-Israel war.<sup>58</sup> The war ended in 1949 But 750,000 Palestinian were displaced.<sup>59</sup> It divides the territory of Palestine into 3 parts, Israel,

---

<sup>55</sup> Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*, 47.

<sup>56</sup> Richard Butler Ac, "Reform of the United Nations Security Council," *International Affairs*, 2012, 9.

<sup>57</sup> The UN General Assembly, "UN Doc. A/RES/181(II)."

<sup>58</sup> "The Declaration of the Establishment of the State of Israel | Ministry of Foreign Affairs," accessed February 28, 2023, <https://www.gov.il/en/Departments/General/declaration-of-establishment-state-of-israel>.

<sup>59</sup> "Israeli-Palestinian Conflict | Global Conflict Tracker," accessed February 28, 2023, <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>.

the West Bank, and the Gaza Strip. This created the issue of Palestinian refugees; this led the General Assembly to pass Resolution 194.<sup>60</sup> Which describes the way of return for those who have been driven away from their homes.<sup>61</sup>

Tension arose in the region which resulted in the Suez crisis in 1956 that was ended by the invasion of the U.S. and Soviet Union by making a peace deal among the parties.<sup>62</sup> In 1967 Israeli forces started the invasion of the Sinai Peninsula and this way Six Day War was started.<sup>63</sup> Israel airstrike the airfields of Egypt and at the end of this war, took the control of Gaza Strip, Sinai, The West Bank, The Golan Heights, and Arab East Jerusalem this led the Security Council to pass Resolution 242.<sup>64</sup> This caused Israel to depart from the OPT.<sup>65</sup> In retribution in October 1973 Egypt and Syria launched a surprise attack on Israel to regain the lost region which initiated the Yom Kippur War prompting Resolution 338 of the Security Council.<sup>66</sup> This war paved the way for Egypt and Syria to negotiate over the previously lost territory.<sup>67</sup>

To secure peace in the territory the U.S. President concluded a peace deal known as Camp David Accords between Israel and Egypt in 1979 which ended the thirty-year conflict. Under this deal, the potential Palestinian issue was discussed but never carried out.<sup>68</sup>

The situation remained worse around the West Bank and Gaza Strip. To secure the right to self-determination, the people of Palestine raised their voices against the Government of Israel which was remembered in history by the name of the first intifada in 1987. To control the situation in 1993 a peace pact Oslo Accords I and in 1995 Oslo Accords II was signed between the PLO and the Israeli Government. These agreements were based upon the UN Resolutions and obliged the Government of Israel to withdraw its illegal occupation from the West Bank. The second

---

<sup>60</sup> The UN General Assembly, "UN Doc. A/RES/181(II)."

<sup>61</sup> Robert Serry, *The Endless Quest for Israeli-Palestinian Peace: A Reflection from No Man's Land* (Springer, 2016), 8.

<sup>62</sup> Bureau of Public Affairs Department Of State. The Office of Electronic Information, "Suez Crisis, 1956" (Department Of State. The Office of Electronic Information, Bureau of Public Affairs., December 13, 2007), <https://2001-2009.state.gov/r/pa/ho/time/lw/97179.htm>.

<sup>63</sup> "Israeli-Palestinian Conflict | Global Conflict Tracker."

<sup>64</sup> United Nations General Assembly, "Resolution 242 of 1967, UN Doc. S/RES/242(1967)," November 22, 1967, <https://daccess-ods.un.org/tmp/8486522.43614197.html>.

<sup>65</sup> "Protection in the Gaza Strip." UNRWA, accessed February 28, 2023, <https://www.unrwa.org/activity/protection-gaza-strip>.

<sup>66</sup> United Nations General Assembly, "Resolution 338 (1973), UN Doc. SCR338(1973," October 22, 1973, <https://peacemaker.un.org/sites/peacemaker.un.org/files/SCR338%281973%29.pdf>.

<sup>67</sup> Jean-Pierre Filiu, *Gaza: A History: Comparative Politics and International Studies Series* (Oxford University Press, 2014), 38.

<sup>68</sup> "Israeli-Palestinian Conflict | Global Conflict Tracker."

intifada happened when the Israeli Prime Minister visited Masjid Al Aqsa in 2000, his visit provoked the civilians to raise their voices against the evil intention of Israel to annex East Jerusalem with Israel. Clashes and violence continued till 2005 which resulted in hundreds of dead from both sides. In reprisal, the construction of the wall around the West Bank had been approved by the Israeli Government in 2002 apart from the opposition of the ICC and ICJ.<sup>69</sup>

To mitigate the situation, the United States, Russia, the European Union, and the UN presented a Road Map, which suggested a two-state solution to the Israel-Palestinian issue and the Palestinian refugee problem. Israel shows serious concern on some points.<sup>70</sup>

The Israeli Government in reprisal for rocket attacks by the Palestinian militant groups put restrictions on Gaza Strip and West Bank in the form of capital punishment. The blockade was started in 2007 which worsened the situation in Gaza. The blockade caused a shortage of medicine, food, and fuel supplies at a critical level. Israel in violation of General Assembly Resolution 181, started the settlement in the region of the West Bank. Israel also constructed a massive border wall which annexed large swaths of Palestinian Territory.<sup>71</sup>

There were many clashes and fights among the rivals which continued until 2015, During conflicts both sides used lethal force against civilians and caused the death of more than 2200 Palestinians in Gaza and 67 in Israel. The clashes continued until the Palestinian President had liberated Palestine from the territorial division of the Oslo Accord. The Palestinians whose lives have become miserable due to clashes among rivals had conducted a weekly demonstration on the border of Israel. During the demonstrations, Israeli forces shot the civilians who went near to fence of the Israeli border. According to the United Nations, 183 demonstrators were killed and 6000 were seriously injured by live ammunition.<sup>72</sup>

The United States of America decided to move its Foreign Embassy from Tel Aviv to Jerusalem<sup>73</sup>. This decision got applause from the Israeli Government but was rejected by the Palestinian people as they consider Jerusalem the capital of the new State of Palestine. In the U.S.

---

<sup>69</sup> “Israeli-Palestinian Conflict | Global Conflict Tracker.”

<sup>70</sup> Serry, *The Endless Quest for Israeli-Palestinian Peace*, 10.

<sup>71</sup> International Court of Justice, “Legal Consequences of the Construction of Wall in the Occupied Palestinian Territory,” no. July 9, 2004 (n.d.): 17.

<sup>72</sup> United Nations, “Resolution Adopted by the General Assembly on 9 December 2021,” in *UNCITRAL Expedited Arbitration Rules 2021*, by United Nations (United Nations, 2022), 1–2, <https://doi.org/10.18356/9789210021753c001>.

<sup>73</sup> “PM Truss Weighs UK Embassy Move in Israel to Jerusalem | Israel-Palestine Conflict News | Al Jazeera,” accessed March 3, 2023, <https://www.aljazeera.com/news/2022/9/22/pm-truss-weighs-uk-embassy-move-in-israel-to-jerusalem>.

administration, January 2020 made a Peace-to-Prosperty Plan for Palestine but it was rejected by the people of Palestine.

In September 2020 the Arab States including Bahrain, Jordan, Egypt, and the United Arab Emirates recognized the state of Israel. The U.S. played a vital role in normalizing the relationship of Israel with the Arab States and on this end, the Abraham Accords agreement was signed, which was rejected by the Palestine President as well as Hamas's leadership.<sup>74</sup>

The obscurities of Palestinian people became worse when the Israeli Court passed the judgment against the residents of Sheikh Jarrah to evict their houses till May 2021 and hand them over to Jewish families. The resident of Sheikh Jarrah raised their voices against the forcible displacement and filed an appeal against the court ruling. In support of Sheikh Jarrah residents, the Palestinian people had started demonstrations against the forcible displacement by Israel. It started the clash between the demonstrators and Israeli forces in which the Israeli forces used stun grenades, rubber bullets, and water cannons over the demonstrators and left hundreds wounded.<sup>75</sup>

On May 21, 2021, Egypt made efforts to make peace between Hamas and Israel and agreed to both sides upon a cease-fire. In response to Egypt's efforts both sides declared victory, and there were no apprehensions of violations. The United Nations estimated that more than 72,000 Palestinians were displaced by the fighting, and authorities in Gaza estimate that tens of millions of dollars' worth of damage was done. According to the United Nations Middle East Envoy, 2022 was marked as the most conflict-related deaths since 2015.<sup>76</sup>

Apart from all the peace efforts, the conflict is still ongoing, making the lives of civilians miserable and depriving them of fundamental Human Rights. The more depressing is the role of the UNSC.

#### **1.4.1 The pattern of United States of America vetoes towards the Palestine-Israel conflict**

The U.S. has played the role of founder in the establishment of United Nations. The purpose of creation of the UN is to secure the peace of the world. But unfortunately, in the world of realpolitik, the U.S. has started to support other countries based on the standard of

---

<sup>74</sup> Filiu, *Gaza: A History: Comparative Politics and International Studies Series*, 77.

<sup>75</sup> "United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Data on Casualties," United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory, accessed February 28, 2023, <http://www.ochaopt.org/data/casualties>.

<sup>76</sup> "United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Data on Casualties."

realism. To maintain its supremacy in the middle east, the U.S. established friendly relations with the State of Israel. To strengthen that relation the United States of America has cast 82 vetoes on the resolutions dealing with the question of Palestine.<sup>77</sup> If the pattern of U.S. vetoes of Security Council resolutions has been analyzed, it highlights the biased policy of U.S. towards the State of Palestine. Over the last thirteen years, the U.S. cast fourteen vetoes among them, one is against terrorism and one is against the situation of Bosnia and Herzegovina, and the remaining twelve vetoes have been lodged against the Palestine situation. The same pattern was followed from 1980 to 2000, in that period the U.S. cast a total of forty-seven vetoes, among them twenty-five were against the Palestine issue, and among the remaining, five were against Nicaragua, six were against Namibia, four were against South Africa, two against Syria, and one against Panama.<sup>78</sup> The pattern of vetoes followed against the State of Palestine is not shown against any other State. This biased approach has been adopted just to maintain the world's legitimacy. To save the State of Israel from the liability of violation of International Law the U.S. has overruled the international law framework and vetoed the resolutions which were in line with *Jus Cogens* norms, and hence facilitated the commission of a crime against humanity and grave breaches of Geneva Conventions of 1949. This behavior has laid many questions upon the purpose and principle of UN Charter as well as upon the binding nature of International Law. The UN Charter has been considered a masterpiece in many countries and its principles are thrilling to read and unchallenged but, unfortunately the veto use has compromised its importance. A Jordanian diplomat has stated in this regard that a proviso must be added in the UN Charter that in times of most crucial issues, the voices, the votes of majority remain unheard and ineffective as the power lies somewhere else.<sup>79</sup>

### **1.5 Discussion on the Application of International Law in the Occupied Palestinian Territory**

Under this section, the application of the Four Geneva Conventions of 1949 and the Rome Statutes of the International Criminal Court is discussed regarding the Palestine-Israel conflict.

---

<sup>77</sup> United Nations, "Vetoed Draft Resolution Archives - Question of Palestine," accessed September 20, 2023, <https://www.un.org/unispal/document-category/vetoed-draft-resolution/>.

<sup>78</sup> "Vetoes - UN Security Council Meetings & Outcomes Tables - Research Guides at United Nations Dag Hammarskjöld Library," accessed September 19, 2023, <https://research.un.org/en/docs/sc/quick>.

<sup>79</sup> Saliba Sarsar, "The Question of Palestine and United States Behavior at the United Nations," *International Journal of Politics, Culture, and Society* 17, no. 3 (2004): 457–70.

Both Palestine and Israel are parties to the Four Geneva Conventions of 1949. The Geneva Conventions deal with universal jurisdiction. The rationale behind the universal jurisdiction is to secure the interest of the whole community, as war crimes and crimes against humanity are the most severe crimes that have an impact on the whole community. IHL is applicable in the OPT due to continued existence of armed conflict among both states.<sup>80</sup>

As far as the application Protocol I and II is concerned Israel does not recognize the AD Protocols but believes it is CIL. There has been Customary International Humanitarian law that deals with international, and non-international armed conflicts and belligerent occupation. The ICRC has mentioned 161 rules of Customary International Humanitarian Law which are coded under the GCIV, the AP, and the Hague Regulations.<sup>81</sup>

By ratifying the Geneva Conventions, it becomes obligatory for the state parties to investigate as well as prosecute the suspects who commit serious violations of IHL.<sup>82</sup>

ICL is different from IHL, as to substantiate the commission of international crimes it is necessary to establish the *mens rea* (intention) of an offender as individual criminal responsibility has been applied to the offenders under the International Criminal Law. To ascertain the commission of a CAH it is required to establish the widespread and systematic nature of that crime. To make International Criminal Law applicable to a territory it is required that there should be ongoing Occupation or Armed Conflict in that territory.

The Occupied Palestinian Territory is under illegal occupation by Israel. Which makes ICL applicable in the conflicted zone. Apart from all international crimes only war crimes and crimes against humanity are discussed under this research.

### **1.5.1 The legal requirements of Crime Against Humanity under International Criminal Law and its commission regarding the Palestine-Israel conflict**

---

<sup>80</sup> United Nations Commission of Inquiry, “Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2),” A/HRC/40/CRP.2, March 18, 2019, 26, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/085/50/PDF/G1908550.pdf?OpenElement>.

<sup>81</sup> “Rules - Customary International Humanitarian Law - International Committee of the Red Cross,” accessed February 28, 2023, <https://ihl-databases.icrc.org/en/customary-ihl/v1>.

<sup>82</sup> International Committee of the Red Cross (ICRC), “Summary of the Geneva Conventions of 1949 and Their Additional Protocols (International Humanitarian Law)” (International Committee of the Red Cross (ICRC), April 2011), [https://www.redcross.org/content/dam/redcross/atg/PDF\\_s/International\\_Services/International\\_Humanitarian\\_Law/IHL\\_SummaryGenevaConv.pdf](https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf).

The Rome Statute of the ICC was ratified by the state of Palestine in 2014. Article 7 of the Rome Statute defines the crime against humanity. The crime against humanity is a gross human rights violation at a scale that shocks the human conscience. For the crime against humanity, three elements are required to be fulfilled, one is the presence of criminal intent of the offender, the second is its widespread impact and it must be a systematic attack third is the knowledge of the attack and the last element is attacking must be in persistence of state or administrative policy.<sup>83</sup>

The crimes that come under the ambit of crime against humanity are murder, torture, deportation or forcible transfer of population, the crime of apartheid, and other inhumane acts as mentioned in article 7 of the Rome statutes.<sup>84</sup> The term widespread means that the attack must be towards a large no of victims. Systematic means it must be an organized nature of acts and not a random occurrence. The widespread and systematic requirement is disjunctive, not conjunctive which means either one should be satisfied.<sup>85</sup> The Pre-Trial Chamber of ICC in the *Katanga Case* in 2008 explained the systematic attack as in continuation of a common policy, an act resulted from an organized plan that contains a continuous commission of acts/crimes in such a way that it will remove the doubt of being occurring randomly or through accident.<sup>86</sup>

There is a policy element that also plays an important role in defining an attack as a systematic one. This can be easily assumed by the presence of constant actions in the same order, the presence of preparation, and united mobilization which is organized by a state or an organization. Another aspect to find out the presence of that element is the lack of intention to discourage that conduct on the part of the state to encourage the happening of events.<sup>87</sup>

Another general requirement for the crime against humanity is that the crime must be perpetrated as a part of an attack on any civilian population. Here, the wording, directed

---

<sup>83</sup> Trial Chamber Judgement, *The Prosecutor v. Jean-Pierre Bemba Gombo* (International Criminal Court June 8, 2018).

<sup>84</sup> Rome Statute of the International Criminal Court, Article 7, available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>85</sup> International Criminal Tribunal for Rwanda (ICTR); Chamber I, *The Prosecutor v. Jean-Paul Akayesu* (Trial Judgement) (International Criminal Tribunal for Rwanda (ICTR); Chamber I i September 2, 1998).

<sup>86</sup> International Criminal Court (Appeal Chamber), *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04-01/07 OA 8) (International Criminal Court (ICC) September 25, 2009).

<sup>87</sup> International Criminal Court (The Trial Chamber), *The Prosecutor v. Germain Katanga* (ICC-01/04-01/07) (International Criminal Court (ICC) March 8, 2018).

against, is being taken from the International Criminal Tribunal for Yugoslavia (hereinafter referred to as ICTY) that the civilian is the intended target and not the isolated victim.<sup>88</sup> To compose a CAH there is no need for a military attack only the maltreatment of civilians is enough as explained by an International Criminal Tribunal.<sup>89</sup>

To establish the legal requirement of crime against humanity as a policy element issued by the Israeli government, an analysis of the instruction issued to the Israel Defense Forces when it came across the demonstration has been provided here.

The Israel Defense Forces (hereinafter referred to as IDF) are the military of the State of Israel, and its activities come under the authority of the Democratic Civil Government of Israel. Their sole purpose is to protect the State of Israel and its citizens.<sup>90</sup> The instruction provided to IDF and the activities of IDF both come under the authority of the Israeli Government. The analysis provided here is based upon the Rules of Engagement issued to IDF, which describe how to use force against demonstrations that began on 30 March 2018. The demonstration, which is analyzed here, has been arranged by the Higher National Committee and its participants consisted of civilian, cultural and social organizations, student unions, women's, renowned persons, members of clans, and members of several political parties, which comes from all the sectors of Palestine.<sup>91</sup>

The IDF has been instructed to use lethal force against persons who fall under the following categories:

1. Aligning strategic positioning or putting tires on fire.
2. Instructing persons to put back the parts of security infrastructure and encourage the persons to participate in that activity.

---

<sup>88</sup> Margaret Mc Auliffe De Guzman, "The Road from Rome: The Developing Law of Crimes Against Humanity," *Human Rights Quarterly*, May 2000, [https://resolver.scholarsportal.info/resolve/02750392/v22i0002/335\\_trfrtdlocah.xml](https://resolver.scholarsportal.info/resolve/02750392/v22i0002/335_trfrtdlocah.xml).

<sup>89</sup>International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Judgement, Prosecutor v. Momcilo Perisic, Case IT-96-23/1 (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Judgement February 28, 2013).

<sup>90</sup> "Israel Defense Forces," IDF, accessed March 2, 2023, <https://www.idf.il/en/>.

<sup>91</sup> United Nations Commission of Inquiry, "Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2)," 58.



3. Talking on the radio while moving through the crowd, and belatedly involved in pulling the wires of security infrastructure by engaging the crowd as well.
4. Instigate the crowd,
5. Damaging the security infrastructure or attacking the IDF,
6. Setting conditions that resulted in mass breach and infiltration.<sup>92</sup>

Under IHL the use of lethal force is only permitted if the person is directly participating in hostility or the first condition of active participation in hostility is being compiled with the rules of Distinction, Proportionality, and Precautions in Attack.<sup>93</sup> Under IHRL lethal force can be used only if there is an imminent threat to life or serious injury, or if the force used was according to legitimate law enforcement objectives or which fulfills the criteria of the principle of Proportionate and is strictly Necessary.<sup>94</sup>

If the abovementioned categories will be analyzed in the light of IHRL and IHL, under both paradigms those conditions do not meet the criteria of using lethal force against the demonstrators. But the conditions clearly show the intention of the Israeli Government to allow their security forces to use lethal force on minor activities of engagement if a person tries to remove the security wire, he can be shot dead, if he used a radio while moving through the crowd, he will be a legitimate target. The Government makes the argument that the security forces only respond when there is an imminent threat to life. But the evidence shows a different story. The IDF snipers were positioned several hundred meters away from the security fence and stayed at the sand berms and even in armored personal carriers, with other soldiers for assistance, equipped with reflex weapons, wearing personal protective equipment together with body armor and ballistic helmets. On the other hand, the crowd is unarmed.<sup>95</sup> The Israeli forces have the firepower with additional mobile forces in the clash area. While the crowd in response to Israel Security Forces (hereinafter

---

<sup>92</sup> United Nations Commission of Inquiry, 84.

<sup>93</sup> International Committee of the Red Cross (ICRC), "ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities | How Does Law Protect in War? - Online Casebook," accessed March 2, 2023, <https://casebook.icrc.org/case-study/icrc-interpretive-guidance-notion-direct-participation-hostilities>.

<sup>94</sup> International Committee of the Red Cross (ICRC).

<sup>95</sup> United Nations Commission of Inquiry, "Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2)," para. 319.

referred to as ISF) fireworks throws rocks, moves tyres, or tries to cut the wire coils placed by IDF inside Gaza. The above facts disapprove of the arguments of an imminent threat to life presented by the Israeli Government. This policy of ISF which is backed by the Israeli Government has led to the application of lethal force against thousands of protestors.<sup>96</sup> It can also be said that the Israeli Government is encouraging the acts of Israeli forces in the OPT.

The forcible transportation of the population has been criminalized as a CAH in Article 7(1)(d) of the Rome Statute. Forcible transportation occurs when the population is forced to move from one area to another within the state territory.<sup>97</sup> The ICTY has also decided that the construction of unfavorable living conditions, such as the termination of water, power supply, and call system, persecution, arrests, and searching the houses, that made it impossible for those who were living there and hence, induced their movement, constitutes forcible transfer.<sup>98</sup>

Over the years, the Israeli army has carried out numerous military operations in the OPT, which have also led to numerous home demolitions and the forcible eviction of thousands of Palestinians. During some of these attacks, populated residential structures and family houses were specifically targeted by airstrikes. From 2014 to 2021 almost one lac thirteen thousand people were displaced and almost nineteen thousand three hundred seventy-four houses were destroyed by the Israeli forces.<sup>99</sup> The Israeli government has followed a policy, which caused the forcible transfer of Palestinians, especially involves the loss of the permanent resident status of thousands of Palestinians. The Israeli forces demolished the houses on account of a lack of permits. The permit-taking procedure is also very exhausting for Palestinians they have to wait many years. The purpose behind it was to force the Palestinian population into small enclaves and to change the demographic composition of the area by favoring the Jewish population in these areas. Apart from these

---

<sup>96</sup> United Nations Commission of Inquiry, para. 322.

<sup>97</sup> Rome Statute of the International Criminal Court, Article 7(2)(d), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>98</sup>International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Judgement, , Prosecutor v. Krajišnik, Case IT-00-39 (September 2009).

<sup>99</sup>United Nations, General Assembly, Economic and Social Council, “Economic and Social Repercussions of the Israeli Occupation on the Living Conditions of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem, and of the Arab Population in the Occupied Syrian Golan, UN Doc. A/77/90–E/2022/66,” June 8, 2022, [https://www.un.org/unispal/wp-content/uploads/2022/07/A.77.90.E.2022.66\\_080622.pdf](https://www.un.org/unispal/wp-content/uploads/2022/07/A.77.90.E.2022.66_080622.pdf).

restrictions the blockade policies work as fuel to fire and make the lives of refugees even worse and they were forced to move to other areas without their own free will.<sup>100</sup>

Articles 7(1)(e) and 7(1)(f) of the Rome Statute define the imprisonment or severe deprivation of physical liberty and torture as a crime against humanity. The prohibition of Torture and other cruel, inhuman, or degrading treatment is absolute and non-derogable and can never be allowed even during armed conflict.<sup>101</sup> The Rome Statute also criminalizes these crimes.<sup>102</sup> If the pain, mental or physical has been inflicted intentionally upon the individual who is in custody, it constitutes the crime of torture.<sup>103</sup>

It is a widespread practice in the OPT to torture Palestinians when they are being detained and interrogated by the Israeli Security Agency, the Israeli Prison Service, or Israeli military personnel. It is highly uncommon for Israeli authorities to conduct prompt, thorough, and impartial investigations into such charges. The UN Committee on Torture provides an account of ways of torture implied upon the Palestinian detainees, which is not verified nor refuted by Israel. The methods of torture include:

1. keeping in excruciatingly anguished circumstances,
2. Enclose in specific circumstances,
3. Playing ear-splitting music for extended periods,
4. Depriving a person of sleep for an extended period,
5. Threats, including threats of death,
6. Induced trembling, and
7. Exposed to freezing air.<sup>104</sup>

Various methods of torture have been revealed when the Israeli Supreme Court announced the landmark judgment in 1999. The judgment discloses the methods of torture

---

<sup>100</sup> Amnesty International, “Chapter 3: Israeli Settlements and International Law.”

<sup>101</sup> UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), Article 2; ICCPR, Article 4(2).

<sup>102</sup> Rome Statute of the International Criminal Court, Article 7(1)(e), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>103</sup> Rome Statute of the International Criminal Court, Article 7(2)(e), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>104</sup> United Nations, Committee against Torture, “Torture Convention/Israel’s Fourth Periodic Report – CAT Meeting – Summary Record, UN Doc. CAT/C/SR.297/Add.1.,” September 4, 1997, <https://www.un.org/unispal/document/auto-insert-178181/>.

implied against Palestinian detainees and prisoners by the ISF.<sup>105</sup> Palestinian children also faced the worst torture especially when Israeli forces tried to obtain, confession, from them. According to the Israeli Information Center for Human Rights in Occupied Palestinian Territory, 151 children were held as Israeli prisoners at the end of June 2020 and two of them were in administrative detention.<sup>106</sup> Israeli Information Center for Human Rights in Occupied Palestinian Territory reported in 2017 that that it is a uniform policy followed by every department of Israel, police who captures the boys, the IPS who maintain the atmosphere of torture in prison and the courts who always extend the custodial remand, even in the face of compelling evidence. Cases when the arrest wasn't necessary in the first place, even when the interrogation is finished, and even in instances where boys claim to have experienced physical abuse.<sup>107</sup>

According to the PCAT, from 2001 to 2020, almost 1300 complaints of torture were registered in the Israeli Ministry of Justice, criminal investigation has been initiated only against two of them, which also resulted in no indictment. The UN Special Rapporteurs in 2021 asked Israel to end impunity for torture and other ill-treatment.<sup>108</sup>

Under administrative detention, the state detained people on account of top-secret security reasons and does not provide the fundamental right of fair trial to detainees. Administrative detention is not forbidden under international law but it is allowed under strict restrictions.<sup>109</sup> However, Israel's repeated use of administrative detention against Palestinians raises the possibility that it is used more as a form of persecution than a deterrent. It is evident from the fact that Israel refers to Palestinians as "security detainees"

---

<sup>105</sup> The Supreme Court Sitting as the High Court of Justice, *Public Committee Against Torture in Israel v. The State of Israel, The General Security Service*, Case no 1 H CJ 5100/94 (The Supreme Court Sitting as the High Court of Justice May 26, 1999).

<sup>106</sup> United Nations, Committee against Torture, "Torture Convention/Israel's Fourth Periodic Report – CAT Meeting – Summary Record, UN Doc. CAT/C/SR.297/Add.1." According to Israel Prison Service information, from 2012 to 2015, Israel held an average of 204 Palestinian children in custody each month. See Defense for Children International - Palestine (DCI-Palestine), "Palestinian Children Incarcerated at Higher Rate, Abuses Routine", 18 July 2017, [dci-palestine.org/palestinian-children-incarcerated-at-higher-rate-abuses-routine](https://dci-palestine.org/palestinian-children-incarcerated-at-higher-rate-abuses-routine); CAT, Concluding Observations: Israel, 3 June 2016, UN Doc. CAT/C/ISR/CO/5.

<sup>107</sup> Public Committee against Torture in Israel, "Torture in Israel 2021: Situation Report," n.d.

<sup>108</sup> United Nations, Human Rights Office of the High Commission, "Israel Must End Impunity for Torture and Ill-Treatment – UN Experts," February 8, 2021, <https://www.ohchr.org/en/press-releases/2021/02/israel-must-end-impunity-torture-and-ill-treatment-un-experts>.

<sup>109</sup> In the context of an occupation, the Fourth Geneva Convention specifies that a civilian may only be interned or placed in assigned residence if "the security of the Detaining Power makes it absolutely necessary" (Article 42) or, in occupied territory, for "imperative reasons of security" (Article 78).

that this is a pretext for denying the people of Palestine their fundamental liberties and rights because they reject Israel's occupation and its policies. Since seizing the West Bank and Gaza Strip in 1967, Israeli authorities have routinely utilized administrative detention to imprison thousands of Palestinians, including children, without charge or trial. These detention orders are renewable.<sup>110</sup> According to Israeli and Palestinian Human Rights Organizations, the number of administrative detainees increased in heightened tension. From the first intifada to the second intifada, the number of administrative detainees remained as high as seven thousand four hundred forty-four.<sup>111</sup> According to data released by the Israeli Information Center for Human Rights in Occupied Palestinian territory by the end of May 2020, the number of administrative detainees stayed as 352 Palestinians, including two children, all of them from the occupied West Bank.<sup>112</sup>

The crimes under International Criminal Law apply individual criminal responsibility over the culprits. The requirements to establish individual criminal responsibility the accused should know the contextual elements of the crime and his action should be part of the widespread and systematic attack. The person can be held responsible under individual criminal responsibility for the acts of cooperation, planning, ordering, aiding, abetting, and command responsibility.<sup>113</sup> A Report issued by the Independent International Commission of Inquiry on the Human Rights situation in Palestine finds that during the investigation, the commission finds that serious Human Rights violations have been experienced in the conflicted zone which may constitute a crime against humanity.<sup>114</sup>

Here, the facts described above show the commission of a crime against humanity as forcible transportation, torture, a administrative detention and there is a continuous policy of attacking civilians who are not participating in direct hostility. All these crimes make the lives of Palestinians miserable and the international community is appalling in front of veto power.

---

<sup>110</sup>B'Tselem, "Statistics on Palestinians in the Custody of the Israeli Security Forces," B'Tselem, November 24, 2021, [https://www.btselem.org/statistics/detainees\\_and\\_prisoners](https://www.btselem.org/statistics/detainees_and_prisoners).

<sup>111</sup>Amnesty International, "Israel/Occupied Territories: Administrative Detention: Despair, Uncertainty and Lack of Due Process," April 29, 1997, <https://www.amnesty.org/en/documents/mde15/003/1997/en/>.

<sup>112</sup>B'Tselem, "Statistics on Administrative Detention," B'Tselem, November 24, 2021, [https://www.btselem.org/administrative\\_detention/statistics](https://www.btselem.org/administrative_detention/statistics).

<sup>113</sup> Antonio Cassese, *International Criminal Law* (Oxford University Press, 2003), chap. 5.

<sup>114</sup> United Nations Commission of Inquiry, "Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2)," para. 789.

### **1.5.2 The Application of the Fourth Geneva Conventions of 1949 to the Palestine – Israel conflict**

The paradigm of IHL applies when there is ongoing conflict in a territory. IHL provides a framework, which protects civilians during conflict. It also imposes some restrictions on the ways and conduct of warfare. The rules of IHL have been incorporated in GCVI of 1949 along with Two AD Protocols of 1977, and the fourth Hague Convention on the War on Land and its Annexed Regulations of 1907. These conventions along with Protocols provide safeguards to civilians, medical personnel, sick, and wounded, and prisoners of war.<sup>115</sup>

The State of Palestine is a party to the Four Geneva Conventions of 1949.<sup>116</sup> The state of Palestine also ratified the Additional Protocol I and II and the Four Hague Convention on the War on Land and its Annexed Regulations of 1907. Israel also ratified the four Geneva Conventions of 1949 on July 6, 1951, but did not ratify the Additional Protocol I and II which deals with the protection of victims of International Armed Conflict and Non-International Armed Conflict.<sup>117</sup> Apart from the fact that Israel does not ratify the Protocols but believes its status is Customary International Law which is binding even on non-state parties.<sup>118</sup> As the ICJ held in the Nuclear Weapons Advisory Opinion that the rules mentioned under the Geneva Conventions are related to arms conflict and they have been so important for humanity and the respect of humans that all States whether they ratified or not the Conventions perceived as binding upon them, because they constitute intransgressible principles of International Customary Law.<sup>119</sup>

---

<sup>115</sup> International Committee of the Red Cross (ICRC), *International Humanitarian Law (Handbook for Parliamentarian)* (Inter-Parliamentary Union (IPU) and International Committee of the Red Cross (ICRC) 2016, 2016).

<sup>116</sup> “Palestine and the Geneva Conventions,” *International Review of the Red Cross* 30, no. 274 (February 1990): 65–65, <https://doi.org/10.1017/S0020860400075227>.

<sup>117</sup> “The Obligations of Israel and The Palestinian Authority under the International Law,” accessed February 3, 2023, <https://www.hrw.org/reports/2001/israel/hebron6-04.htm>.

<sup>118</sup> International Committee of the Red Cross (ICRC), “Summary of the Geneva Conventions of 1949 and Their Additional Protocols (International Humanitarian Law).”

<sup>119</sup> The International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons* (The International Court of Justice (ICJ) July 8, 1996).

The ICRC has mentioned 161 rules of Customary International Humanitarian Law which are coded under the Geneva Conventions, the Additional Protocols, and the Hague Regulations.<sup>120</sup>

The Territory is deemed to be Occupied whenever it is truly put under the control of the opposing force. The Occupation is only extending to the area where such control/authority has been established and exercised.<sup>121</sup> This provision of the Hague Regulations of 1907 is Customary IHL in nature. To check whether there is belligerent control over the territory, an Effective Control Test will be applied which is summarized as without the consent of local sovereign authority, the armed forces of one party are physically present in the territory of another party or the local sovereign authority has been replaced by the presence of foreign armed forces or in place of the pre-existing local authority, the foreign forces have established or readily establish their authority<sup>122</sup>

From the 1967 war to 2005, Israel exercised its authority over the OPT as the Supreme Court of Israel also recognized Israel's status of Occupying Power in Gaza in 2004.<sup>123</sup> In 2005 Israel withdrew its control over the Gaza Strip and evacuated its troops from the area which raises the question that the evacuation terminates the Occupation under the IHL framework. In this regard, ICRC provides the significant view that if in the evacuated area the departing forces can still exercise their effective control in the form of authority then that area will be considered Occupied.<sup>124</sup> It has been reflected in many Resolutions passed by the UN General Assembly and Security Council that Israel still retains the status of Occupation in OPT.<sup>125</sup>

---

<sup>120</sup> “Rules - Customary International Humanitarian Law - International Committee of the Red Cross.”

<sup>121</sup> “Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, 29 July 1899.” art. 42, accessed March 1, 2023, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899/>, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899/regulations-art-42>.

<sup>122</sup> Tristan Ferraro, “Determining the Beginning and End of an Occupation under International Humanitarian Law,” n.d., 139.

<sup>123</sup> The Supreme Court Sitting as the High Court of Justice, Physicians for Human Rights and others v. Prime Minister of Israel and others (HCJ 201/09) (The Supreme Court Sitting as the High Court of Justice January 2019).

<sup>124</sup> Ferraro, “Determining the Beginning and End of an Occupation under International Humanitarian Law,” 157.

<sup>125</sup> United Nations Security Council, “United Nations Employees/Incidents – Vetoed Draft Resolution, UN Doc. S/2002/1385,” December 14, 2001, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/753/31/PDF/N0275331.pdf?OpenElement>; United Nations Security Council; United Nations Security Council; United Nations Security Council, “Mideast Situation/Separation Wall – SecCo – Vetoed Draft Resolution, UN Doc. S/2003/980,” October 14, 2003, [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/980/01/PDF/N0398001.pdf?OpenElement)

Concerns regarding the application and enforcement of the Geneva Conventions of 1949 in the West Bank and Gaza Strip were discussed in a meeting of the Geneva Convention High Contracting Parties held in Geneva in July 1999. Israel and the United States both abstained from the conference. The contributing High Contracting Parties endorsed the relevance of the Geneva Convention to the OPT, including East Jerusalem, and stressed on the full respect of the Geneva Convention of 1949 provisions in the OPT.<sup>126</sup>

All ratifying parties were obligated by the Geneva Conventions of 1949's Common Article 1 to respect and uphold the present Convention in all circumstances., which includes the responsibility to try to take cognizance in case of a breach of the Conventions.<sup>127</sup>

Now it has been established that the Geneva Conventions of 1949 apply to both parties to the conflict. By ratifying the Geneva Conventions, it becomes obligatory for the state parties to investigate as well as prosecute the suspects who commit serious violations of International Humanitarian Law. The fourth Geneva Conventions is believed to be fully applied to Israel's actions in the West Bank and Gaza Strip, according to the ICRC.<sup>128</sup>

The increase in war crimes in OPT initiated the investigation by the Office of the Prosecutor of the International Criminal Court. The investigation shows evidence of the involvement of Israeli forces in war crimes of torture, forcible transportation, the killing of innocent civilians, and lack of opportunity for a fair trial.<sup>129</sup>

---

ny.un.org/doc/UNDOC/GEN/N03/557/81/PDF/N0355781.pdf?OpenElement; United Nations Security Council, "Mideast Situation/Palestine Question – Vetoed Draft Resolution, UN Doc. S/2003/891," September 16, 2003, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/521/52/PDF/N0352152.pdf?OpenElement>; United Nations Security Council, "Mideast Situation/Beit Hanoun Fact-Finding Mission – SecCo – Vetoed Draft Resolution, UN Doc. S/2006/878," November 11, 2006, <https://www.un.org/unispal/document/auto-insert-189648/>; United Nations Security Council, "Mideast Situation/Palestine Question [Israeli Operation 'Summer Rains,' Abduction of Shalit Etc.] – SecCo – Vetoed Draft Resolution, UN Doc. S/2006/508," July 12, 2006, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/429/31/PDF/N0642931.pdf?OpenElement>; United Nations Security Council, "Draft Security Council Resolution on Protecting Civilians in Gaza, UN Doc S/2018/516, Vetoed," June 1, 2018.

<sup>126</sup> "Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration - Switzerland Text/Non-UN Document," in *Question of Palestine*, 1999, <https://www.un.org/unispal/document/auto-insert-199888/>.

<sup>127</sup> International Committee of the Red Cross (ICRC), "Summary of the Geneva Conventions of 1949 and Their Additional Protocols (International Humanitarian Law)," 16.

<sup>128</sup> The International Committee of Red Cross has consistently affirmed the application of the Fourth Geneva Convention in all its statements dealing with the Occupied Territories since Israel's 1967 occupation of the West Bank and Gaza.

<sup>129</sup> Office of Prosecutor of International Criminal Court, "Statement of ICC Prosecutor, Fatou Bensouda, Respecting an Investigation of the Situation in Palestine" (International Criminal Court, March 3, 2012), <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>.



## 1.6 Conclusion

From the above discussion, it can be concluded that the veto power at the time of incorporation was meant to create harmony among the Member States and not to support the commission of heinous crimes. The permanent members pledge to not use the veto power in violation of International Law but the practice shows another story. The permanent members used the veto to protect their political interests and protect their politically aligned states. The Palestine conflict is a clear example of that practice.

International Criminal Law as well as International Humanitarian Law both applied to the Occupied Palestinian territory. International Criminal Law applies individual criminal responsibility upon the offenders of heinous International Crimes while the Geneva Convention makes it binding upon the parties to punish the offenders and ensure the adherence to Geneva Convention obligations in all situations.<sup>130</sup>

The crime against humanity and grave breaches Of the Geneva Conventions of 1949 have attained the status of Jus Cogens norm and hence are non-derogatory. During the commission of the above-stated crimes, the exercise of veto power not only promotes the violations of Human Rights but also encourages the culprits.

---

<sup>130</sup> United Nations Commission of Inquiry, “Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2).”

## Chapter 2: *Jus Cogens*/Peremptory Norms

### 2.1 Introduction

This chapter will discuss the issue no 2, the content of *Jus Cogens* norms as to crime against humanity and grave breaches of Geneva Conventions of 1949, and issue no 3, that how to restrict the use of veto power especially examining the relation with *Jus Cogens* norms, and issue no 1(B) the superior hierarchy of *Jus Cogens* norms. This chapter also elaborate the content of *Jus Cogens* norms, their historical evolution, and core elements, and can also establish the superior hierarchy of these norms by providing the theoretical framework. This chapter also deals with an important question of the validity of Security Council Resolutions when contain a violation of *Jus Cogens* norms. This chapter also highlights the legal restrictions upon the Security Council veto power.

### 2.2 Historical Evolution of *Jus Cogens* Norms

The *Jus Cogens* norms have their roots in classical Roman Law. The history of *Jus Cogens* norms is traced back to the Natural Law and the preacher of Natural Law believes that the law of nature is immutable. Hence, states are unable to make any changes through their Conventions or Treatise nor they can exempt themselves from the observance of it. They further argue that the Positive Law must be following Natural Law. In the nineteenth century, the positive theory made its way under International Law and advocated the concept of State Sovereignty and the consideration of the will of states as a dominant factor. With State Sovereignty, there are some rules which serve the common interest of the whole world which can't be derogated. This phenomenon is explained by Positive Law vicar Hans Kelsen in his *Pure Theory of Law*.<sup>131</sup> There is a certain immoral treatise that can never be allowed under the International Law framework like a treatise that authorized slavery and piracy which is considered by states as *hostis humani generis* (enemies of mankind).<sup>132</sup> This debate started the discussion over the existence of non-derogable norms.

World War I revived the discussion on the concept of *Jus Cogens* norms. The covenant which provides the legal basis to the League of Nations, contains many provisions comprehending the concept of non-derogable norms like the covenant declaring the war or threat of war as a matter

---

<sup>131</sup> Hans Kelsen, *The Pure Theory of Law: Its Method and Fundamental Concept* (The Law Quarterly Review 474, 1934), [https://legal.un.org/ilc/publications/yearbooks/english/ilc\\_2006\\_v2\\_p2.pdf](https://legal.un.org/ilc/publications/yearbooks/english/ilc_2006_v2_p2.pdf).

<sup>132</sup> Mark Weston Janis, "The Nature of *Jus Cogens*," 1988, <https://core.ac.uk/download/pdf/302393673.pdf>.

of common interest. The Second World War sped up the process of development of the *Jus Cogens* idea, as the scholars consider that only non-derogable norms can deal with the Nazi atrocities.<sup>133</sup>

The *Jus Cogens* reference can also be traced in many judicial decisions in early 1934, where the Permanent Court of International Justice held in Oscar Chinn's case that a treaty is void if it is inconsistent with other rules of International Law. The judge also admits that a rule of this kind is not much developed under International Law and stated that any rule which states considered as binding upon themselves can't be altered just through numbers and any rule in contradictions of these norms is void under International Law.<sup>134</sup> The concept can also be traced in the individual opinion of Judge Fernandes of the International Court of Justice as over special rules many several rules cogente takes precedence. Judge Tanaka expressed in the Southwest Africa Case that the law that guaranteed the protection of Human Rights is *Jus Cogens* in nature.<sup>135</sup>

The *Jus Cogens* norms became a legally binding force under International Law through the adoption of the Vienna Convention on the Law of Treatises (hereinafter referred to as VCLT). So, it is important to discuss the procedure of making Article 53 of VCLT. firstly, the concept was introduced by Sir Gerald Fitzmaurice in his eighth report on the Law of Treatise. He discussed the basic elements of *Jus Cogens* norms as for a treaty to be valid under International Law must be in conformity with existing rules of International Law and should not contradict the rules which are *Jus Cogens* in nature.<sup>136</sup> The discussion is concerned with the invalidity of treaty provisions on account of inconsistency with International Law under the Convention framework. To that end, scholars proposed that a treaty is void if it deals with an act that is illegal under Customary International Law and that inconsistency must override the principles of International Law regarded as principles of International Public Policy.<sup>137</sup>

The idea that a treaty is void if contrary to General Principles of International Law is welcomed by the member states as well as the Commission. The member states express their approval and pledge that no expert in International Law could refute *the Jus Cogens* principle, which states that no two States may come to an agreement to establish slavery or legalize piracy

---

<sup>133</sup> Kleinlein, "Jus Cogens as the Highest Law: Peremptory Norms and Legal Hierarchies."

<sup>134</sup> The Permanent Court of Justice, The Oscar Chinn case (United Kingdom v Belgium) (n.d.).

<sup>135</sup> The International Court of Justice (ICJ), Southwest Africa case (Liberia v South Africa) (1971).

<sup>136</sup> Janis, "The Nature of Jus Cogens."

<sup>137</sup> Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*.

and that any formal agreement for either purpose is null and void. The doctrine of *Jus Cogens* is widely accepted by all member states.<sup>138</sup>

### **2.2.1 Core Elements of *Jus Cogens* Norms**

The *Jus Cogens* norms are defined in Article 53 of VCLT.<sup>139</sup> Which describes the basic elements of *Jus Cogens*. Apart from those basic elements, *the Jus Cogens* have some core elements that have been mentioned under the judgments and state practices. For a norm to have the status of *Jus Cogens* must be a Norm of General International Law, accepted and recognized by the International Community of States as a whole, a norm from which no derogation is permitted (basic elements), apart from these it must have universal application, have a status of superiority in relation with other norms of International Law, and lastly secure the fundamental values of the International Community (core elements).

140

The most important elements of *Jus Cogens* norms are non-derogation and universal application. The element of no derogation is so fundamental that it binds all the States and it affirms the Peremptoriness of *Jus Cogens* norms. it supports the existence of rules that are not to be violated in any situation. The universal application of *Jus Cogens* has been affirmed in many judicial decisions. The United States Court of Appeal held in *Smith v. Socialist People's Libyan Arab Jamahiriya* that *Jus Cogens* norms bear a universal binding effect, which makes these norms free from individual State consent.<sup>141</sup>

*Jus Cogens* norms protect the fundamental values of the international community and are hierarchically superior to other norms.

### **2.3 Hierarchical Superiority of *Jus Cogens* Norms (Theoretical Framework)**

This portion will shed light on the hierarchical superiority of *Jus Cogens* norms and analyze the status by evaluating the four legal hierarchies found in legal theory. This portion will also discuss the special status of *Jus Cogens* norms as an invalidating the existing valid treatise and most importantly the status of Security Council Resolutions.

---

<sup>138</sup> General Assembly, International Law Commission, "First Report on *Jus Cogens* by Dire Tladi, Special Rapporteur," March 8, 2016, <https://digitallibrary.un.org/record/1325320?ln=en>.

<sup>139</sup> Vienna Convention on the Law of Treatise, Article 53.

<sup>140</sup> General Assembly, International Law Commission, "First Report on *Jus Cogens* by Dire Tladi, Special Rapporteur."

<sup>141</sup> The United States Court of Appeal, *Smith v. Socialist People's Libyan Arab Jamahiriya* (n.d.).

While moving forward it is important to define the legal hierarchies present in legal theory. These hierarchies refer to the different levels of relations among the legal norms and for reference, four types of hierarchies are discussed here.

A structural hierarchy has originated from the Pure Theory of Law; it is a condition of law-making. It distinguishes between meta laws on law-making. Meta laws have a normative function, they provide sufficient power to lawmakers to put forward and apply the norms. Meta laws on law creation are directly concerned with the act of law-making rather than referring to other legal rules. Legal norms have dichotomous division, conditioned, and conditioning at the same time. All legal acts have this double legal appearance except the acts of physical execution and basic norms.<sup>142</sup>

The next hierarchy discussed is based upon the power of legal norms to abolish or derogate the validity of another legal norm. it highlighted the relation between the derogated and derogating norm, the derogating norm has the power to invalidate the other norm but the other norm does not have any power to abolish the first norm. it is a combination of three norms, where two norms are substantial norms and a conflict is present among them, the main norm here is the third norm which resolves the conflict between the substantial norms and can validate one of two substantial norms or invalidate both norms. This third norm is a derogating norm that resolves the conflict between two substantial norms.<sup>143</sup>

The third hierarchy is based upon the primary and secondary rules and maintains a logical or linguistic hierarchy. The relation between primary and secondary rules is on a different level of language as the primary rules are the object language and secondary rules are metalanguage and talk about the object language. Secondary rules specify the ways through which the primary rules can be ascertained, introduced, and eliminated. Secondary rules must be determined to remove doubts about the primary rules. The last hierarchy deals with the contents of legal norms. It focuses on the perception of legal norms and is rooted in the relative value of norms. it is known as an axiological hierarchy. Now comes the main issue of the superior hierarchy of Jus Cogens norms.

144

---

<sup>142</sup> Kelson, *The Pure Theory of Law: Its Method and Fundamental Concept*.

<sup>143</sup> Kleinlein, "Jus Cogens as the Highest Law: Peremptory Norms and Legal Hierarchies"; Erika De Wet and Jure Vidmar, *Hierarchy in International Law: The Place of Human Rights* (Oxford Scholarship Online, 2012), file:///http.oxford%20stuff/Erika%20De%20Wet,%20Jure%20Vidmar%20-%20Hierarchy%20in%20International%20Law\_%20The%20Place%20of%20Human%20Rights%20(2012,%20Oxford%20University%20Press,%20USA)%20-%20libgen.li.pdf.

<sup>144</sup> Kelson, *The Pure Theory of Law: Its Method and Fundamental Concept*.

If the language of Article 53 of VCLT is analyzed it reflects the structural hierarchy as the first clause says that a treaty is void if it conflicts with the Peremptory Norm of General International Law at the time of its conclusion. This clause placed Article 53 under the law-making division. If Article 53 is read with Part V, Section 2 of VCLT, Articles 46 to 51, it can be inferred that Peremptory Norms possess the power to limit the treaty-making power which also means that they possess the power to validate the other treaty norms or condition other norms of International Treaty Law. which means that *Jus Cogens* are part of *Rechtserzeugungsregel* of International Law.<sup>145</sup> The rule declaring that treaties in disagreement with *Jus Cogens* are null and void is superior in a structural hierarchy to treaties that are reached via the treaty-making processes. The only issue with structure hierarchy is that it shortage two main features of *Jus Cogens* norms, one is the status of *Jus Cogens* norms as the highest law in the system and the other is the dichotomous division of International Law as Peremptory and Ordinary norms.<sup>146</sup>

The *Jus Cogens* norms have a very special status as they can invalidate the existing valid treatise, which means that the *Jus Cogens* norms possess the power of derogation. The derogating power of *Jus Cogens* norms can be simply ascertained through the language of Articles 53 and 64 of VCLT, defined as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of General International Law having the same character.<sup>147</sup> According to Article 64 of the VCLT, Any existing treaty that is inconsistent with such new Peremptory Norm of General International Law shall be void and terminated.<sup>148</sup> So, it can be inferred that the *Jus Cogens* are primarily *jus non dispositivum*. It can be concluded through the language of the above Articles that *the Jus Cogens* norms possess a substantial hierarchy with other treatises and these norms can easily abolish the treatise which is not consistent with the *Jus Cogens* norms.<sup>149</sup>

Another special status of Peremptory Norms is non-derogability. This special status always makes the *Jus Cogens* norms mandatory and imperative. To fully understand this status, it is important to discuss the shift in International Law towards the interest of the whole community from the interest of States. After the Second World War, the International Institutional System

---

<sup>145</sup> Simon Mateus, “The Relationship between Peremptory Norms of General International Law (Jus Cogens) and Obligations Erga Omnes” (Dissertation, University of Pretoria, 2021), <https://repository.up.ac.za/handle/2263/84092>.

<sup>146</sup> Kleinlein, “Jus Cogens as the Highest Law: Peremptory Norms and Legal Hierarchies.”

<sup>147</sup>Vienna Convention on Law of Treatise, Article 53.

<sup>148</sup> Vienna Convention on Law of Treatise, Article 64.

<sup>149</sup> Kleinlein, “Jus Cogens as the Highest Law: Peremptory Norms and Legal Hierarchies”; De Wet and Vidmar, *Hierarchy in International Law: The Place of Human Rights*.

changed its fundamentals. The powers of states are put under restriction, the rationale behind this restriction is the protection of the interest of the whole community. The same has been reflected in the preamble of the UN Charter as the Charter starts with the wording of, we the people, rather than we the States.<sup>150</sup> This also explains why some of the provisions of Human Rights are non-derogable and states cannot suspend those provisions even in a state of emergency. The same is true for the provisions of the Geneva Conventions of 1949 and States are under a legal obligation to respect the provision of those Conventions in all circumstances.

*Jus Cogens* norms protect the interest of the whole community which makes them superior to other norms and adorn them with the status of non-derogability. A member of ILC writing describes the *Jus Cogens* as rules that reflect the interest of the whole international community and become absolute. These norms are like a public order imperative in the municipal system.<sup>151</sup> The sovereign states may not change or agree with others to change by *Jus Dispositivum*, they cannot enter into a valid agreement to enslave minority people, and they can't use force or implement any policy in violation of fundamental Human Rights of a race.<sup>152</sup>

The superior hierarchy of *Jus Cogens* norm has been affirmed by Judge ad hoc John Dugard in his separate opinion in the Armed Activities on the Territory of Congo (DRC v. Rwanda) Case 2006 that why the *Jus Cogens* norms enjoy hierarchical superiority with other norms under the International Legal Order lies in the fact that these norms are a blend of principle and policy. On one side these norms hold the high principles of International Law e.g., the right to be free from torture, aggression, slavery, genocide, and the right to self-determination. On the other side, these norms provide the legal framework for the most fundamental policies of the International Community e.g., the prohibition of genocide, aggression, torture, and slavery. In that way, these norms play a vital role in the process of judicial choice.<sup>153</sup>

---

<sup>150</sup>The Charter of the United Nations, Chapter 1 Purpose and Principle, available at: <https://www.un.org/en/about-us/un-charter/chapter-1>.

<sup>151</sup> Gordon A. Christenson, "The World Court and Jus Cogens," *Cambridge University Press*, n.d., [https://www.jstor.org/stable/pdf/2202135.pdf?refreqid=excelsior%3Ae20393d161638eb7e8df5367e27c8f7a&ab\\_segments=&origin=&initiator=&acceptTC=1](https://www.jstor.org/stable/pdf/2202135.pdf?refreqid=excelsior%3Ae20393d161638eb7e8df5367e27c8f7a&ab_segments=&origin=&initiator=&acceptTC=1); Mateus, "The Relationship between Peremptory Norms of General International Law (Jus Cogens) and Obligations Erga Omnes."

<sup>152</sup> Marjorie M Whiteman, "Jus Cogens in International Law, with a Projected List" 7 (n.d.).

<sup>153</sup>International Court of Justice, Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application (n.d.).

It can be concluded from the above discussion that the *Jus Cogens* are the hierarchical superior norms of International Law, which enjoy supreme authority over other norms because of their extreme importance for the welfare of society.

#### **2.4 The Prohibitions of Crime against Humanity and War Crimes are Peremptory Norms Protected as *Jus Cogens***

The list of those norms which are protected under the umbrella of *Jus Cogens* norms has not been provided under the Vienna Convention on the Law of Treatise (which defines *Jus Cogens* Norms). The discussion of either crime against humanity and grave breaches of the Geneva Conventions qualify the status of *Jus Cogens* norms is discussed below.

The general requirements for a norm to have the status of *Jus Cogens* are the ones which are mentioned in Article 53 of the Vienna Convention on the Law of Treatise which states the first requirement as a Peremptory Norm of General International Law which is accepted and recognized by the international community of States as a whole, second as a norm from which no derogation can be permitted, and thirdly can only be changed by a subsequent norm of General International Law.<sup>154</sup> Here, in the language of Article 53, the third requirement is a criterion of how the *Jus Cogens* norms can be modified for that a norm needs to be identified as a *Jus Cogens* norm first. So, the third requirement is not the requirement for the identification of the *Jus Cogens* norm. Secondly, the rules of General International Law have been recognized and accepted by the states. In concluding, the only rule that qualifies for the identification of a norm to have the status of are:

- 1) A norm of general International Law.
- 2) Accepted and recognized as a norm from which no derogation is permitted.<sup>155</sup>

The crime against humanity will be analyzed in the light of discussion to know if it falls under the criteria of the *Jus Cogens* norm. The first requirement is to be a norm of General International Law. How to check whether a norm is a part of General International Law, in this regard the Special Rapporteur of the UN concludes that Customary International Law is the most

---

<sup>154</sup> Vienna Convention on the Law of Treaties, Art. 53.

<sup>155</sup> General Assembly, International Law Commission, "Fourth Report on Peremptory Norms of General International Law (*Jus Cogens*) by Dire Tladi, Special Rapporteur," January 31, 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/024/33/PDF/N1902433.pdf?OpenElement>.



common basis for the formation of *Jus Cogens* norms of International Law. A treaty rule is also important for a norm to reach the status of a Peremptory Norm of General International Law.<sup>156</sup>

For the crime against humanity to be a part of Customary International Law the Supreme Court of Argentina stated that the norms of war crimes and crimes against humanity have emerged from the rules of Customary International Law.<sup>157</sup>

Similarly, the High Court of Kenya determined in the case of Kenya section of the International Commission of Jurists v. The Attorney-General and Others that the duty to prosecute international crimes is a rule of Customary International Law.<sup>158</sup>

The prohibition of crime against humanity is incorporated in the statutes of International Criminal Tribunals established by the United Nations namely the ICTY (Article 5 deals with crime against humanity),<sup>159</sup> and the ICTR (Article 3 deals with crime against humanity), IMT (Nuremberg), and the International Criminal Court (ICC) (Article 7 of Rome Statute). The incorporation of crime against humanity in all the above tribunals serves as evidence of being part of the norm of General International Law from which no derogation is permitted.<sup>160</sup>

The ICC statute has been ratified by 123 States Parties and all these State Parties undertake to prosecute persons accused of this crime within their territory or surrender them to ICC for prosecution this obligation exists irrespective of whether a given State Party has enacted specific national legislation to define or prosecute the crime against humanity.<sup>161</sup> This shows the general practice of State Parties considering the norm of crime against humanity from which no derogation is permitted.

The status of the prohibition of crime against humanity as a Peremptory Norm of General International Law (*Jus Cogens*) is being further established from the decisions of National and International Courts. The International Tribunal for the Former Yugoslavia in Prosecutor v Kupreskic held that the prohibition of crime against humanity and the prohibition of genocide is a

---

<sup>156</sup> United Nations, General Assembly, International Law Commission, "Second Report on Jus Cogens by Dire Tladi, Special Rapporteur, UN Doc. A/CN.4/706," March 16, 2017, 46/47, file:///C:/Users//A\_CN-4\_706-EN%20(1).pdf.

<sup>157</sup> Trial Chamber Judgement, The Prosecutor v. Jean-Pierre Bemba Gombo.

<sup>158</sup> Kenya Section of the International Commission of Jurists v. the Attorney -General and Others, Judgment of the High Court of Kenya of 28 November 2011, para. 14.

<sup>159</sup> International Criminal Tribunal for the Former Yugoslavia, Article 5.

<sup>160</sup> International Criminal Tribunal for the Rwanda, Article 3.

<sup>161</sup> International Criminal Court, "The States Parties to the Rome Statute," <https://asp.icc-cpi.int/states-parties>.

Peremptory Norm of General International Law (*Jus Cogens*).<sup>162</sup> The International Criminal Court in Prosecutor v William Samoei Ruto and Joshua Arap Sang held that it is agreed that the interdiction of crime against humanity enjoys the status of *Jus Cogens*.<sup>163</sup>

The Inter-American Court of Human Rights in Miguel Castro-Castro Prison v Peru determines that the prohibition of crime against humanity constitutes the Peremptory Norm of General International Law.<sup>164</sup> This judgment has been based upon the judgment of Almonacid-Arellano v Chile in which it has been established that the prohibition of crime against humanity is a Peremptory Norm by analyzing its previous practice and the Nuremberg principles.<sup>165</sup>

The International Law Commission also assist in this regard under the commentary of Article 16 and 40 of the Articles on the Responsibilities of States for Internationally Wrongful Acts (Articles on State Responsibility). The ILC observed that the prohibition of crimes against humanity, genocide, and basic rules of International Humanitarian Law (war crimes) are Peremptory Norms due to clear acceptance and recognition.<sup>166</sup>

From the above discussion, it has been established that the prohibition of crime against humanity is a Peremptory Norm of General International Law (*Jus Cogens*).

Now comes towards the grave breaches of the Geneva Convention of 1949. These are the fundamental rules of International Humanitarian Law, before proceeding to further discussion about their status of *Jus Cogens* norm it is necessary to add some comments about the terminology. The phrase basic rules of International Humanitarian Law, principles of Humanitarian Law, principles of International Humanitarian Law, grave breaches of Geneva Conventions, and prohibition of war crimes, all have been used with the same meanings. Here, in this research paper, the phrase grave breaches of Geneva Conventions will be used as this research title contains these words.

---

<sup>162</sup> International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Judgement, Prosecutor v. Zoran Kupreki, Mirjan Kupreki, Vlatko kupreki, Drago Josipovi, Dragan Papi, Vladimir, also known as “Vlado”, Case No.: IT-95-16-T (January 14, 2000).

<sup>163</sup> International Criminal Court (Appeal Chamber), The Prosecutor v. William Samoei Ruto and Joshua Arap Sang, Case no. ICC-01/09-01/11-1598 (June 18, 2013). Decision of Trial Chamber on the Request of Mr. Ruto for Excusal from Continued Presence at Trial.

<sup>164</sup> Inter-American Court of Human Rights, Miguel Castro-Castro Prison v. Peru, Judgment (Merits, Reparations and Costs) (November 18, 2010).

<sup>165</sup> Inter-American Court of Human Rights, Almonacid-Arellano and Others v. Chile, Judgment (Preliminary Objections, Merits and Costs) (September 26, 2006).

<sup>166</sup> International Law Commission, Articles on State Responsibility, Arts. 16, 40, available at: [https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_1996.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_1996.pdf).

The peremptory status of the rules of the Geneva Conventions can only be found in the judgment of International and National courts, some of the decisions are presented here for reference. The importance of rules mentioned in the Geneva Convention and their status as recognized Peremptory Norms of General International Law have been determined by the International Court of Justice under the Nuclear Weapons Advisory Opinion as the rules mentioned under the Geneva Conventions are related to arms conflict and they have been so important for humanity and the respect of humans and all states (whether they ratified or not the Conventions) perceived binding upon them because they constitute intransgressible principles of International Customary Law.<sup>167</sup>

In the same case Judge Weeramantry in his dissenting opinion mentioned that the rules of the Humanitarian Law of war have acquired the status of *Jus Cogens*, for they are fundamental rules of a humanitarian character, from which no derogation is possible without negating the basic considerations of humanity which they are intended to protect.<sup>168</sup>

The judgment of the Trial Chamber of the International Tribunal for the Former Yugoslavia in Kupreskic held that the norms of International Humanitarian Law mostly containing prohibition of war crimes are the Peremptory Norms of International Law and non-derogable and overriding character.<sup>169</sup>

The national courts also recognized the grave breaches of the Geneva Convention as a Peremptory Norm of General International Law as the United States District Court held in the Agent Orange Product Liability Litigation case that rules containing war crimes were *Jus Cogens*.<sup>170</sup> The rules of International Humanitarian Law bind all the states even those which have not ratified those treaties as these have the status of *Jus Cogens* norm.<sup>171</sup>

## **2.5 The Obligations of the Security Council to Respect *Jus Cogens* Norms**

---

<sup>167</sup> The International Court of Justice (ICJ), Legality of the Threat or Use of Nuclear Weapons.

<sup>168</sup> The International Court of Justice (ICJ), at 496.

<sup>169</sup> International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Judgement, Prosecutor v. Zoran Kupreki, Mirjan Kupreki, Vlatko kupreki, Drago Josipovi, Dragan Papi, Vladimir, also known as “Vlado”, Case No.: IT-95-16-T at 520.

<sup>170</sup> United States District Court District of Massachusetts, United States of America v. Gary Lee Sampson, Case 01-10384-MLW (January 6, 2016).

<sup>171</sup> Constitutional Court of Colombia., Additional protocol to the Geneva Conventions regarding the protection of victims of non-international armed conflicts. Case no C-225/95 (n.d.).

This portion of the research paper will highlight the legal authority of *Jus Cogens* norms which bind the UN and the Security Council to respect International Law. The legal arguments mentioned here will be based on judicial decisions.

The Security Council is the organ of the UN as discussed above the UN has been made to ensure the international peace and security of the international community of states and that pious duty has been especially transmitted to the Security Council. Due to the importance of that duty, the Security Council is more bound to observe International Law. The Security Council is not *legibus solutus* it has some restrictions which are discussed below but firstly it is important to establish that the Security Council is more bound to respect International Law as ICJ established that the Security Council and General Assembly are not exempted from the observance of Treaty Provisions (UN Charter) just because of their political character. While the (UN Charter) put limitations on their power.<sup>172</sup> A similar concept has been reflected in the judgment of Judge Fitzmaurice in the Namibia Advisory Opinion as the Security Council has the ultimate duty to respect International Law as the individual states and the UN itself are bound to respect International Law<sup>173</sup>.

Judge Castro in the same case held that the court which is the guardian of the law is bound to not cooperate with the Security Council and General Assembly in Resolutions that are in clear violation of International Law.<sup>174</sup> Ad Hoc Judge Jennings held that the discretionary powers have been provided by law so should be used according to law. It is constrained to represent the authority and power of law and at the same time claim to be above it.<sup>175</sup>

The Appeal Chamber of ICTY mentions in detail the limitations on the power of the Security Council in the Tadic Case as the Article 39 of the UN Charter provides a very wide range of discretionary powers to the Security Council. But these powers are not absolute. United Nations has been established through a Treaty that defines its powers and provides a framework for the

---

<sup>172</sup>International Court of Justice, Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (February 27, 1998).

<sup>173</sup> International Court of Justice, Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 279 (1970), Advisory Opinion of Judge Fitzmaurice (June 21, 1971).

<sup>174</sup> International Court of Justice, Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 279 (1970), Advisory Opinion of Judge De Castro (June 21, 1971).

<sup>175</sup> International Court of Justice, Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom).

organization, The Security Council is an organ of the UN, which established that the discretionary powers of the Security Council are subject to UN Charter limitations. Security Council cannot exercise its powers beyond those limitations as these apply to the internal division of powers as well. The UN Charter provides powers to the Security Council which are not *absolute fiat*.<sup>176</sup>

The issue is whether the Security Council is *Legibus Solutus* (unbound by law). The answer to that issue lies in the fact that the Security Council is an organ of International Organization that gets its powers from a treaty (UN Charter) made by States. Therefore, the Security Council is subject to the limitations imposed under that treaty (UN Charter) which makes it bound to observe those limitations. How is it possible that an organization which is based upon the principle of Sovereign Equality of Member States will make one of its organs unbound to observe these principles?<sup>177</sup>

The legal hierarchies have existed under the International Law. if the language of the UN Charter is analyzed on the scale of structural hierarchy, it will be observed that the UN Charter belongs to both conditioning and conditioned rules. Article 24(2) of the Charter makes it obligatory for the Security Council to act following the purpose and principles of the United Nations.<sup>178</sup> The purpose and principle of the UN Charter reflect the observance of *Jus Cogens* norms. thus, it can be said that the Resolutions of the Security Council must follow *Jus Cogens* norms as the UN Charter also makes it obligatory upon the Security Council otherwise these Resolutions will be *ultra vires*.<sup>179</sup> The limitation applied through Articles 25 and 103 on the Member States of the UN cannot violate the adherence to *Jus Cogens* norms as the preamble and purpose of the UN make it binding to observe the *Jus Cogens* norms. The Security Council Resolutions that violate *Jus Cogens* or even a broader set of fundamental Human Rights are invalid due to the structural hierarchy between the UN Charter and the legal acts of UN organs under the Charter. There is no need to apply the *Jus Cogens* restriction upon the Security Council Resolutions for a very simple reason which is that derogation will not be required if a norm does not adhere to the prerequisites for its creation because no norm was ever established in the first place.<sup>180</sup>

---

<sup>176</sup> ICTY, Appeal Chamber, Prosecutor v Dusko Tadic, Case No. IT-94-1-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction.

<sup>177</sup> Aristotle Constantinides, "An Overview of Legal Restraints on Security Council Chapter VII Action with a Focus on Post-Conflict Iraq," n.d., [https://esil-sedi.eu/wp-content/uploads/2018/04/Constantinides\\_0.pdf](https://esil-sedi.eu/wp-content/uploads/2018/04/Constantinides_0.pdf).

<sup>178</sup> The Charter of the United Nations, Article 24(2), available at: <https://www.un.org/en/about-us/un-charter/chapter-5>.

<sup>179</sup> Kleinlein, "Jus Cogens as the Highest Law: Peremptory Norms and Legal Hierarchies."

<sup>180</sup> De Wet and Vidmar, *Hierarchy in International Law: The Place of Human Rights*.

The same can be found in many judgments of international and national courts. In the case of *Kadi v Council of the European Union and Commission of the European communities*, the European Court of First Instance held that the Peremptory Norms of General International Law (*Jus Cogens*) are binding upon all subjects of International Law because of their superior hierarchy under International Law. These norms are binding even on the bodies of the United Nations.<sup>181</sup> If these norms are binding upon the United Nations, then surely, they bind the Security Council as well.

The same conclusion can be drawn from the application of the principal *Nemo plus iuris transferre potest quam ipse habet* (an international creature cannot acquire more powers than its creators). In this regard, an International Law scholar writes that the Security Council is bound by the *Jus Cogens* norms as the Security Council acquired its powers from the UN Charter. So, it has only those powers which have been granted to it by the UN Member States. It follows then that the Security Council is bound by the *Jus Cogens* as the international creature cannot acquire more powers than its creature-*nemo plus iuris transferre potest quam ipse habet*.<sup>182</sup>

Other arguments can be presented in favor of the above conclusion as the language of Article 53 states that a norm from which no derogation can be permitted, and any treaty that conflicts with a Peremptory Norm is void means that no treaty can suspend the operation of *Jus Cogens* norms except for a treaty of same nature. The UN Charter is also a treaty and cannot derogate from the provisions of *Jus Cogens* norms.<sup>183</sup>

It has been established from the above discussion that the Security Council is subject to International Law. The Peremptory Norms of General International Law (*Jus Cogens*) are part of International Law and acquire hierarchical superiority under International Law. so, it can be inferred that the Security Council is subject to *Jus Cogens* norms as well. A scholar of International Law expressed his opinion that the Peremptory Norms of General International Law according to the language of Article 53 of VCLT can only be derogated by the subsequent norms of the same kind which makes it clear that these norms (*Jus Cogens*) noticeably bound the Security Council.<sup>184</sup>

### **2.5.1 Security Council Resolution will be Void if it conflicts with the *Jus Cogens* Norms**

---

<sup>181</sup> European Court of Justice, *Kadi v. Council of the European Union and Commission of the European Communities* 2005 E.C.R. II-03649, Case T-315/01.

<sup>182</sup> Yiu, "Jus Cogens, the Veto and the R2P: A New Approach."

<sup>183</sup> Vienna Convention on Law of Treatise, Art. 53.

<sup>184</sup> James Crawford, "Chance, Order, Change: The Course of International Law, General Course on Public International Law," n.d., para. 546.

As stated above that the Security Council is bound to observe International Law as well as the norm of *Jus Cogens*. Here, an analysis has been provided of the Resolution which has been declared void as it contradicts the *Jus Cogens norm* the case discussed here is based upon the Genocide Convention.<sup>185</sup>

The Security Council passed Resolution 713 and declared that all the states implement a general and complete embargo on all deliveries of weapons and military equipment in Yugoslavia. The Government of Bosnia Herzegovina took the stance to declare Resolution 713 of the Security Council Ultra Vires as it contradicts the *Jus Cogens* norm. The Government of Bosnia Herzegovina explained that the embargo imposed upon Yugoslavia facilitated the better-armed Serbian forces within Bosnia which was contrary to the Right of Self Defense of Article 51 of the Charter. It also prevents the Government of Bosnia Herzegovina from stopping the commission of Genocide which is contrary to Article 1 of the Genocide Convention.<sup>186</sup> Judge ad hoc Eli Lauterpacht shares his views in a separate opinion as it can be observed that though unwillingly and unintentionally the Members of the UN are found facilitators of genocidal activity in Bosnia which is contrary to the rule of *Jus Cogens* norms.<sup>187</sup> He also mentions that paragraph 6 of Resolution 713 ceased to be valid when it facilitates the violation of *Jus Cogens* norms and the Members of the UN are free to disregard it and the attention of the Security Council should be drawn toward the relevance of *Jus Cogens* norm so that it will consider this relevance for any future reconsideration.<sup>188</sup>

As Judge Lauterpacht concluded in his opinion that a Resolution is void if contradicts *Jus Cogens'* norm. hence, it can be inferred that if a Resolution is being vetoed specially to facilitate the *Jus Cogens* violation, then it will cease to be effective under International Law. The above example is explained regarding genocide but the conclusion is valid for all *Jus Cogens* norms violation and it stands true about Crime against Humanity and grave breaches of the Geneva Conventions.

---

<sup>185</sup> International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (n.d.).

<sup>186</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Article 1.

<sup>187</sup> International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) paragraph 102.

<sup>188</sup> International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro).

The responsibility of the Security Council to obey the *Jus Cogens* norm is also recognized under the Armed Activities Case by Judge Dugard. Judge Dugard held in the Armed Activities Case that it has been accepted and a recognized rule that a treaty becomes void when it contradicts with *Jus Cogens* norm (Article 53 of VCLT) and it is obligatory upon the states to deny any situation that facilitates the violation of the Peremptory Norm of General International Law.<sup>189</sup>

The European Court of First Instance established the same opinion in the Barakaat and Kadi cases as it has been affirmed that the *Jus Cogens* norms have a complete binding effect over the Security Council and any Resolution that violates these norms is held void.<sup>190</sup>

The Resolutions of the Security Council do not have any legal authority to set aside the Peremptory Norms of General International Law (*Jus Cogens*). The *Jus Cogens* norms highest form of International Law and these norms have superiority over all other norms so, any Resolution in conflict with these norms has no legal binding.<sup>191</sup>

The use of veto power in violation of *Jus Cogens* norms is against the spirit of International Law. The veto that supports the violation of *Jus Cogens* norms will become void and the Members of the UN have the option to disregard it as Judge Lauterpacht held that the operation of the Security Council which enables the Members to accessories to Genocide will cease to be valid and binding.<sup>192</sup>

The veto power should not be used where it facilitates the violation of the *Jus Cogens* norm can also be warranted by the ILC Articles on State Responsibilities (Article 41.2) and (Article 42.2) of Articles on the Responsibility of International Organizations for Internationally Wrongful Acts. These Articles state that the States and International

---

<sup>189</sup> International Court of Justice, Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application.

<sup>190</sup> European Court of Justice, Kadi v. Council of the European Union and Commission of the European Communities 2005 E.C.R. II-03649, Case T-315/01.

<sup>191</sup> Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*. (“Peremptory norms of International Law cannot be set aside by Resolutions of the Security Council; those Resolutions cannot produce binding force upon the members of the United Nations.”).

<sup>192</sup> International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) paragraph 456.



Organizations are under an obligation to end through lawful means any serious breach (of *Jus Cogens* norms), nor render any aid or assistance in maintaining that situation.<sup>193</sup>

### **2.5.2 The Veto should be used in a way that is consistent with the *Jus Cogens* Norms**

The making of the UN Charter as discussed above supports the incorporation of veto power. The veto power as it follows the UN Charter (a treaty) should be exercised according to the limits of International Law. In this portion, it will be discussed that if in any situation the veto is used it should be used in consistency with *Jus Cogens norms* as these norms are the highest level of law from which no derogation is permitted and cannot be violated. Which rules are absolute and binding on the UN Security Council.<sup>194</sup>

The argument in support of consistency with *Jus Cogens* has been discussed in the case of Al Kaddi and Al Jedda by the European Court of Human Rights and the European Court of Justice. The above cases discussed the matter of the inconsistency of the Security Council Resolution with the protections provided under the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). The European Court of Justice held in the Al Kaddi case that the protections guaranteed under the EU Law cannot be dislodged by Security Council Resolutions. In the Al Jedda case, the European Court of Human Rights discussed that the Security Council is under an obligation to not make binding any duty on Member States that violates fundamental principles of Human Rights. The court is also liable to adopt such an interpretation of the Security Council Resolution which is in harmony with the laws of the European Convention.<sup>195</sup>

Logically it can be inferred from the above court stance that if a Resolution is to be interpreted in harmony with the European Convention, then the same is true for the Resolution to be consistent with the *Jus Cogens* norm.

The individual members of the UN are also under the legal obligation to support the consistency and respect of the *Jus Cogens* norm. In the Tadic Case, the ICTY held that

---

<sup>193</sup> Articles on State Responsibility, Art. 41.2; Int'l L. Comm'n, Draft Articles on the Responsibility of International Organizations for Internationally Wrongful Acts, with Commentaries (adopted), UN Doc. A/66/10, para. 87 (2001) [hereinafter, Articles on the Responsibility of International Organizations], Art. 42.2.

<sup>194</sup>Gerald Fitzmaurice, *The General Principles of International Law Considered from the Standpoint Of the Rule of Law*, vol. 92, n.d.

<sup>195</sup> Marko Milanovic, "Al-Skeini and Al-Jedda in Strasbourg," *European Journal of International Law* 23, no. 1 (February 2012), <https://academic.oup.com/ejil/article/23/1/121/525492>.

the Security Council is bound under the jurisdictional limits of the organization (United Nations).<sup>196</sup> As the Security Council cannot go beyond the powers provided under the UN Charter, it is also true that the individual members cannot go beyond those restrictions. It has been established above that the Security Council is bound to act under the *Jus Cogens* limits same is true for its individual member states. The individual Member States of the Security Council are subject to International Law and in this way, the *Jus Cogens* norm is binding on all of them and no exception has been provided for permanent members of the Security Council. As Judge Fitzmaurice held in the Namibia Case the Security Council is bound to respect International Law in the same way as the individual Member States are.<sup>197</sup> Secondly, the above proposition is well supported by the application of the principle of *Nemo plus iuris transferre potest quam ipse habet* (an international creature cannot acquire more powers than its creators) as the UN is an international organization that is bound to observe the UN Charter provision same is the case with its individual Member States.<sup>198</sup>

### **2.5.3 The Vetoes related to the Situation in Palestine are not Consistence with the Peremptory Norms of General International Law (*Jus Cogens*)**

The Resolutions that have been vetoed by the permanent members of the Security Council critical of the Palestine issue are not in line with International Law. The resolutions that have been vetoed especially concerning the Palestine-Israel conflict deal with the blocking the condemnation of the crime,<sup>199</sup> the acts of violence against civilians and tensions and deterioration of the situation in occupied Palestinian Territory,<sup>200</sup> the illegal settlement of Israel in Palestinian Territory,<sup>201</sup> the attack on Beit Hanon on 8 of Nov. 2006,<sup>202</sup> the military

---

<sup>196</sup>ICTY, Appeal Chamber, Prosecutor v Dusko Tadic, Case No. IT-94-1-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction.

<sup>197</sup> International Court of Justice, Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 279 (1970), Advisory Opinion of Judge Fitzmaurice.

<sup>198</sup> Yiu, “Jus Cogens, the Veto and the R2P: A New Approach”; Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*.

<sup>199</sup> United Nations Security Council, “Draft Security Council Resolution on Protecting Civilians in Gaza, UN Doc S/2018/516, Vetoed.”

<sup>200</sup> United Nations Security Council, “Israeli Settlements in the Occupied Palestinian Territory – SecCo – Vetoed Draft Resolution, UN Doc. S/2011/24,” February 18, 2011, [get\\_file\\_name file\\_url=https://www.un.org/unispal/wp-content/uploads/2018/06/S.2018.516.pdf](https://www.un.org/unispal/wp-content/uploads/2018/06/S.2018.516.pdf)].

<sup>201</sup> United Nations Security Council; United Nations Security Council, “Mideast Situation/Separation Wall – SecCo – Vetoed Draft Resolution, UN Doc. S/2003/980.”

<sup>202</sup> United Nations Security Council, “Draft Security Council Resolution on Protecting Civilians in Gaza, UN Doc S/2018/516, Vetoed”; United Nations Security Council, “Mideast Situation/Beit Hanoun Fact-Finding Mission – SecCo – Vetoed Draft Resolution, UN Doc. S/2006/878.”

assault, killing, and injury of dozens of Palestinian civilians and destruction of property and infrastructure,<sup>203</sup> and the extrajudicial killings of UN Employees.<sup>204</sup>

The United States vetoed all the Resolutions critical of Israel. All these Resolutions were presented before the Security Council to condemn the commission of war crimes and crimes against humanity in OPT by Israeli forces. The purpose of Resolutions is to send a message to the international community about the suspects of International Crimes but the veto stopped the process. The veto is also responsible for providing the green lights to offenders. The veto use concerning the question of Palestine makes the lives of refugees nastiest and raise serious question on the credibility of the United Nations Security Council.

## 2.6 Conclusion

In conclusion, it can be inferred from the above discussion that the *Jus Cogens* norms are superior norms of General International Law. Which have a binding nature over the Security Council and its permanent members as well. The crime against humanity and grave breaches of the Geneva Conventions of 1949 both are recognized norms of General International Law and bear the status of *Jus Cogens* norms.<sup>205</sup> The States are obligated to respect these norms in all situations. When it is established that the grave breaches of the Geneva Conventions of 1949 and a crime against humanity are *Jus Cogens* norms then all the members of the Security Council must respect the adherence to these norms. So, if a Resolution has been presented before the Security Council, which is in line with *Jus Cogens* norms, the cast of negative votes against that Resolution is prohibited and it violates International Law as it contradicts with absolute nature of *Jus Cogens* norms.

---

<sup>203</sup> United Nations Security Council, “Israeli Settlements in the Occupied Palestinian Territory – SecCo – Vetoed Draft Resolution, UN Doc. S/2011/24”; United Nations Security Council, “United Nations Employees/Incidents – Vetoed Draft Resolution, UN Doc. S/2002/1385”; United Nations Security Council, “Israeli Military Offensive in Gaza – Vetoed Draft Resolution, UN Doc. S/2004/783,” October 5, 2004, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/537/39/PDF/N0453739.pdf?OpenElement>.

<sup>204</sup> United Nations Security Council, “United Nations Employees/Incidents – Vetoed Draft Resolution, UN Doc. S/2002/1385.”

<sup>205</sup> Kleinlein, “Jus Cogens as the Highest Law: Peremptory Norms and Legal Hierarchies.”

## Chapter 3: Case Studies\_ Veto used related to the situation in Palestine

### 3.1 Introduction

This Chapter presents the case study of Palestine-Israel conflict and this chapter addresses the issue no 4 and elaborate that how the veto hampered the Security Council ability to pass resolutions and weaken the peacekeeping. The case study will highlight the climbing ratio of civilian casualties, the suffering of children and women, and prolonged blockade in the form of collective punishment, while the United States invoked the veto on many occasions. The vetoes blocked the condemnation of the commission of the above-mentioned crimes, investigation, and prosecution of those crimes. There is a significant number of Resolutions that have been completely blocked by the use of the veto and hence failed to send a metaphorical message to the perpetrators. Hence, it can be said that the use of veto provides a green light to the perpetrators of serious violations of International Law and can be considered responsible for the ongoing Human Rights violations in OPT. The case study will highlight that the use of the veto when there is evidence of a violation of *Jus Cogens* norms is antagonistic to International Law. To fully understand that the veto is responsible to some extent for the ongoing worst situation of Human Rights in OPT, it is important to briefly explain the issue of Palestine, and then an analysis has been provided in the upcoming part of this Chapter that how veto facilitates the commission of the violation of *Jus Cogens* norms.

### 3.2 The History of the Resolutions Vetoed by the United States regarding Palestine-Israel conflict

A brief introduction and a snapshot of what was occurring in OPT on the date of each veto in the Security Council have been provided under this section. The Palestine issue started at the end of the 19th century when the United Nations adopted Resolution 181 which divides the British Mandate Palestine into Arab and Jewish States against the will of the Palestine people.<sup>206</sup>This led both countries towards the first war of 1948 and it created the issue of refugees. This led the General Assembly to pass Resolution 194, which described the way of return for those who had been driven away from their homes.<sup>207</sup> After this, the Security Council passed Resolution 242, which called for Israel to withdraw from the occupied territories that have been occupied after the

---

<sup>206</sup>The UN General Assembly, "UN Doc. A/RES/181(II)."

<sup>207</sup> United Nations General Assembly, "United Nations General Assembly Resolution 194 (III) of 11 December 1948," December 11, 1948, <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20ARES%20194.pdf>.

six-day war in 1967.<sup>208</sup> The situation in OPT remains worse which led both the countries towards the Yom Kippur War which paved the way for Resolution 338 of the Security Council. The United States vetoed Resolution S/2006/508 of the Security Council, which was presented before the Security Council to condemn the illegal activities of Israeli forces upon the demonstrators.<sup>209</sup>

The blockade policy was implemented in OPT by the Israeli forces in 2007 which has worsened the situation in Gaza. The blockade has been started by the Israeli Government to control and restrict the movements of people as well as supplies in the OPT. The blockade affected the lives of civilians in many ways, it has deteriorated the economy of the Gaza Strip and created hurdles in reaching medical facilities. The blockade caused a shortage of medicine, food, and fuel supplies at a critical level.<sup>210</sup> Many Resolutions of the Security Council condemned the blockade policy but were vetoed.<sup>211</sup>

Israel in violation of General Assembly Resolution 181, started the settlement in the region of West Bank. Israel also constructed a massive border wall that annexed large swaths of Palestinian Territory. The US vetoed Resolution S/2003/980.<sup>212</sup>

From 2012 to 2014 many conflicts arose between the rivals and killed more than 2150 Palestinians and 73 Israelis.<sup>213</sup> The clashes and fights continued until 2015. The violence remains continues in the OPT resulting in many casualties. The U.S. vetoed Resolution S/2018/516.<sup>214</sup>

From the above-described facts, it is obvious that the United States of America vetoed all the above resolutions and stopped the Security Council from securing the peace of the conflicted zone. In the last preceding years, many attempts have been made to secure peace in Palestine through Accords and peace negotiations but all these efforts bear no fruit. By analyzing the complexities of war, it becomes obvious that it not only affects the lives of civilians but children

---

<sup>208</sup> United Nations General Assembly, “Resolution 242 of 1967, UN Doc. S/RES/242(1967),” 242.

<sup>209</sup> United Nations Security Council, “Mideast Situation/Palestine Question [Israeli Operation ‘Summer Rains,’ Abduction of Shalit Etc.] – SecCo – Vetoed Draft Resolution, UN Doc. S/2006/508.”

<sup>210</sup> “Timeline: The Humanitarian Impact of the Gaza Blockade | Oxfam International,” accessed March 3, 2023, <https://www.oxfam.org/en/timeline-humanitarian-impact-gaza-blockade>.

<sup>211</sup> United Nations Security Council, “Draft Security Council Resolution on Protecting Civilians in Gaza, UN Doc S/2018/516, Vetoed”; United Nations Security Council, “Israeli Settlements in the Occupied Palestinian Territory – SecCo – Vetoed Draft Resolution, UN Doc. S/2011/24.”

<sup>212</sup> United Nations Security Council, “Mideast Situation/Separation Wall – SecCo – Vetoed Draft Resolution, UN Doc. S/2003/980.”

<sup>213</sup> United Nations Commission of Inquiry, “Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2).”

<sup>214</sup> United Nations Security Council, “Draft Security Council Resolution on Protecting Civilians in Gaza, UN Doc S/2018/516, Vetoed.”

as well. During all these years of continuous clashes, many civilians and children's deaths have been reported with the total estimated casualties of 63,543.<sup>215</sup> The situation worsened when war crimes and a crime against humanity were reported to be committed in the OPT as the report of the Independent International Commission of Inquiry finds that the Israeli forces were involved in the widespread and systematic attack against the civilian population which constitutes the Crime against Humanity.<sup>216</sup>

Now the most depressing is the role of the Security Council in all that situation. As discussed in earlier Chapters the purpose of the Security Council is to secure peace in the world but in the case of Palestine the role of the Security Council is lacking and the main reason is the presence of veto power. The Council failed to send a clear and consistent message for accountability of those who commit the violations of *Jus Cogens* norms just because of veto power. In this situation a case can be made that the veto (exercised by the permanent members of the Security Council due to their political military interest) was a contributing factor in enabling the continued perpetration of grave breaches of the Geneva Conventions of 1949, facilitating the Commission of Crime Against Humanity, blocked the investigation and blocked the prosecution.

### **3.3 Vetoes which blocked the condemnation of the occurrence of crime against humanity and grave breaches of the Geneva Conventions of 1949**

In the above portion, the issue of Palestine has been explained, and the events that happened in the history of conflict are also discussed. Under this part, the Resolutions that are vetoed will be discussed briefly. The main highlight of this part is the situation and commission of the violation of *Jus Cogens* norms when the veto is exercised. The United States has used the veto on 82 occasions, often in support of Israel.<sup>217</sup>

This portion will only provide the analysis of those Resolutions which condemned the commission of crimes against humanity and war crimes which are clear violations of the Fourth Geneva Conventions of 1949. Before discussing the Vetoed Resolution, it is important to discuss the two main Resolutions of the Security Council which are considered very important about the

---

<sup>215</sup> "United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Data on Casualties."

<sup>216</sup> United Nations Commission of Inquiry, "Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2)."

<sup>217</sup> United States of America, Office of Historian, "Milestones: 1945–1952 - Office of the Historian," accessed March 3, 2023, <https://history.state.gov/milestones/1945-1952/arab-israeli-war>.

Palestine Question. These are Security Council Resolutions 242 and 338.<sup>218</sup> These Resolutions provide a framework to mitigate the issue among the conflicting parties and almost all Security Council Resolutions insist upon the execution of Resolution 242.<sup>219</sup> Here, the main body of these Resolutions will be discussed, and the loopholes will also be highlighted because of the political interest of permanent members of the Security Council.

Resolution 242 laid down the principles for the peaceful settlement in the Middle East. This Resolution was unanimously adopted by the Security Council on 22 November 1967. The Resolution demands the withdrawal of Israeli forces from the occupied territories, termination of all claims and belligerency respect for the territorial integrity of states and secure the right to live in peace, and just settlement of the refugee issue, and the implementation of the above-mentioned principles a special representative was decided to be appointed, who will help the parties to settle the issue peacefully. Apart from the importance of Resolution 242, there are many loopholes in this Resolution, especially regarding the settlement of the Middle East issue.<sup>220</sup>

Resolution 242 legated the right of self-determination of the Palestinian people. Resolution 242 irrespective of its unanimous adoption does not mitigate the Middle East conflict as it lacks the true spirit of mitigation. The Resolution set a mechanism for peaceful settlement but if it will be analyzed in the light of the power of the Security Council which is granted under Chapter VII of the UN Charter, it shows that the Resolution lacks the proper mechanism to settle the conflict among the parties.<sup>221</sup> The mediator appointed in the Resolution has only limited powers (which are restricted because of pressure put by the United States on the request of Israel) which work only with states and do not acknowledge the true plight of Palestinians. Resolution 242 also legates the solution to the refugee problem.<sup>222</sup> It does not make clear how the refugee problem will be resolved, a compromise or a Right of Return. The above facts become the reason for the lack of adherence to Resolution 242.

After the adoption of Resolution 242, the conflict continued among the parties which led to the 1973 war between Israel and Egypt on the Suez Canal and Sinai area. As the fighting reached

---

<sup>218</sup> United Nations General Assembly, "Resolution 338 (1973), UN Doc. SCR338(1973)."

<sup>219</sup> United Nations General Assembly, "Resolution 242 of 1967, UN Doc. S/RES/242(1967)," 242.

<sup>220</sup> Karl Doehring, "Unlawful Resolutions of the Security Council and Their Legal Consequences," *Max Planck Yearbook of United Nations Law Online*, 1997, 242, <https://doi.org/10.1163/187574197X00056>.

<sup>221</sup> The Charter of the United Nations, Chapter VII, available at: <https://www.un.org/en/about-us/un-charter/chapter-7>.

<sup>222</sup> Ruth Lapidot, "The Misleading Interpretation of UN Security Council Resolution 242 (1967)," *Jewish Political Studies Review* 23, no. 3/4 (2011): 7–17.

a critical level the Soviet Union and the United States requested an urgent meeting of the Security Council. On 22 October 1973, the Security Council adopted Resolution 338.<sup>223</sup> This reaffirmed Resolution 242 and encouraged the negotiation among the parties after the cease-fire. This Resolution was again adopted by all, only China abstained from voting. Both these Resolutions have been adopted by the Security Council but fail to mitigate the issue of parties on the ground as Resolution 338 also encourages the enforcement of Resolution 242 but does not address the ambiguities left in Resolution 242.

Now comes the actual issue of the veto power in the Security Council which hailed the peacekeeping and stopped the investigations of serious crimes of International Law. Here, a brief list of Vetoed Resolutions critical of the Palestine issue has been presented below:

### **3.3.1 Blocking the Condemnation of Crime:**

All the Resolutions that have been vetoed concerning the Palestine-Israel conflict blocked the condemnation of heinous crimes of International Law and stopped the community of States from sending a response message to the perpetrators.

#### **3.3.1.1 Vetoed the Excessive Use of Force, Illegal Settlements, Deprivation of Enjoyment of Economic and Social Rights due to Curfews:**

On 26 March 2001, the United States vetoed the Security Council Resolution which demanded the immediate cessation of all acts of violence, provocation, and collective punishment. Under this Resolution, a grave concern has been shown regarding the worst Human Rights situation in OPT and all the parties to ensure the implementation of the Fourth Geneva Convention in the OPT.<sup>224</sup> The Resolutions also stressed the implementation of recommendations of Mitchell's report produced by the International Commission which outlined a series of steps to restore calm and advance the peace process.<sup>225</sup>

The Resolution was presented before the Security Council to condemn the commission of war crimes and to take the stance of the International Community over the worst situation of Human Rights during the Second Intifada. To fully understand the

---

<sup>223</sup> United Nations General Assembly, "Resolution 338 (1973), UN Doc. SCR338(1973)."

<sup>224</sup> United Nations Security Council, "Mideast Situation/UN Observer Force – Vetoed SecCo Draft Resolution, UN Doc. S/2001/270," March 26, 2001, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/700/50/PDF/N0170050.pdf?OpenElement>.

<sup>225</sup> Senator George Mitchell, "Senator George Mitchell Report Sharm El-Sheikh Fact Finding Committee, Excerpts," May 8, 2001, [https://israeled.org/wp-content/uploads/2015/08/2001.5.8\\_Mitchell\\_Report.pdf](https://israeled.org/wp-content/uploads/2015/08/2001.5.8_Mitchell_Report.pdf).



scenario of Human Rights in OPT it is compulsory to discuss the background of the abovementioned Resolution.

The background of Security Council Resolution S/2001/270 has been traced back to the outbreak of the Second Intifada which began on 28<sup>th</sup> September 2000 after the visit of Israel's Prime Minister to the Al-Aqsa Mosque. His visit provoked the Palestinians to raise their voice against Israel's illegal intention of annexation of East Jerusalem.<sup>226</sup> Thousands of civilians participated in that intifada. Many complex causes initiate the Second intifada but the major factors are Israel's prolonged illegal occupation and the worst political and economic conditions.<sup>227</sup> The Israelis consider intifada a threat as the Palestinians rejected Camp David II which is a peaceful settlement agreement on Israel's conditions. These factors turn the intifada into violence.

As the intifada was moved by the civilian authorities, the crowd mostly consisted of men, women, children, political activists, religious leaders, and ordinary citizens. The crowd is frustrated due to the prolonged blockade and vehemence and sometimes turns violent and throws rocks and stones at the members of IDF who are staying behind the concrete bunkers. On the other side, the Israeli soldiers used live ammunition on the demonstrators including rubber-coated bullets (which are metal bullets coated with rubber) and tear gas.<sup>228</sup> The live ammunition that was used includes high-velocity bullets which causes the maximum harm. All these weapons can only be used in life-threatening situations under the Law Enforcement Paradigm, the way to deal with violent crowds is to disperse them with water cannons, soft rubber bullets, and tear gas, unfortunately, the IDF

---

<sup>226</sup> United Nations, Commission on Human Rights, "Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, UN DOC. E/CN.4/2001/121," March 16, 2001, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/118/72/PDF/G0111872.pdf?OpenElement>.

<sup>227</sup> Todd R. Phinney, "The Second Palestinian Intifada," *Airpower versus Terrorism* (Air University Press, 2007), <https://www.jstor.org/stable/resrep13776.10>.

<sup>228</sup> United Nations, Commission on Human Rights, "Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, UN DOC. E/CN.4/2001/121," 96; Human Rights Watch Report, "The Israeli Army and the Intifada Policies That Contribute to the Killings," 2003, <https://www.hrw.org/legacy/campaigns/israel/intifada-intro.htm>.

does not use any of these options.<sup>229</sup> It is also a clear violation of Article 35(2) of Additional Protocol I of 1977.<sup>230</sup>

The evidence collected by NGOs shows that most deaths are caused by injuries on the head and on the upper body, which shows the intention of IDF members to cause bodily harm and not to disperse the crowd.<sup>231</sup> During clashes between demonstrators and IDF on 21 February 2001, three hundred and eleven Palestinians (including civilians and 84 Palestinian children) were killed by Israeli forces, and eleven thousand five hundred seventy-five Palestinians were injured. On the other hand, almost forty-seven Israelis were killed by Palestinian security forces, and four hundred sixty-six have been injured.<sup>232</sup> Article 51(2) of Additional Protocol I forbid any attack against the civilian population.<sup>233</sup>

The Israel Rules of Engagement allow the use of lethal force for minor harm as is reflected in the saying of the Israeli Deputy Minister of Defense, Hit everyone who is planning or committing any act of terrorist attack, Prime Minister of Israel instructs the IDF as you are free to act against everyone who seeks to harm us, which does not meet the criteria of use of force against the civilians under the International Law Paradigm.<sup>234</sup>

It is also witnessed during the discords that the protected objects, places, and buildings were damaged as the records show that medical personal vehicles were attacked

---

<sup>229</sup> “Palestinian Intifada: How Israel Orchestrated a Bloody Takeover | Conflict News | Al Jazeera,” accessed March 4, 2023, <https://www.aljazeera.com/news/2020/9/28/palestinian-intifada-20-years-later-israeli-occupation-continues>.

<sup>230</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of victim of International Armed Conflicts (Protocol 1), Article 35(2), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>231</sup> United Nations, Commission on Human Rights, “Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, UN DOC. E/CN.4/2001/121,” para. 47.

<sup>232</sup> United Nations, Commission on Human Rights, para. 44.

<sup>233</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of victim of International Armed Conflicts (Protocol 1), Article 51(2), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>234</sup> United Nations, Commission on Human Rights, “Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, UN DOC. E/CN.4/2001/121,” para. 54.

one hundred fifty-seven times from both sides, which is a clear violation of Article 12(1) of AD I of 1977.<sup>235</sup>

The IDF members were also involved in damaging the residential houses statistics show that ninety-four homes have been demolished and seven thousand twenty-two dunums of agricultural land have been destroyed including the water wells. Article 53 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 prohibits the destruction of real or personal property which belongs to civilians.<sup>236</sup>

The argument presented in response to all these illegal activities is the rule of military necessity, while the ground reality shows another story. The report of the Human Rights Inquiry Commission found evidence and held such activities as disproportionate and outweighed the military gain.<sup>237</sup>

The above facts show the commission of the clear violation of the Geneva Convention by the IDF members. The situation is not only dangerous for the residents of OPT but it also worsens for the upcoming generation especially it affects the children who are compelled to live in a disturbing situation and the cast of Veto makes the situation even worse.

### **3.3.1.2 Vetoed the Extrajudicial killing of UN Employees, acts of Terrorism, and Violence against Civilians**

Three Resolutions have been vetoed from December 2002 to October 2003. On December 19, 2002, A draft Resolution S/2002/1385 was presented before the Security Council which was aimed at condemning Israel's military operations in the West Bank. The Resolution was supported by ten members with four abstentions but vetoed by the United States. The Resolution called for Israel to withdraw its troops from Palestinian cities, to end its policy of target assassinations, and to lift the blockade of Palestinian areas. The Resolution was

---

<sup>235</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of victim of International Armed Conflicts (Protocol 1), Article 12(1), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>236</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 53.

<sup>237</sup> United Nations, Commission on Human Rights, "Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, UN DOC. E/CN.4/2001/121," para. 50.

largely seen as a response to the Israeli military operation, which had resulted in the deaths of hundreds of Palestinians, including many civilians, the targeted killing of UN employees especially the killing of one international staff member in the Jenin Refugee Camp and the destruction of United Nation World Food Program warehouse in Beit Lahiya in the OPT in which 537 metric tons of food is being stored to distribute it among the needy Palestinians. The Resolution demands full adherence to the Fourth Geneva Convention relative to the Protection of Civilian Persons in the time of War of 1949 from the occupying power and refrains from the use of excessive and disproportionate force in the territory of OPT.<sup>238</sup>

On 16 September 2003, a draft Resolution S/2003/891 was discussed in the Security Council, which aimed to address the ongoing conflict between Israel and Palestinians. The Resolution expressed concern about the situation in the region, particularly concerning the humanitarian situation of the Palestinian people. The Resolution called for the implementation of the Road Map for Peace which was a plan developed by the Quartet on the Middle East (comprised of the United States, the European Union, Russia, and the United Nations) aimed at achieving a two-state solution to the conflict. The Resolution also called for an end to violence and for the parties to resume negotiations toward a peaceful settlement. The Resolution demands that Israel completely desist from any act of deportation cease all acts of violence, and make sure of complete adherence to International Humanitarian Law. In addition, the Resolution called for the implementation of previous relevant UNSC Resolutions 242, 338, and 1397, which called for the withdrawal of Israeli forces from Palestinian territory, the establishment of the Palestinian State, and a peaceful settlement of the conflict.<sup>239</sup>

On 14 October 2003, the draft Resolution S/2003/980 was presented to the Security Council which aimed to stop Israel from illegal acquisitions of Palestinian territory which is completely in violation of International Law. The Resolution endorses the two-state solution, where both states can live peacefully. The Resolution stressed the implementation and adherence to the Fourth Geneva Convention of 1949 in the OPT by both parties. The

---

<sup>238</sup> United Nations Security Council, “United Nations Employees/Incidents – Vetoed Draft Resolution, UN Doc. S/2002/1385.”

<sup>239</sup> United Nations Security Council, “Mideast Situation/Palestine Question – Vetoed Draft Resolution, UN Doc. S/2003/891.”

Resolution discourages Israel's act of annexation of Palestinian territory and condemns the confiscation of land. The Resolution discourages Israel's act of constructing the wall. The Resolution called for the implementation of previous United Nations Security Council Resolutions 242, 267, 298, and 1397.<sup>240</sup>

To enhance the importance of the above-mentioned Resolutions of the Security Council it is important to briefly discuss the situation of Occupied Palestine Territory. The situation remained worse as the second intifada started and it lasted till 2005. Israeli forces on account of taking measures against the rocket attacks of Palestinian militants group launched a military operation at the Jenin Refugee Camp on April 3, 2002. The Jenin Refugee Camp contains an overwhelming majority of civilians. During the operation, the Israeli forces used armored bulldozers to destroy the residential buildings of the Camp just to make way for the tanks and other heavy weaponry across the narrow streets of the Camp. At least one hundred forty buildings were destroyed which are multi-family dwellings and almost four thousand people were rendered homeless. Significant harm has also been caused to the water installation, sewage system, and electricity of the Camp. During the fighting seventy-four Palestinian civilians were killed and more than one hundred fifty-seven injured.<sup>241</sup>

On 2 December 2002, the Israeli forces by using tanks, dynamite sticks, and explosive projectiles dropped by helicopter destroyed the United Nations World Food Program Warehouse in Beit Lahiya, which contained 413 metric tons of wheat flour, 107 metric tons of rice, and 17 metric tons of vegetable oil. Before destroying the warehouse, the Israeli forces evacuated the area from the civilians and conducted a search operation through dogs, which diminished the possibility of the presence of Palestinian militants.<sup>242</sup>

During clashes with the demonstrators of the second intifada, the Israeli forces killed more than six hundred seventy Palestinians and injured thousands.<sup>243</sup> During the intifada, the IDF carries loaded M-16, and Galil assault rifles while the Palestinian

---

<sup>240</sup> United Nations Security Council, "Mideast Situation/Separation Wall – SecCo – Vetoed Draft Resolution, UN Doc. S/2003/980."

<sup>241</sup> Human Rights Watch Report, "The Israeli Army and the Intifada Policies That Contribute to the Killings."

<sup>242</sup> Jamie Tarabay, "Israel Army Destroys U.N. Food Warehouse," The Edwardsville Intelligencer, December 10, 2002, <https://www.theintelligencer.com/news/article/Israel-Army-Destroys-U-N-Food-Warehouse-10496309.php>.

<sup>243</sup> "United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Data on Casualties."

demonstrators use guns against soldiers (only 5% have guns, knives, and gasoline bombs) eighty-five percent are stone-throwing mostly children under the age of 13 years.<sup>244</sup> The IDF members argue that they use lethal force on demonstrators at the imminent threat to life and that the force used is proportionate.<sup>245</sup> while the evidence shows that the force used against the stone-throwing demonstrators is excessive which can be easily understood from the statistics of casualties as Palestinians killed eleven soldiers while IDF killed six hundred seventy Palestinians.<sup>246</sup>

The Geneva Convention of 1949 sets the duty of the occupying power to protect the civilians of the occupying area against all acts of violence, prosecute those who are involved in grave breaches of the Geneva Conventions, and prohibit willful killing.<sup>247</sup>

Apart from all the violations of International Law, the United States of America used its permanent member vote, a veto, and caste against the condemnation of crimes. All the above-mentioned Resolutions are vetoed by the U.S. The caste of veto raises serious questions on the efficiency and responsibility of the Security Council which is made to secure an environment free from all these crimes. But the veto power makes it a dream which can never be achieved.

### **3.3.1.3 Vetoed the Attack on Beit Hanoun**

There are four Resolutions presented before the Security Council on the condition of Beit Hanoun. On 12 July 2006, the United States vetoed a Resolution that expressed great concern over the deteriorating situation in OPT, the military assault of Israeli forces, the killing and injury of dozens of Palestinian civilians, the destruction of civilian property and infrastructure, and the destruction of Gaza main power station. The Resolution calls upon

---

<sup>244</sup> Human Rights Watch Report, "The Israeli Army and the Intifada Policies That Contribute to the Killings," 5.

<sup>245</sup> Human Rights Watch Report, "The Israeli Army and the Intifada Policies That Contribute to the Killings."

<sup>246</sup> "United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Data on Casualties."

<sup>247</sup> Fourth Geneva Convention relative to Protection of Civilian Persons in time of War of 1949, Article 27 states that: "protected persons...shall at all times be humanely treated and shall be protected especially against all acts of violence". Article 146 of the Convention requires the occupying power to investigate and prosecute "grave breaches" of the Convention. It obliges an occupying power to "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and... [to] bring such persons, regardless of their nationality, before its own courts." Article 147 provides that "willful killing" and "willfully causing great suffering or serious injury to body or health [of protected persons]" constitute "grave breaches" of the Convention.

Israel to stop the disproportionate use of force against civilians and urges the parties to abide by all obligations of International Humanitarian Law and International Human Rights Law. The Resolution stresses that all parties need to fully oblige their commitments towards the implementation of International Humanitarian Law especially the Geneva Convention on the Protection of Civilians in Time of War of 12 August 1949, and to refrain from using violence against civilians.<sup>248</sup>

Due to the increasingly deteriorating situation in Gaza as Israel uses disproportionate force against civilians another Resolution S/2006/878 has been presented before the Security Council. The resolutions have been presented in response to Israel's military operations which resulted in the deaths of thousands of Palestinians including children and women. The Resolution expresses concern over the Israeli attack on the territory of Beit Hanoun, during the attack the Israeli forces were involved in the use of excessive force against the civilians which is a clear violation of the Fourth Geneva Conventions of 1949. The Israeli forces attacked the protected objects and buildings and caused vast destruction of civilian property and infrastructure.<sup>249</sup>

All these Resolutions have been vetoed by the United States of America. While clarifying their use of veto power against the alleged violation of Jus Cogens Norms, the U.S. took the stance that the Resolutions are outdated and do not highlight the concern of both parties. Israel is the major importer of U.S. arms weapons. So, it is obvious for the U.S. to support Israel.<sup>250</sup>

To highlight the situation in OPT, it is important to discuss the events that happened during the attack on Beit Hanoun. Beit Hanoun is a densely populated area containing 35000 inhabitants about whom seventy-five percent are registered refugees. Israel started its military operation and launched fifteen thousand artillery shells and conducted five

---

<sup>248</sup> United Nations General Assembly, "Report of the High-Level Fact-Finding Mission to Beit Hanoun Established under Council Resolution S-3/1, Human Rights Situation in Palestine and Other Occupied Arab Territories, UN Doc. A/HRC/9/26," September 1, 2008, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/153/11/PDF/G0815311.pdf?OpenElement>.

<sup>249</sup> United Nations Security Council, "Mideast Situation/Palestine Question [Israeli Operation 'Summer Rains,' Abduction of Shalit Etc.] – SecCo – Vetoed Draft Resolution, UN Doc. S/2006/508."

<sup>250</sup> United Nations Security Council, "United States Vetoes Security Council Draft Resolution on Events in Gaza, UN Doc. SC/8775."

hundred fifty air strikes into the Gaza Strip.<sup>251</sup> The Israeli Government took the stance that a strike has been made to stop the rocket launching activity from Palestinian militants. Israel conducted its operation on Wednesday 8 November 2006 early in the morning approximately at 5.35 am in Beit Hanoun.<sup>252</sup> The Israeli forces launched twelve shells in 30 minutes in a densely populated area, destroying six houses and damaging the surrounding land and buildings. The residents of those houses were mostly sleeping or returning from the morning prayer. The shelling caused the immediate deaths of nineteen civilians including seven children and six women.<sup>253</sup> The first shell when smashed, the injured started leaving the houses and gathering in the streets, more shells then landed in the streets killing and injuring dozens more. The witnesses told the members of the High-Level Fact-Finding Mission the scenario of shelling. During the investigation, the testimonies received by the Commission portray an alarming picture. The first shell hit the streets and injured several, where families started gathering to help the injured. One mother told the Commission that she suffered to see one of his sons scoop his intestine back into his stomach while the other one was undergoing an open skull wound. As the families started gathering in the streets to help the wounded, more shells landed in the streets leaving no one standing. The streets were filled with scattered limbs, the children were amputated, and those who survived went through mental trauma.<sup>254</sup> Article 51(2) of Additional Protocol I prohibit direct attack against civilians which is done to create fear in the mind of the civilian population.<sup>255</sup>

---

<sup>251</sup> United Nations General Assembly, “Report of the High-Level Fact-Finding Mission to Beit Hanoun Established under Council Resolution S-3/1, Human Rights Situation in Palestine and Other Occupied Arab Territories, UN Doc. A/HRC/9/26.”

<sup>252</sup> United Nations General Assembly.

<sup>253</sup> “United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Data on Casualties.”

<sup>254</sup> United Nations General Assembly, “Report of the High-Level Fact-Finding Mission to Beit Hanoun Established under Council Resolution S-3/1, Human Rights Situation in Palestine and Other Occupied Arab Territories, UN Doc. A/HRC/9/26,” para. 28.

<sup>255</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of victim of International Armed Conflicts (Protocol 1), Article 51(2), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.



Article 57(2(ii)) of AD I of 1977 makes it compulsory before launching an attack to adopt all the precautions which can minimize the civilian loss, injury, and destruction of civilian objects while deciding the means and methods of attack.<sup>256</sup>

During the shelling, the electricity, water, and telephone services in the town were cut. The medical ambulances were prevented from reaching the area of shelling and prior authorization was made compulsory. Education services were also disrupted.<sup>257</sup>

Article 12 of AD I of 1977 prohibits the attack on medical units. Article 53 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 prohibits the destruction of property real or personal which belongs to the civilian population unless rendered necessary under military operations.<sup>258</sup>

The Israeli Government took the stance that the shelling was the result of rocket launching. The rockets have been launched by non-state actors, under International Law when force is used against non-state actors it must be according to the principle of Proportionality and Necessity. But in this case, the force is used against the civilians. As the president of ICC Judge Higgins held that it is an intransgressible obligation of Humanitarian Law for the occupier and for those who seek to liberate themselves from occupation, to protect the civilians.<sup>259</sup>

The Human Rights Council sent its High-Level Fact-Finding Mission to Beit Hanoun to investigate the commission of war crimes, the Mission in Its reports acknowledge the violation of International Humanitarian Law and stated that the murder of innocent civilians, and the demolition of civilian property in Autumn Clouds, the firing of artillery towards the Beit Hanoun on the 8th of November 2006, was a deliberate act. The Mission believes that the protection of civilians is an intransgressible obligation there

---

<sup>256</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of victim of International Armed Conflicts (Protocol 1), Article 57(2)(ii), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>257</sup> United Nations General Assembly, “Report of the High-Level Fact-Finding Mission to Beit Hanoun Established under Council Resolution S-3/1, Human Rights Situation in Palestine and Other Occupied Arab Territories, UN Doc. A/HRC/9/26.”

<sup>258</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 53.

<sup>259</sup> The International Court of Justice Report, “Judge Higgins: Dissenting Opinion,” 2004, <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/state-immunity-human-rights-and-jus-cogens-a-critique-of-the-normative-hierarchy-theory/DOE0EBAB8095ADF3FA28A13D1B4D1D19>.

is evidence in the form of facts that disproportionate and reckless force is being used against civilian life, which is a clear violation of International Humanitarian Law and it legitimately established the possibility of commission of War Crimes.<sup>260</sup>

The reports of the mission investigated and as stated above acknowledge the commission of war crimes during the Beit Hanoun attack. Regardless, of all these acknowledgments the U.S. vetoed the Resolutions and blocked the further investigation and prosecution of crimes. By contrast, the Security Council's silence at this point was a concerning first sign that the body would not make a serious effort to stop the commission of crimes against humanity and war crimes.

#### **3.3.1.4 Vetoed the killing of Civilians, use of Disproportionate Force, and use of Lethal Force against Civilians**

On 18 February 2011, a draft Resolution was placed before the Security Council to condemn the Israeli settlement in the occupied Palestinian territory and stressed that Israel abide by all International Humanitarian Law rules. The Resolution also called the Israel to stay away from changing the demographic composition of OPT which is a major obstacle in the way of peace. The Resolution endorsed the Quartet Roadmap obligation which obliges Israel to freeze all illegal settlement activities since March 2001.<sup>261</sup> The continued vetoing of the condemnation of the commission of the serious violation of the Fourth Geneva Conventions of 1949 and a crime against humanity has acted as a trigger that increased the commission of these crimes in OPT. The Report of the Human Rights Council Mission investigated the commission of crimes and acknowledged the severity of the commission of the above crime in OPT. A brief account of events is presented below.

In 2005 Israel terminated its military activities in the OPT in response to a ceasefire agreement made between Israel and Gaza authorities. The agreement was assisted by the Egyptian government, in response to that agreement both parties agreed to exchange the prisoners and open the blockade of the Rafah crossing and Israel agreed to lift the blockade on the import of commodities. After the agreement, the peace lasted till 23 June 2008 when

---

<sup>260</sup> United Nations General Assembly, "Report of the High-Level Fact-Finding Mission to Beit Hanoun Established under Council Resolution S-3/1, Human Rights Situation in Palestine and Other Occupied Arab Territories, UN Doc. A/HRC/9/26," para. 49.

<sup>261</sup> United Nations Security Council, "Israeli Settlements in the Occupied Palestinian Territory – SecCo – Vetoed Draft Resolution, UN Doc. S/2011/24."

Israeli forces targeted the group of Palestinians. After that, there was a series of attacks from both sides which resulted in a military operation on 27 December 2008 which lasted till 18 January 2009.<sup>262</sup> This initiated Operation Cast Lead and Israel's army, navy, and air force participated in that operation.<sup>263</sup>

There are Certain weapons were used during the operation by Israeli forces which caused greater effects on the person injured. The doctors ascertain the nature of the burns to be untreatable. The weapons used are white phosphorus and flechette missiles.<sup>264</sup> The Fact-Finding Mission of the Human Rights Council stated in its report that serious consideration should be given to banning the use of white phosphorous in built-up areas. The Mission also received information regarding the use of depleted and non-depleted uranium by Israeli armed forces in Gaza.<sup>265</sup>

The tactic and strategy used by Israeli forces during the operation mirror the Dahiya Doctrine which is an application of disproportionate force and causing great damage and destruction to civilians' property and infrastructure and suffering to civilian population. This is further corroborated by the statement issued by Israeli leaders as destroy 100 homes for every rocket fired.<sup>266</sup> The reprisal is prohibited under Additional Protocol I Article 21 reprisal against the persons and objects protected is prohibited.<sup>267</sup>

The Israeli forces during the operation launched direct attacks against civilians and they also used lethal force. The first two attacks have been made at the two houses in the south of Gaza City including the shelling of houses in which Palestinians have been forced to assemble by the Israeli armed forces.<sup>268</sup> The Israeli forces were also involved in the

---

<sup>262</sup> United Nations Security Council, "Mideast Situation/Beit Hanoun Fact-Finding Mission – SecCo – Vetoed Draft Resolution, UN Doc. S/2006/878."

<sup>263</sup> IDF, "27.12.2008 –18.01.2009 Operation Cast Lead | IDF," accessed March 4, 2023, <https://www.idf.il/en/mini-sites/wars-and-operations/operation-cast-lead/>.

<sup>264</sup> Bill Van Esveld, "Rain of Fire:Israel's Unlawful Use of White Phosphorus in Gaza," *Human Rights Watch*, March 25, 2009, <https://www.hrw.org/report/2009/03/25/rain-fire/israels-unlawful-use-white-phosphorus-gaza>.

<sup>265</sup>United Nations General Assembly, "Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48," September 25, 2009, para. 48, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/158/66/PDF/G0915866.pdf?OpenElement>.

<sup>266</sup> United Nations General Assembly, "Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48," 64.

<sup>267</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of victim of International Armed Conflicts (Protocol 1), Article 20, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>268</sup> United Nations General Assembly, "Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48."

shooting of seven groups of civilians who were waving white flags and trying to move to a safer place. In all these attacks one thing is clear the area is under the control of Israeli forces and they are sure about their civilian status. It also clears the intention of the Israeli Government to instruct the IDF to use lethal force against low thresholds. During the operation, a mosque was targeted at evening prayer time and killed 15 civilians.<sup>269</sup> The Report of the Human Rights Council High-Level-Fact-Finding Mission stated the above attacks as intentional attacks against the civilian population and civilian objects.<sup>270</sup> A house has been attacked by Israeli forces and killed 22 family members. It is ascertained from the above facts that the Israeli forces are involved in the willful killing of civilians, which is a clear violation of the Fourth Geneva Conventions of 1949 and Article 51(2) of Additional Protocol I.<sup>271</sup>

Article 53 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 prohibits the destruction of property real or personal which belongs to the civilian population.<sup>272</sup> During operation, the Israeli forces are involved in the destruction of residential houses through air strikes, mortar, artillery shelling, missile strikes, the operation of bulldozers, and demolition charges. The Report of the Human Rights Council High-Level-Fact-Finding Mission stated that the houses were destroyed without any connection with Palestinian Armed groups nor there was any evidence of their contribution to the military action.<sup>273</sup>

During the operation, the Israeli military forces also destroyed food production, water infrastructure, and industrial facilities. This is a clear violation of Additional Protocol

---

<sup>269</sup> United Nations General Assembly, “Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48.”

<sup>270</sup> United Nations General Assembly, “Report of the International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting from the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance, UN Doc. A/HRC/15/21,” September 27, 2010, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/164/86/PDF/G1016486.pdf?OpenElement>.

<sup>271</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victim of International Armed Conflicts (Protocol I), Article 51(2), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>272</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 53.

<sup>273</sup> United Nations General Assembly, “Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48,” para. 53.

I Article 54(2) prohibits attacking objects that are indispensable for the survival of the civilian population.<sup>274</sup>

Article 51(7) of the Additional Protocol banned the use of the movement of the civilian population to shield military objectives or operations.<sup>275</sup> During the operation, it was witnessed and corroborated by the published statement of Israeli forces that Israeli armed forces had used the Palestinian civilians as human shields and coerced them to enter houses where the Palestinian combatants were hiding. Which is a clear violation of International Humanitarian Law.

During the whole operation, the Israeli forces killed more than thirteen hundred Palestinians including more than three hundred children and many civilians, and almost five thousand Palestinians were injured. Hamas and other Palestinian armed groups killed three Israeli civilians through rocket attacks.<sup>276</sup>

The most important to note is the policy of the Israeli Government toward the civilians of Gaza and the West Bank. Before the operation, the inhabitants of the Gaza Strip experienced a blockade for the last three years.<sup>277</sup> The blockade restricted the movement of civilians across the borders and imports of goods which resulted in a shortage of food supplies, medical supplies, and supplies required for the conduct of daily life like fuel, electricity, school items, and repair and construction materials. The blockade has been imposed to weaken the Hamas Authority which won the election in Gaza. All these restrictions increased the suffering of civilians living in the Gaza Strip.<sup>278</sup> The blockade has affected the health sector, worn out the Gaza Economy, and made the population depend only upon humanitarian assistance for their survival. The above-mentioned facts

---

<sup>274</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of victim of International Armed Conflicts (Protocol 1), Article 54(2), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>275</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of victim of International Armed Conflicts (Protocol 1), Article 51(7), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.

<sup>276</sup> Amnesty International, "Israel / OPT: Fuelling Conflict: Foreign Arms Supplies to Israel/Gaza," *Amnesty International Publications*, 2009, <https://www.amnesty.org/en/wp-content/uploads/2021/07/mde150122009en.pdf>.

<sup>277</sup> "Timeline: The Humanitarian Impact of the Gaza Blockade | Oxfam International."

<sup>278</sup> United Nations, Commission on Human Rights, "Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, UN DOC. E/CN.4/2001/121."

clearly show the miseries of the population of OPT before the military operation and in such a situation, Israel decided to invade its military in Occupied Palestinian Territory and took the stance of military necessity.

The above-mentioned facts describe the horrific Human Rights situation of civilians of OPT. which not only raises concern for the international peace of the world but also proves havoc for the future of the Middle East. In that situation, the Security Council must step forward and make efforts to secure the peace of the territory. For one more time Resolution S/2011/24, the Middle East Situation including the Palestinian Question, has been presented in the Security Council. The purpose of the Resolution is to condemn and stop Israel from all its illegal activities in OPT, and to encourage the parties towards peace talks to mitigate the issue. To make the parties respect the obligations of International Humanitarian Law and to implement the Road Map. The Resolution has been widely supported by all other members of the Security Council except the United States of America.<sup>279</sup>

The major reason for the use of veto power by the United States in favor of Israel lies in the shared political interest of both countries. The United States supports Israel on the political, financial, and military levels. The main reason behind this support is regional geopolitics.<sup>280</sup> Israel is the only democratic state that existed in the Middle East in the eyes of the United States, which is mainly due to Israel's support to counter the Soviet threat and Iranian threats.

Both countries shared intelligence information, which is also a factor for close ties. The United States worked on many projects with Israel including Iran Nuclear Program, weapon proliferation, and terrorism. Both countries support each other in their joint political interest. The United States has provided financial assistance to Israel worth \$3.8 billion since 2017.<sup>281</sup>

The United States put efforts into the existence of a military-strong Israel. On that behalf, a Memorandum of Understanding was signed among the parties in 2016, Consistent

---

<sup>279</sup> United Nations Security Council, "Israeli Settlements in the Occupied Palestinian Territory – SecCo – Vetoed Draft Resolution, UN Doc. S/2011/24."

<sup>280</sup> "What Is U.S. Policy on the Israeli-Palestinian Conflict? | Council on Foreign Relations," accessed March 5, 2023, <https://www.cfr.org/backgrounder/what-us-policy-israeli-palestinian-conflict>.

<sup>281</sup> "The United States-Israel Relationship - United States Department of State," accessed March 5, 2023, <https://www.state.gov/the-united-states-israel-relationship/>.

with (the MOU) the U.S. provides \$500 million for Cooperative Programs for Missile Defense and \$3.3 billion in Foreign Military Financing.<sup>282</sup> The United States also engages the Israeli military forces in many exchange programs the main purpose is to make the Israeli forces strong in the skills of weapon development and to efficiently cop with regional threats.

One of the main importers of American weapons is Israel. Israel is so devoted to American military equipment that it currently has the largest F-16 fleet outside of the US with more than 200 F-16s.<sup>283</sup> Under the Excess Defense Articles Program, the United States also provides Israel with firearms and ammunition, including M-16A1 rifles, M-204 grenade launchers, M-2.50 caliber machine guns, and 30,.50, and 20mm ammo. It is in the United States' national interest to promote the existence of a stable, democratic, and militarily strong Israel.<sup>284</sup>

### **3.3.1.5 Vetoed the killing of Children, Civilians, Journalists, Medical and Humanitarian Personnel, and the Commission of a Crime against Humanity against Civilians:**

On 1 June 2018, a draft Resolution was presented before the Security Council, The Resolution shows concern, regarding the loss of civilian lives and the high number of Palestinian civilian casualties, especially in the Gaza Strip, including casualties among children, caused by the Israeli forces, as well as the escalation of violence and tensions and the worsening of the situation in the Occupied Palestinian Territory, including East Jerusalem, in particular since 30 March 2018. The Resolution emphasized the measure of accountability and asked for an independent and transparent investigation of the OPT. The Resolution stressed the specific effects that armed conflict has on women and children, including those who are refugees or displaced, as well as on other civilians who may be particularly vulnerable, such as people with disabilities and the elderly, and highlighting the need for the Security Council and Member States to strengthen further the protection of civilians, and condemns the use of any excessive, disproportionate, or indiscriminate force by Israeli forces against Palestinian civilians in the Occupied Palestinian Territory,

---

<sup>282</sup> Jeremy M. Sharp, "U.S. Foreign Aid to Israel," March 1, 2023, <https://sgp.fas.org/crs/mideast/RL33222.pdf>.

<sup>283</sup> "What Is U.S. Policy on the Israeli-Palestinian Conflict? | Council on Foreign Relations."

<sup>284</sup> U.S. Department of Defense statement on Israel, in Joint Report to Congress, January 3, 2001.

including East Jerusalem, and in particular in the Gaza Strip, including the use of live ammunition against protesters who were peacefully demonstrating, including children, as well as against medical professionals and journalists, and expresses its deep concern over the loss of innocent lives.<sup>285</sup>

The Resolution was vetoed by the United States. To have a clear view of the commission of war crimes and crimes against humanity in OPT, a brief view of the situation is described below.

The situation in OPT remains deteriorating as the Security Council fails to resolve the issue among the parties due to unrestrained veto power. From 2008 to 2009 Israel's military operations, the situation became toxic for civilians as Israel again implemented the policy of blockade across the occupied Palestinian territory. The Secretary-General of the United Nations describes the blockade in these words: A continuing collective penalty against the population in Gaza.<sup>286</sup> The Palestinians are suffering from mental and physical trauma along with poverty and settler violence. No progress has been witnessed from the political authorities to resolve the issues, which increases the risk of a flare-up of the situation. On 7 July 2014, Israel commenced Operation Protective Edge in the Gaza Strip.<sup>287</sup> The operation has three phases, air strike, ground operation, and air strikes along with alternation ceasefires.

The events of the summer of 2014 deeply affected both Israelis and Palestinians. Particularly in Gaza, the level of destruction was unprecedented. The number of fatalities alone is pessimistic: two thousand two hundred fifty-one Palestinians, including two hundred ninety-nine women and five hundred fifty-one children, were killed; one thousand one hundred thirty-two Palestinians, including women and children, were injured, and many of them received lifelong disabilities.<sup>288</sup> The high rate of loss of life and injury in

---

<sup>285</sup> United Nations Security Council, "Draft Security Council Resolution on Protecting Civilians in Gaza, UN Doc S/2018/516, Vetoed."

<sup>286</sup> United Nations General Assembly, "Report of the Secretary-General, Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, UN Doc. A/HRC/28/45," March 5, 2015, para. 70, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/043/18/PDF/G1504318.pdf?OpenElement>.

<sup>287</sup> "Operation Protective Edge-Full Report," GOV.IL, accessed February 28, 2023, <https://www.gov.il/en/Departments/General/operation-protective-edge-full-report>.

<sup>288</sup> "United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Data on Casualties." United Nations General Assembly, "Report of the United Nations High Commissioner for Human Rights on the Implementation of Human Rights Council Resolutions S-9/1 and S-12/1, The Human Rights Situation in the Occupied Palestinian Territory between 12 June and 26 August 2014, Including the Escalation in Hostilities



Gaza is tragic. While on Israel's side, the casualties recorded include the death of six civilians, sixty-seven soldiers, and almost 1600 injured.<sup>289</sup>

Significant damage can be witnessed to civilian infrastructure in Gaza. Eighteen thousand housing units were destroyed along with a large portion of the water and sanitation infrastructure, the electricity network, 73 medical facilities, and many ambulances were also smashed. At the height of the conflicts, there were 500,000 internally displaced people who had been uprooted from their homes or temporary shelters many times.<sup>290</sup> Generations to come will continue to feel the impacts of this destruction on the human rights of Palestinians in Gaza. During this time, there were several Human Rights violations and heightened tensions in the West Bank, particularly in East Jerusalem.<sup>291</sup> The Geneva Conventions of 1949 strictly prohibited to damage protected objects buildings and residential areas.

While monitoring the situation in Gaza, the Human Rights Council on 23 July 2014 decided to dispatch an Independent International Commission of Inquiry to investigate the commission of a crime against humanity and grave breaches of the Geneva Conventions of 1949.

A ceasefire mediated by Egypt between Israel and Hamas was concluded in August 2014. Episodes of hostilities have since continued, and included Israeli airstrikes and incursions into Gaza, and indiscriminate rocket or mortar fire by Palestinian armed groups towards Israel.<sup>292</sup>

Gaza is home to 2 million people, half of whom are children, who reside in a 42 km long coastal strip with one of the greatest population densities in the world. Due to movement restrictions put in place by Israel since the 1990s and continuing after Israel

---

between the State of Israel and Palestinian Armed Groups in Gaza, UN Doc. A/HRC/28/80/Add.1,” December 26, 2014, para. 24, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/251/48/PDF/G1425148.pdf?OpenElement>.

<sup>289</sup> United Nations General Assembly, “Report of the United Nations High Commissioner for Human Rights on the Implementation of Human Rights Council Resolutions S-9/1 and S-12/1, The Human Rights Situation in the Occupied Palestinian Territory between 12 June and 26 August 2014, Including the Escalation in Hostilities between the State of Israel and Palestinian Armed Groups in Gaza, UN Doc. A/HRC/28/80/Add.1.”

<sup>290</sup> “Ministry of Interior Data: 40 East Jerusalem Palestinians Were Stripped of Their Permanent Residency Status in 2019 as Part of Israel’s ‘Quiet Deportation’ Policy; a Significant Increase Compared to 2018 הַפְּרִט,” accessed March 5, 2023, <https://hamoked.org/document.php?dID=Updates2174>.

<sup>291</sup> United Nations, Commission on Human Rights, “Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, UN DOC. E/CN.4/2001/121.”

<sup>292</sup> Patrick Seale, “The Egypt-Israel Treaty and Its Implications” 35 (May 1979): 189–96.

evacuated its settlements from Gaza in 2005, their access to the outside world and the rest of the Occupied Palestinian Territories is severely constrained. Israel proclaimed Gaza a hostile territory after Hamas won the 2006 elections for the Palestinian legislative body and established an air, land, and sea blockade in June 2007 as part of a campaign of Economic Warfare.

By 2015, Gaza's GDP had been cut in half as a result of Israeli restrictions on the movement of people through the territory. As a result, Gaza had the highest unemployment rate in the world and 68% of the population was food insecure.<sup>293</sup> The embargo qualifies as collective punishment, according to both the United Nations and the International Committee of the Red Cross. In 2017, the UN issued a warning that Gaza would soon become unlivable, citing a growing water, electricity, health, and food crisis brought on by the siege.<sup>294</sup>

More than half of Gaza's population is registered refugees. In 1948, the General Assembly recognized in its Resolution 194 that refugees should be allowed to return to their homes and live in peace with their neighbors as soon as practically possible and compensation should be given for the property of those who choose not to return as well as for loss of or property damage.<sup>295</sup> The General Assembly again reaffirmed the inalienable right of return of Palestinian refugees in its Resolution 3236. Security Council also urges for the just settlement of the refugee issue in its Resolution 242.<sup>296</sup> But the issue is unresolved till today.

The continued and prolonged blockade and the worst economic situation in Gaza led the inhabitants to start a demonstration to demand a just solution for the refugee issue and to demand an end to the continued blockade. A weekly demonstration was held between 30 March and 31 December 2018. In the demonstration, the persons participated from all sectors of Palestinian society including sociocultural organizations student unions, women, eminent persons, and members of the clan.<sup>297</sup>

---

<sup>293</sup> “Timeline: The Humanitarian Impact of the Gaza Blockade | Oxfam International.”

<sup>294</sup> United Nations General Assembly, “Report of the Secretary-General, Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, UN Doc. A/HRC/28/45.”

<sup>295</sup> United Nations General Assembly, “United Nations General Assembly Resolution 194 (III) of 11 December 1948.”

<sup>296</sup> United Nations General Assembly, “Resolution 242 of 1967, UN Doc. S/RES/242(1967).”

<sup>297</sup> United Nations General Assembly, “Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48.”

The Rules of Engagement have been issued to the IDF members which prescribed the way of using force against the demonstrators. The Rules of Engagement permitted to use of lethal force (live fire) against the demonstrators when there is an imminent threat to the life or limb of Israeli soldiers or civilians. The Israeli forces issued instructions to snipers to shoot civilians in the leg when they tried to cross the fence. As discussed before the demonstration mainly consisted of civilians and under the IHL paradigm, the threshold to use lethal force does not meet the criteria mentioned in the rules of engagement. Under IHL the use of lethal force is only permitted if

- (1) The person is directly participating in hostility.
- (2) The first condition of active participation in hostility is being compiled with the rules of Distinction, Proportionality, and Precautions in Attack.<sup>298</sup>

In accordance with IHRL, lethal force may only be employed in cases of immediate danger to life or serious bodily harm or when necessary to achieve legitimate law enforcement goals. or that precisely Necessitates and meets the requirements of the proportionate principle.<sup>299</sup>

During the demonstration the atmosphere was festive, literary activities were happening there like poetry readings, seminars, lectures, and sports competitions. The ISF responded to demonstrators with live ammunition and injured many civilians who were not posing any serious harm nor carrying any arms. The demonstration started to send kites and balloons carrying burning rags or coals wrapped in chicken wire toward Israel's side. Which creates some fear in civilians on the Israel side. The Israeli forces considered the deployment of kites as an act of Hamas and launched attacks against associated infrastructure. The demonstrators damaged the coil of barbed wire placed by ISF and burned tyres. On 14 May demonstrators decided to reach the Israeli communities by breaching the fence. The Israeli forces took that step as initiated by Hamas, which under the cover of demonstrators tried to reach Israel and do their terror activities. In response,

---

<sup>298</sup> International Committee of the Red Cross (ICRC), "ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities | How Does Law Protect in War? - Online Casebook," 63.

<sup>299</sup> In November 2014, the Human Rights Committee called on Israel to "take all necessary measures to prevent incidents of excessive use of force during law enforcement operations, including by ensuring that rules of engagement or open fire regulations of the State party's security forces in the West Bank, including East Jerusalem, and the Access Restricted Areas of Gaza, are consistent with article 6 of the Covenant and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", United Nations, Human Rights Committee, "Concluding Observations on the Fourth Periodic Report of Israel, UN Doc. CCPR/C/ISR/CO/4," November 21, 2014, para. 13.

the Israeli forces deployed soldiers from 11 battalions, armored corps, snipers, and drones toward the demonstration sites.<sup>300</sup> A senior health official narrates the scenario of 14 May attack as there was bloodshed; if it had continued for even another half-hour, Gaza's entire healthcare system would have collapsed. In my judgment, the event was much larger than anyone could have anticipated.<sup>301</sup>

The Israeli forces used lethal force against the demonstrators as indicated under the Rules of Engagement. The statistics show that one hundred eighty-nine Palestinians were killed, including forty-seven children as Israeli forces shot them with live ammunition, they were hit by a tear gas canister and almost twenty-three thousand three hundred thirteen Palestinians were injured.<sup>302</sup>

The Israeli forces killed three health workers, and 560 have been injured. Journalists were also targeted as ISF killed two, and injured 39 with live ammunition, 2 with rubber-coated bullets, and 32 with tear gas canisters. The Israeli forces used high-velocity ammunition which caused life-changing injuries which led to amputation. The Human Rights Commission of Inquiry in its report held that the protesters were purposefully shot even though they were hundreds of meters away from Israeli forces and were engaged in civilian activities. Children, women, and people with disabilities were shot as well as journalists and healthcare professionals who were marked as such.<sup>303</sup>

The above scenario describes the deteriorating situation of human rights in OPT. It highlights the sufferings of Palestinian refugees, apart from all the international violations the United States to protect the political alignment Israel cast the veto in the Security Council.

### **3.4 How Veto Threat Hampered the Security Council's Ability to Pass Resolutions Related to the Situation in Palestine**

---

<sup>300</sup> United Nations Commission of Inquiry, "Report of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/74)" (Koninklijke Brill NV, March 6, 2019), [https://doi.org/10.1163/2210-7975\\_HRD-9850-20190001](https://doi.org/10.1163/2210-7975_HRD-9850-20190001).

<sup>301</sup> United Nations General Assembly, "Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Including East Jerusalem, with a Focus on Collective Punishment, UN Doc. A/HRC/44/60," December 22, 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/352/94/PDF/G2035294.pdf?OpenElement>.

<sup>302</sup> "Ministry of Interior Data: 40 East Jerusalem Palestinians Were Stripped of Their Permanent Residency Status in 2019 as Part of Israel's 'Quiet Deportation' Policy; a Significant Increase Compared to 2018 הַפְּרָט." <https://www.mfa.gov.il/press-releases/2020/12/40-east-jerusalem-palestinians-were-stripped-of-their-permanent-residency-status-in-2019-as-part-of-israel-s-quiet-deportation-policy-a-significant-increase-compared-to-2018>.

<sup>303</sup> United Nations Commission of Inquiry, "Report of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/74)."

The Palestine-Israel conflict is one of the most intractable and long-standing conflicts in the world, with numerous parties attempting to broker peace and work toward a Resolution. However, one of the major obstacles to peace has been the inability of the Security Council to pass Resolutions and enforce them due to veto threats, silent vetoes, or hidden vetoes.<sup>304</sup> The veto threat is a tool available to the permanent members of the Security Council, which gives them the ability to block or remove any Resolutions from the agenda without formally exercising the right of veto. The veto threat is more dangerous for peacekeeping as it is used as a threat tool under informal and private meetings, which never comes on the agenda or record of those meetings.<sup>305</sup> The veto threat protects the political alignment of permanent members and the political interest of permanent members, which in return ceases the drafting of Resolutions. The veto threat empowers the permanent members to not exercise the veto power but simply refuse to support a certain Resolution.<sup>306</sup>

Due to increasing criticism of the exercise of veto power, the permanent members start using the hidden veto in closed doors meetings, where the permanent members are free from the pressure of the international community and can freely mold the decision of other members simply by using the option of threatening to veto their interest or draft.<sup>307</sup>

The hidden veto is effective in playing a strategic role. Permanent members before going to a formal session of the Security Council, arrange an informal meeting where they discuss the repercussions of certain matters placed on the Security Council agenda and ask other members for support or otherwise, a veto will be cast. Hence, the interest of permanent members is secured.<sup>308</sup>

The hidden veto is more drastic for the Security Council working as it has no official record means that the public is unaware of the exercise of veto and deemed that veto power is not effective anymore but under closed doors, the political alignment and political interest of permanent members are secured through veto threat.<sup>309</sup>

---

<sup>304</sup> Celine Nahory, "The Hidden Veto," May 2004, <https://archive.globalpolicy.org/security-council/42656-the-hidden-veto.html>.

<sup>305</sup> Jan Wouters and Tom Ruys, "Use and Abuse of the Veto Power," SECURITY COUNCIL REFORM: (Egmont Institute, 2005), <https://www.jstor.org/stable/resrep06699.5>.

<sup>306</sup> Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*, 320.

<sup>307</sup> Weiss and Kuele, "The Veto: Problems and Prospects."

<sup>308</sup> Hatuel-Radoshitzky, "Criticism of the UN Security Council Veto Mechanism: Ramifications for Israel."

<sup>309</sup> Trahan, "Why the Veto Power Is Not Unlimited: A Response to Critiques of, and Questions About, Existing Legal Limits to the Veto Power in the Face of Atrocity Crimes."

Hence the silent veto stops the Security Council members from presenting Resolutions in formal sessions and hence weakens the peacekeeping in conflicts. Regarding the Palestine-Israel conflict, the United States a political align with Israel refuse to support many Resolutions. Many resolutions have been vetoed and many have been remodeled under closed doors. All these actions prevent the Security Council from taking action for the maintenance of peace. The Security Council has been prevented from taking any action under Chapter VII of the Charter. The Security Council can impose financial sanctions upon Israel but paralyze.<sup>310</sup>

The veto threat and veto itself both played havoc rule against the maintenance of international peace and security and indirectly protected the offenders of serious crimes of International Law. The veto creates hurdles in the way of implementation of International Law. Hence, it can be concluded that the veto threats, as well as veto, hampered the Security Council's ability to pass Resolutions and hence, weakened peacekeeping.<sup>311</sup>

### **3.5 Conclusion**

The crime against humanity has been committed in the Occupied Palestinian Territory and The Human Rights Council has conducted a thorough investigation in the conflicted zone and issued reports which acknowledge the commission of war crimes as well as crimes against humanity. Even then the Security Council does not take any action according to the powers it has under UN Charter. The Security Council is helpless in front of the veto power of permanent members. The veto power makes the Security Council a puppet, which acts only, if the action falls under the political interest of permanent members of the Security Council. The Security Council is unable to perform its main duty the maintenance of peace due to veto power. There is an urgent need for the General Assembly and the States to challenge the uncontrolled use of veto power by the Permanent members of the Security Council, as the veto power justify Human Rights violation and heinous crimes of International Law. On the other hand, it can also be inferred that the use of veto power, which derives its validity from the UN charter, does the UN charter voting provision legally allow the politicized use of the veto when there is an ongoing commission of war crimes

---

<sup>310</sup> Constantinides, "An Overview of Legal Restraints on Security Council Chapter VII Action with a Focus on Post-Conflict Iraq." Yiu, "Jus Cogens, the Veto and the R2P: A New Approach." Kandiah Thompson, Landgren, and Romita, "The United Nations in Hindsight: Challenging the Power of the Security Council Veto."

<sup>311</sup> Chesterman, "The UN Security Council and the Rule of Law: The Role of the Security Council in Strengthening a Rules-Based International System Final Report and Recommendations from the Austrian Initiative."

and crimes against humanity. The simple answer is no, the only need of the day is to revisit the use of the veto when there is an ongoing violation of *Jus Cogens* norms.<sup>312</sup>

---

<sup>312</sup> Trahan, “Why the Veto Power Is Not Unlimited: A Response to Critiques of, and Questions About, Existing Legal Limits to the Veto Power in the Face of Atrocity Crimes.”

## Chapter 4: Recommendation and Conclusion

### 4.1 Conclusion

This research focus on the violation of *Jus Cogens* norms, when the veto power is exercised by the permanent members of the UNSC especially during the ongoing commission of crime against humanity and grave breaches of Geneva Conventions of 1949. The first chapter of this research provide an overview of incorporation of veto power in the Charter of the UN. The UNSC has been aimed at maintaining the peace of the world. But the veto power of permanent members of the Security Council has made it a dream. The veto power not only facilitates the commission of heinous crimes but also provides a green light to offenders. The purpose of veto power is to create unanimity but in practice, it becomes a tool in the hands of permanent members who use it to protect their interests and to save their allies from criminal responsibility under the International Law framework. Especially in the perspective of the Palestine-Israel conflict the US vetoed the Resolutions to block the recognition of CAH, and war crimes, and blocked the criminal investigation. The use of veto in such a manner is far from the original rationale for the creation of veto power and it's not designed to be used in such a manner. The Security Council has been established to protect the international peace and security of the world. Due to the importance of that duty, the UNSC is more bound to observe international law. The same is true for the General Assembly, both these organs of the UN are not exempt from the observance of International Law due to their political character. From a legal point of view, this chapter discusses the application of the Rome Statute and the Geneva Convention in the OPT.

Second chapter is the most crucial chapter of this research as it deals with three main issues of this research. The second chapter establish the superior hierarchy of *Jus Cogens* norms, and also concluded that the UNSC is bound to respect the *Jus Cogens* norms. *Jus Cogens* are the highest form of Customary International Law and these norms enjoyed a superior hierarchy with other rules. The rationale behind the superior hierarchy of *Jus Cogens* norms lies in the fact that these norms was aimed to secure the interest of whole community rather than just the state interest. Under International Law, more weightage is given to community interest rather than States as reflected in the language of the UN Charter. This research applied three legal barriers to the



uncontrolled veto power of UNSC. The first legal argument is the superior hierarchy of *Jus Cogens* norms which has binding authority upon the international bodies under the international law framework, any Resolution in conflict with these norms has no legal binding. So, it is right to say that the Resolutions of the Security Council do not have any legal authority to set aside the *Jus Cogens* norms. The second argument is derived from the wording of the purpose and principle of the Charter of the UN. The purpose and principles of the Charter of the UN contain principles that are part of Customary International law and even binds the non-members of the UN. Many declarations of the General Assembly enforced the universal application of these rules giving them the status of peremptory norms from which no derogation is permitted and have a binding effect upon the UNSC veto power. The third legal argument is based upon the obligations of members of the UNSC as a State towards the Geneva Convention of 1949. Almost all the UN members have ratified the Geneva Conventions of 1949. These Conventions prohibit the commission of War Crimes and make it obligatory for the state parties to punish the offenders.

Third chapter deals with the case study of Palestine-Israel conflict. This study provides a summary of the commission of a CAH and grave breaches of the Geneva Convention of 1949 in the vicinity of OPT. The reports of High-Level-Fact-Finding Missions of the UN Human Rights Council acknowledged the commission of the above-mentioned crimes. The exercise of veto power, in these circumstances, raised many questions about the legal validity of such politicized use of veto under the dominion of the UN Charter, as it is in clear violation of its principle and purpose. The role of the UNSC in these circumstances is very depressing, as it only acts like a dummy in the hands of permanent members.

It can be concluded from the above discussion that the veto power is not uncontrolled and it has some restrictions under the International Law Framework. Through this research, some of these restrictions are analyzed and critically evaluated. Hence, it can be legally right to say that the veto power of the permanent members of the UNSC is not *absolute fiat* and *Jus Cogens* norms have a binding nature upon the veto power.

#### **4.1 Recommendation**

This portion will suggest the recommendation to reaccess the use of veto power when there is an ongoing violation of *Jus Cogens* norms.

#### **4.1.1 The UN Charter language and Geneva conventions of 1949 prohibits such use of veto power**

It is recommended under this research that under the international law framework the permanent members cannot exercise a veto in the circumstances when there is an ongoing commission of a CAH and grave breaches of the Geneva Conventions of 1949. The UNSC is required to take strict notice of such exercise of veto power as the use of veto power compromises the main duty of UNSC. The UNSC is bound to respect the *Jus Cogens* norms as these norms have binding force even upon its Charter which create the veto power. By virtue of use of veto power, in situation which facilitate the commission of CAH and grave breaches of Geneva Conventions of 1949, the UNSC is not working the way it is designed under the UN Charter. By creating the legal limits over the veto power, it is suggested under this research that there is dire need, and it is compulsory for the state parties to submit a resolution containing all the legal barriers upon such exercise of veto power, before the General Assembly.

The permanent members itself have to bind themselves to respect the International Law and to refrain from the use of veto power which facilitate the violation of international law as they are bound under the Geneva Conventions and also under the purpose and principle of the UN Charter. It is also suggested that such use of veto is not in line with the wording of purpose and principle of the UN Charter, so, it is necessary to reassess the use of veto when there is ongoing violation of *Jus Cogens* norms involved.

#### **4.1.3 Suggested to obtain a Judicial Review from the International Court of Justice (ICJ)**

It is also suggested that to properly grasp the concept of whether the veto use when there is an ongoing commission of above crimes is consistent with superior norms of *Jus Cogens* of International Law, with the purpose and principle of UN Charter, with the obligations mentioned under the Geneva Conventions of 1949. It is suggested that there is a need for a Judicial Review by the ICJ as an Advisory Opinion. Now the issue is that the advisory opinion does not have any binding force upon the Security Council. so, why is it suggested?

The simple answer to that question lies in the fact that the advisory opinion of ICJ has a great legal worth as these helps in the development of international law and they also carry great legal and moral authority. The purpose behind the suggestion of judicial review is to provide a solid base, firstly the review set and determine the legal position of the UNSC in such situations. The review also helpful in determining the legal binding nature of those resolutions which are in line with *Jus Cogens* norms but vetoed. The option of ICJ is suggested as Article 96 of the UN Charter provides that the ICJ can provide an Advisory Opinion on legal questions at the request of the General Assembly and the Security Council. Why the ICJ will provide the judicial review of above mention issue? The answer to that question lies in the fact that the limits mentioned above are all legal, secondly, the issue is very critical as it involves the lives of civilians and serious Human Rights violations, thirdly the states consider the Veto power as problematic for the proper functioning of the UNSC. It is recommended that to put legal restraint over the uncontrolled veto power, the General Assembly or UNSC must seek a Judicial review from the ICJ on the question of *Jus Cogens* restraint over the Veto power.

## BIBLIOGRAPHY

### Books

- Bailey, Sydney D., and Sam Daws. *The United Nations: A Concise Political Guide*, 1994. <https://www.amazon.co.uk/United-Nations-Concise-Political-Guide/dp/0333629175>.
- Cassese, Antonio. *International Criminal Law*. Oxford University Press, 2003.
- Chesterman, Simon. "The UN Security Council and the Rule of Law: The Role of the Security Council in Strengthening a Rules-Based International System Final Report and Recommendations from the Austrian Initiative." *Institute of International Law and Justice*, n.d. [https://www.iilj.org/wp-content/uploads/2017/08/unsc\\_and\\_the\\_rule\\_of\\_law.pdf](https://www.iilj.org/wp-content/uploads/2017/08/unsc_and_the_rule_of_law.pdf).
- Christenson, Gordon A. "The World Court and Jus Cogens." *Cambridge University Press*, n.d. [https://www.jstor.org/stable/pdf/2202135.pdf?refreqid=excelsior%3Ae20393d161638eb7e8df5367e27c8f7a&ab\\_segments=&origin=&initiator=&acceptTC=1](https://www.jstor.org/stable/pdf/2202135.pdf?refreqid=excelsior%3Ae20393d161638eb7e8df5367e27c8f7a&ab_segments=&origin=&initiator=&acceptTC=1).
- Crawford, James. "Chance, Order, Change: The Course of International Law, General Course on Public International Law," n.d., 382.
- De Wet, Erika, and Jure Vidmar. *Hierarchy in International Law: The Place of Human Rights*. Oxford Scholarship Online, 2012. [file:///http.oxford%20stuff/Erika%20De%20Wet,%20Jure%20Vidmar%20-%20Hierarchy%20in%20International%20Law\\_%20The%20Place%20of%20Human%20Rights%20\(2012,%20Oxford%20University%20Press,%20USA\)%20-%20libgen.li.pdf](file:///http.oxford%20stuff/Erika%20De%20Wet,%20Jure%20Vidmar%20-%20Hierarchy%20in%20International%20Law_%20The%20Place%20of%20Human%20Rights%20(2012,%20Oxford%20University%20Press,%20USA)%20-%20libgen.li.pdf).
- Filiu, Jean-Pierre. *Gaza: A History: Comparative Politics and International Studies Series*. Oxford University Press, 2014.
- Fitzmaurice, Gerald. *The General Principles of International Law Considered from the Standpoint of the Rule of Law*. Vol. 92, n.d.
- International Humanitarian Law (Handbook for Parliamentarian)*. Inter-Parliamentary Union (IPU) and International Committee of the Red Cross (ICRC) 2016, 2016.
- Kelson, Hans. *The Pure Theory of Law: Its Method and Fundamental Concept*. *The Law Quarterly Review* 474, 1934. [https://legal.un.org/ilc/publications/yearbooks/english/ilc\\_2006\\_v2\\_p2.pdf](https://legal.un.org/ilc/publications/yearbooks/english/ilc_2006_v2_p2.pdf).
- Kramer, Gudrun. *A History of Palestine: From the Ottoman Conquest to the Founding of the State of Isarel*. Princeton University Press, 41 William Street, Princeton, New Jersey 08540, 2008.
- Krasno, Jean, and Mitushi Das. *The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council, in The UN Security Council and the Politics of International Authority*. Ist Edition. Routledge, n.d.
- Luck, Edward C. *UN Security Council: Practice and Promise*. 2006 Edward C. Luck. Antony Rowe Ltd, Chippenham, Wiltshire, 2006.
- Masalha, Nur. *Palestine: A Four Thousand Year History*, n.d. <https://www.goodreads.com/en/book/show/36645450>.
- Morris, Benny. *1948: A History of the First Arab-Israeli War*. Yale University Press, 2008. <https://www.jstor.org/stable/j.ctt1np9bm>.
- Saleh, Dr Mohsin Muhammad. *History of Palestine: A Methodical Study of the Palestinian Struggle*. Al-Falah Foundation, 2003.

Serry, Robert. *The Endless Quest for Israeli-Palestinian Peace: A Reflection from No Man's Land*. Springer, 2016.

Trahan, Jennifer. *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*. Cambridge, United Kingdom; New York, NY, USA Cambridge University Press, 2020. <http://www.cambridge.org/9781108487016>.

### **Case Laws**

Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application (n.d.)

Constitutional Court of Colombia. Additional protocol to the Geneva Conventions regarding the protection of victims of non-international armed conflicts. Case no C-225/95 (n.d.).

European Court of Justice. Kadi v. Council of the European Union and Commission of the European Communities 2005 E.C.R. II-03649, Case T-315/01 (2009).

Inter-American Court of Human Rights. Almonacid-Arellano and Others v. Chile, Judgment (Preliminary Objections, Merits and Costs) (September 26, 2006).

International Criminal Court (Appeal Chamber). The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (ICC-01/04-01/07 OA 8) (International Criminal Court (ICC) September 25, 2009).

International Court of Justice. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (n.d.).

International Criminal Court (The Trial Chamber). The Prosecutor v. Germain Katanga (ICC-01/04-01/07) (International Criminal Court (ICC) March 8, 2018).

International Criminal Tribunal for Rwanda (ICTR); Chamber I. The Prosecutor v. Jean-Paul Akayesu (Trial Judgement) (International Criminal Tribunal for Rwanda (ICTR); Chamber I i September 2, 1998).

International Criminal Tribunal for the Former Yugoslavia, Appeal Chamber. Prosecutor v. Dusko Tadic ´, Case No. IT-94-1-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (October 2, 1995).

International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Judgement, Prosecutor v. Krajišnik, Case IT-00-39 (September 2009).

The International Court of Justice (ICJ). Legality of the Threat or Use of Nuclear Weapons (The International Court of Justice (ICJ) July 8, 1996).

Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 279 (1970), Advisory Opinion of Judge De Castro (June 21, 1971).

Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 279 (1970), Advisory Opinion of Judge Fitzmaurice (June 21, 1971).

Miguel Castro-Castro Prison v. Peru, Judgment (Merits, Reparations and Costs) (November 18, 2010).

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (February 27, 1998).

Southwest Africa case (Liberia v South Africa) (1971).

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang, Case no. ICC-01/09-01/11-1598 (June 18, 2013).

The Permanent Court of Justice. The Oscar Chinn case (United Kingdom v Belgium) (n.d.).

The Supreme Court Sitting as the High Court of Justice. Physicians for Human Rights and others v. Prime Minister of Israel and others (HCJ 201/09) (The Supreme Court Sitting as the High Court of Justice January 2019).

The Public Committee against Torture in Israel, Palestinian Society for the Protection of Human Rights and the Environment v. The Government of Israel, Case HCJ 769/02 (The Supreme Court Sitting as the High Court of Justice December 13, 2006).

The United States Court of Appeal. Smith v. Socialist People's Libyan Arab Jamahiriya (n.d.).

Trial Chamber Judgement. The Prosecutor v. Jean-Pierre Bemba Gombo (International Criminal Court June 8, 2018).

Prosecuter v. Momcilo Perisic, Case IT-96-23/1 (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Judgement February 28, 2013).

Prosecutor v. Zoran Kupreki, Mirjan Kupreki, Vlatko kupreki, Drago Josipovi, Dragan Papi, Vladimir, also known as "Vlado", Case No.: IT-95-16-T (January 14, 2000).

Public Committee Against Torture in Israel v. The State of Israel, The General Security Service, Case no 1 HCJ 5100/94 (The Supreme Court Sitting as the High Court of Justice May 26, 1999).

United States District Court District of Massachusetts. United States of America v. Gary Lee Sampson, Case 01-10384-MLW (January 6, 2016).

### **Conference Paper**

"Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration - Switzerland Text/Non-UN Document." In *Question of Palestine*, 1999. <https://www.un.org/unispal/document/auto-insert-199888/>.

Constantinides, Aristotle. "An Overview of Legal Restraints on Security Council Chapter VII Action with a Focus on Post-Conflict Iraq," n.d. [https://esil-sedi.eu/wp-content/uploads/2018/04/Constantinides\\_0.pdf](https://esil-sedi.eu/wp-content/uploads/2018/04/Constantinides_0.pdf).

Permanent Mission of Belgium to the UN. "Belgium and the United Nations: A Historical Perspective." In *Permanent Mission of Belgium to the UN*, 2015. <https://newyorkun.diplomatie.belgium.be/belgium-at-the-un/historical-perspective>.

### **Documents**

"Israeli Military Offensive in Gaza – Vetoed Draft Resolution, UN Doc. S/2004/783," October 5, 2004. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/537/39/PDF/N0453739.pdf?OpenElement>.

"Israeli Settlements in the Occupied Palestinian Territory – SecCo – Vetoed Draft Resolution, UN Doc. S/2011/24," February 18, 2011. <https://www.un.org/unispal/wp-content/uploads/2018/06/S.2018.516.pdf>["].

"Mideast Situation/Beit Hanoun Fact-Finding Mission – SecCo – Vetoed Draft Resolution, UN Doc. S/2006/878," November 11, 2006. <https://www.un.org/unispal/document/auto-insert-189648/>.

"Mideast Situation/Palestine Question – Vetoed Draft Resolution, UN Doc. S/2003/891," September 16, 2003. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/521/52/PDF/N0352152.pdf?OpenElement>.

"Mideast Situation/Palestine Question [Israeli Operation 'Summer Rains,' Abduction of Shalit Etc.] – SecCo – Vetoed Draft Resolution, UN Doc. S/2006/508," July 12, 2006.

- <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/429/31/PDF/N0642931.pdf?OpenElement>.
- “Mideast Situation/Separation Wall – SecCo – Vetoed Draft Resolution, UN Doc. S/2003/980,” October 14, 2003. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/557/81/PDF/N0355781.pdf?OpenElement>.
- “Mideast Situation/UN Observer Force – Vetoed SecCo Draft Resolution, UN Doc. S/2001/270,” March 26, 2001. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/700/50/PDF/N0170050.pdf?OpenElement>.
- Office of Prosecutor of ICC. “Statement of ICC Prosecutor, Fatou Bensouda, Respecting an Investigation of the Situation in Palestine.” International Criminal Court, March 3, 2012. <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>.
- “Summary of the Geneva Conventions of 1949 and Their Additional Protocols (International Humanitarian Law).” International Committee of the Red Cross (ICRC), April 2011. [https://www.redcross.org/content/dam/redcross/atg/PDF\\_s/International\\_Services/International\\_Humanitarian\\_Law/IHL\\_SummaryGenevaConv.pdf](https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf).
- “United Nations Employees/Incidents – Vetoed Draft Resolution, UN Doc. S/2002/1385,” December 14, 2001. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/753/31/PDF/N0275331.pdf?OpenElement>.
- “United States Vetoes Security Council Draft Resolution on Events in Gaza, UN Doc. SC/8775,” n.d. <https://www.un.org/unispal/document/auto-insert-208290/>.
- United Nations Security Council. “Draft Security Council Resolution on Protecting Civilians in Gaza, UN Doc S/2018/516, Vetoed,” June 1, 2018.
- “Vienna Convention on the Law of Treaties,” 1969.

### **Journal Articles**

- Ac, Richard Butler. “Reform of the United Nations Security Council.” *International Affairs*, 2012.
- De Guzman, Margaret Mc Auliffe. “The Road from Rome: The Developing Law of Crimes Against Humanity.” *Human Rights Quarterly*, May 2000. [https://resolver.scholarsportal.info/resolve/02750392/v22i0002/335\\_trfrtdlocah.xml](https://resolver.scholarsportal.info/resolve/02750392/v22i0002/335_trfrtdlocah.xml).
- Doehring, Karl. “Unlawful Resolutions of the Security Council and Their Legal Consequences.” *Max Planck Yearbook of United Nations Law Online*, 1997. <https://doi.org/10.1163/187574197X00056>.
- Esveld, Bill Van. “Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza.” *Human Rights Watch*, March 25, 2009. <https://www.hrw.org/report/2009/03/25/rain-fire/israels-unlawful-use-white-phosphorus-gaza>.
- Ferraro, Tristan. “Determining the Beginning and End of an Occupation under International Humanitarian Law,” n.d.
- Gul, Noman, and Dr Rubeena Batool. “Role of United Nations in Conflict Resolution: A Case Study of Palestine Issue,” 2019. <http://web.uob.edu.pk/uob/Journals/Balochistan-Review/data/BR%20Special%20Edition%20Vol%2044/324-335%20Role%20of%20United%20Nations%20in%20Conflict%20Resolution%20A%20Case%20Study%20of%20Palestine%20Issue,%20Noman%20Gul.pdf>.
- Hatuel-Radoshitzky, Michal. “Criticism of the UN Security Council Veto Mechanism: Ramifications for Israel,” 2015. <https://www.inss.org.il/publication/criticism-of-the-un-security-council-veto-mechanism-ramifications-for-israel/>.

- Hughes, Matthew. Review of *Review of The Iron Wall: Israel and the Arab World, second edition*, by Avi Shlaim. *Middle East Journal* 69, no. 4 (2015): 625–27.
- “Israel / OPT: Fueling Conflict: Foreign Arms Supplies to Israel/Gaza.” *Amnesty International Publications*, 2009. <https://www.amnesty.org/en/wp-content/uploads/2021/07/mde150122009en.pdf>.
- “Legal Consequences of the Construction of Wall in the Occupied Palestinian Territory,” no. July 9, 2004 (n.d.): 1–71.
- Janis, Mark Weston. “The Nature of Jus Cogens,” 1988. <https://core.ac.uk/download/pdf/302393673.pdf>.
- Kandiah Thompson, Shamala, Karin Landgren, and Paul Romita. “The United Nations in Hindsight: Challenging the Power of the Security Council Veto.” *Just Security*, April 28, 2022. <https://www.justsecurity.org/81294/the-united-nations-in-hindsight-challenging-the-power-of-the-security-council-veto/>.
- Kleinlein, Thomas. “Jus Cogens as the ‘Highest Law’? Peremptory Norms and Legal Hierarchies.” *Netherlands Yearbook of International Law* 2015 46 (2016): 173–218. [https://doi.org/DOI.10.1007/978-94-6265-114-2\\_7](https://doi.org/DOI.10.1007/978-94-6265-114-2_7).
- Knuchel, Sevrine. “State Immunity and The Promise of Jus Cogens.” *Northwestern Journal of International Human Rights* 9 (2011). <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jihr9&div=10&id=&page=>
- Lapidoth, Ruth. “The Misleading Interpretation of UN Security Council Resolution 242 (1967).” *Jewish Political Studies Review* 23, no. 3/4 (2011): 7–17.
- Lopez-Claros, Augusto. “The Origins of the UN Veto and Why It Should Be Abolished.” *Global Governance Forum*, 2022. <https://globalgovernanceforum.org/origins-un-veto-why-it-should-be-abolished/>.
- Milanovic, Marko. “Al-Skeini and Al-Jedda in Strasbourg.” *European Journal of International Law* 23, no. 1 (February 2012). <https://academic.oup.com/ejil/article/23/1/121/525492>.
- Nahory, Celine. “The Hidden Veto,” May 2004. <https://archive.globalpolicy.org/security-council/42656-the-hidden-veto.html>.
- Nanda, Ved P. “The Security Council Veto in the Context of Atrocity Crimes, Uniting for Peace and the Responsibility to Protect.” *Case Western Reserve Journal of International Law*, 2020.
- Onuf, N G, and Richard K Birney. “Peremptory Norms of International Law: Their Source, Function and Future,” n.d.
- Padelford, Norman J. “The Use of the Veto.” *University of Wisconsin Press* 2, no. 2 (June 1948): 227–46.
- Pappe, Ilan. “The 1948 Ethnic Cleansing of Palestine.” *University of California Press on Behalf of the Institute for Palestine Studies* 36 (Autumn 2006): 1–16.
- “Research\_report\_3\_the\_veto\_2015.Pdf.” Accessed February 28, 2023. [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research\\_report\\_3\\_the\\_veto\\_2015.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf).
- Sarsar, Saliba. “The Question of Palestine and United States Behavior at the United Nations.” *International Journal of Politics, Culture, and Society* 17, no. 3 (2004): 457–70.
- Seale, Patrick. “The Egypt-Israel Treaty and Its Implications” 35 (May 1979): 189–96.
- Sharp, Jeremy M. “U.S. Foreign Aid to Israel,” March 1, 2023. <https://sgp.fas.org/crs/mideast/RL33222.pdf>.



- Singh, Sushil Chandra. "The Veto Problem in the U.N." *The Indian Journal of Political Science* 19, no. 2 (2021): 129–33.
- Sinha, Dilip. "Veto Provision in UN Charter." *Indian Foreign Affairs Journal* 14, no. 4 (2019): 267–74.
- Tharoor, Ishaan. "The U.N. Veto Is a Problem That Won't Go Away," 2015.
- "Questioning Unlimited Veto Use in Face of Atrocity Crimes." *Case Western Reserve Journal of International Law*, 2020.
- "Why the Veto Power Is Not Unlimited: A Response to Critiques of, and Questions About, Existing Legal Limits to the Veto Power in the Face of Atrocity Crimes" 54 (2022).
- Webb, Philippa. "Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria." *Oxford University Press* 19 (2014): 471–88.
- Weiss, Thomas G, and Giovanna Kuele. "The Veto: Problems and Prospects." *International Relations*, 2019. <https://www.e-ir.info/pdf/48075>.
- Whiteman, Marjorie M. "Jus Cogens in International Law, with a Projected List" 7 (n.d.).
- Yiu, Hannah. "Jus Cogens, the Veto and the Responsibility to Protect: A New Approach," n.d. <http://www.austlii.edu.au/nz/journals/NZYbkIntLaw/2009/8.pdf>.

## Reports

- Amnesty International. "Chapter 3: Israeli Settlements and International Law." Amnesty International, January 30, 2019. <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>.
- Commission III, Security Council. "Commission 3 / Committee 3 - Sixteenth Meeting," June 6, 1945. <https://search.archives.un.org/commission-3-committee-3-sixteenth-meeting-2>.
- Francisco, San. "Commission 3 / Committee 1 - Seventeenth Meeting," (Creation). [united-nations-conference-on-international-organization-uncio-1945.pdf](https://www.un.org/conferences-and-events/un-conference-on-international-organization-uncio-1945/pdf).
- "Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur," January 31, 2019. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/024/33/PDF/N1902433.pdf?OpenElement>.
- General Assembly, International Law Commission. "First Report on Jus Cogens by Dire Tladi, Special Rapporteur," March 8, 2016. <https://digitallibrary.un.org/record/1325320?ln=en>.
- Human Rights Watch Report. "The Israeli Army and the Intifada Policies That Contribute to the Killings," 2003. <https://www.hrw.org/legacy/campaigns/israel/intifada-intro.htm>.
- "Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council', Report of the High-Level Fact-Finding Mission to Beit Hanoun Established under Resolution S-3/1, UN Doc. A/HRC/5/20," June 18, 2007. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/132/57/PDF/G0713257.pdf?OpenElement>.
- "Israel/Gaza: Operation 'Cast Lead': 22 Days of Death and Destruction," July 2, 2009. <https://www.amnesty.org/en/documents/mde15/015/2009/en/>.
- "Israel/Occupied Territories: Administrative Detention: Despair, Uncertainty and Lack of Due Process," April 29, 1997. <https://www.amnesty.org/en/documents/mde15/003/1997/en/>.
- Mitchell, Senator George. "Senator George Mitchell Report Sharm El-Sheikh Fact Finding Committee, Excerpts," May 8, 2001. [https://israeled.org/wp-content/uploads/2015/08/2001.5.8\\_Mitchell\\_Report.pdf](https://israeled.org/wp-content/uploads/2015/08/2001.5.8_Mitchell_Report.pdf).

- Phinney, Todd R. "The Second Palestinian Intifada." *Airpower versus Terrorism*. Air University Press, 2007. <https://www.jstor.org/stable/resrep13776.10>.
- Public Committee against Torture in Israel. "Torture in Israel 2021: Situation Report," n.d.
- "Report of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/74)." Koninklijke Brill NV, March 6, 2019. [https://doi.org/10.1163/2210-7975\\_HRD-9850-20190001](https://doi.org/10.1163/2210-7975_HRD-9850-20190001).
- "Report of the High-Level Fact-Finding Mission to Beit Hanoun Established under Council Resolution S-3/1, Human Rights Situation in Palestine and Other Occupied Arab Territories, UN Doc. A/HRC/9/26," September 1, 2008. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/153/11/PDF/G0815311.pdf?OpenElement>.
- "Report of the International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, resulting from the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance, UN Doc. A/HRC/15/21," September 27, 2010. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/164/86/PDF/G1016486.pdf?OpenElement>.
- "Report of the Secretary-General, Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, UN Doc. A/HRC/28/45," March 5, 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/043/18/PDF/G1504318.pdf?OpenElement>.
- "Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Including East Jerusalem, with a Focus on Collective Punishment, UN Doc. A/HRC/44/60," December 22, 2020. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/352/94/PDF/G2035294.pdf?OpenElement>.
- "Report of the United Nations High Commissioner for Human Rights on the Implementation of Human Rights Council Resolutions S-9/1 and S-12/1, The Human Rights Situation in the Occupied Palestinian Territory between 12 June and 26 August 2014, Including the Escalation in Hostilities between the State of Israel and Palestinian Armed Groups in Gaza, UN Doc. A/HRC/28/80/Add.1," December 26, 2014. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/251/48/PDF/G1425148.pdf?OpenElement>.
- "Resolution 242 of 1967, UN Doc. S/RES/242(1967)," November 22, 1967. <https://daccess-ods.un.org/tmp/8486522.43614197.html>.
- "Resolution 338 (1973), UN Doc. SCR338(1973)," October 22, 1973. <https://peacemaker.un.org/sites/peacemaker.un.org/files/SCR338%281973%29.pdf>.
- The International Court of Justice Report. "Judge Higgins: Dissenting Opinion," 2004. <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/state-immunity-human-rights-and-jus-cogens-a-critique-of-the-normative-hierarchy-theory/D0E0EBAB8095ADF3FA28A13D1B4D1D19>.
- United Nations Commission of Inquiry. "Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2)." A/HRC/40/CRP.2, March 18, 2019. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/085/50/PDF/G1908550.pdf?OpenElement>.
- United Nations, Commission on Human Rights. "Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine, UN DOC. E/CN.4/2001/121," March 16, 2001. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/118/72/PDF/G0111872.pdf?OpenElement>.

- United Nations, Committee against Torture. “Torture Convention/Israel’s Fourth Periodic Report – CAT Meeting – Summary Record, UN Doc. CAT/C/SR.297/Add.1.,” September 4, 1997. <https://www.un.org/unispal/document/auto-insert-178181/>.
- United Nations Conference on International Organization. “Commission 3 / Verbatim Reports (3 May 1945),” (Creation). [united-nations-conference-on-international-organization-uncio-1945.pdf](https://www.un.org/unispal/document/1945.pdf).
- United Nations General Assembly. “Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48,” September 25, 2009. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/158/66/PDF/G0915866.pdf?OpenElement>.
- United Nations, General Assembly. “Resolution Adopted on the Report of The Ad Hoc Committee on the Palestinian Question, UN Doc. A/RES/181(II),” 1947. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/038/88/PDF/NR003888.pdf?OpenElement>.
- United Nations General Assembly. “United Nations General Assembly Resolution 194 (III) of 11 December 1948,” December 11, 1948. <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20ARES%20194.pdf>.
- United Nations, General Assembly, Economic and Social Council. “Economic and Social Repercussions of the Israeli Occupation on the Living Conditions of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem, and of the Arab Population in the Occupied Syrian Golan, UN Doc. A/77/90–E/2022/66,” June 8, 2022. [https://www.un.org/unispal/wp-content/uploads/2022/07/A.77.90.E.2022.66\\_080622.pdf](https://www.un.org/unispal/wp-content/uploads/2022/07/A.77.90.E.2022.66_080622.pdf).
- United Nations, General Assembly, International Law Commission. “Second Report on Jus Cogens by Dire Tladi, Special Rapporteur, UN Doc. A/CN.4/706,” March 16, 2017. [file:///C:/Users//A\\_CN-4\\_706-EN%20\(1\).pdf](file:///C:/Users//A_CN-4_706-EN%20(1).pdf).
- United Nations, Human Rights Committee. “Concluding Observations on the Fourth Periodic Report of Israel, UN Doc. CCPR/C/ISR/CO/4,” November 21, 2014.
- United Nations, Human Rights Office of the High Commission. “Israel Must End Impunity for Torture and Ill-Treatment – UN Experts,” February 8, 2021. <https://www.ohchr.org/en/press-releases/2021/02/israel-must-end-impunity-torture-and-ill-treatment-un-experts>.
- Wouters, Jan, and Tom Ruys. “Use and Abuse of the Veto Power.” SECURITY COUNCIL REFORM: Egmont Institute, 2005. <https://www.jstor.org/stable/resrep06699.5>.

### **Thesis**

- Mateus, Simon. “The Relationship between Peremptory Norms of General International Law (Jus Cogens) and Obligations Erga Omnes.” Dissertation, University of Pretoria, 2021. <https://repository.up.ac.za/handle/2263/84092>.

### **Web Page**

- Addameer Prisoner Support and Human Rights Association. “Administration Detention,” July 2017. <https://www.addameer.org/>.
- B’Tselem. “Statistics on Administrative Detention.” B’Tselem, November 24, 2021. [https://www.btselem.org/administrative\\_detention/statistics](https://www.btselem.org/administrative_detention/statistics).
- “Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, 29 July 1899.” Accessed March 1, 2023. <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv->

- [ii-1899/](https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899/regulations-art-42), <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899/regulations-art-42>.
- Department Of State. The Office of Electronic Information, Bureau of Public Affairs. “Suez Crisis, 1956.” Department Of State. The Office of Electronic Information, Bureau of Public Affairs., December 13, 2007. <https://2001-2009.state.gov/r/pa/ho/time/lw/97179.htm>.
- GOV.IL. “Operation Protective Edge-Full Report.” Accessed February 28, 2023. <https://www.gov.il/en/Departments/General/operation-protective-edge-full-report>.
- IDF. “27.12.2008 –18.01.2009 Operation Cast Lead | IDF.” Accessed March 4, 2023. <https://www.idf.il/en/mini-sites/wars-and-operations/operation-cast-lead/>.
- IDF. “Israel Defense Forces.” Accessed March 2, 2023. <https://www.idf.il/en/>.
- International Committee of the Red Cross (ICRC). “ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities | How Does Law Protect in War? - Online Casebook.” Accessed March 2, 2023. <https://casebook.icrc.org/case-study/icrc-interpretive-guidance-notion-direct-participation-hostilities>.
- “Israeli-Palestinian Conflict | Global Conflict Tracker.” Accessed February 28, 2023. <https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>.
- “Ministry of Interior Data: 40 East Jerusalem Palestinians Were Stripped of Their Permanent Residency Status in 2019 as Part of Israel’s ‘Quiet Deportation’ Policy; a Significant Increase Compared to 2018 הפרט.” Accessed March 5, 2023. <https://hamoked.org/document.php?dID=Updates2174>.
- Nations, United. “Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Articles 39-51).” United Nations. United Nations. Accessed March 3, 2023. <https://www.un.org/en/about-us/un-charter/chapter-7>.
- “Palestinian Intifada: How Israel Orchestrated a Bloody Takeover | Conflict News | Al Jazeera.” Accessed March 4, 2023. <https://www.aljazeera.com/news/2020/9/28/palestinian-intifada-20-years-later-israeli-occupation-continues>.
- “PM Truss Weighs UK Embassy Move in Israel to Jerusalem | Israel-Palestine Conflict News | Al Jazeera.” Accessed March 3, 2023. <https://www.aljazeera.com/news/2022/9/22/pm-truss-weighs-uk-embassy-move-in-israel-to-jerusalem>.
- “Rules - Customary International Humanitarian Law - International Committee of the Red Cross.” Accessed February 28, 2023. <https://ihl-databases.icrc.org/en/customary-ihl/v1>.
- “Statistics on Palestinians in the Custody of the Israeli Security Forces.” B’Tselem, November 24, 2021. [https://www.btselem.org/statistics/detainees\\_and\\_prisoners](https://www.btselem.org/statistics/detainees_and_prisoners).
- “The Charter of the United Nations.” United Nations. United Nations. Accessed September 19, 2023. <https://www.un.org/en/about-us/un-charter>.
- “The San Francisco Conference.” United Nations. United Nations. Accessed June 16, 2023. <https://www.un.org/en/about-us/history-of-the-un/san-francisco-conference>.
- Tarabay, Jamie. “Israel Army Destroys U.N. Food Warehouse.” The Edwardsville Intelligencer, December 10, 2002. <https://www.theintelligencer.com/news/article/Israel-Army-Destroys-U-N-Food-Warehouse-10496309.php>.
- “The Declaration of the Establishment of the State of Israel | Ministry of Foreign Affairs.” Accessed February 28, 2023. <https://www.gov.il/en/Departments/General/declaration-of-establishment-state-of-israel>.
- “The United States-Israel Relationship - United States Department of State.” Accessed March 5, 2023. <https://www.state.gov/the-united-states-israel-relationship/>.

“Timeline: The Humanitarian Impact of the Gaza Blockade | Oxfam International.” Accessed March 3, 2023. <https://www.oxfam.org/en/timeline-humanitarian-impact-gaza-blockade>.

United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory. “United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Data on Casualties.” Accessed February 28, 2023. <http://www.ochaopt.org/data/casualties>.

United States of America, Office of Historian. “Milestones: 1945–1952 - Office of the Historian.” Accessed March 3, 2023. <https://history.state.gov/milestones/1945-1952/arab-israeli-war>.

UNRWA. “Protection in the Gaza Strip.” Accessed February 28, 2023. <https://www.unrwa.org/activity/protection-gaza-strip>.

“Vetoed Draft Resolution Archives - Question of Palestine.” Accessed September 20, 2023. <https://www.un.org/unispal/document-category/vetoed-draft-resolution/>.

“Vetoes - UN Security Council Meetings & Outcomes Tables - Research Guides at United Nations Dag Hammarskjöld Library.” Accessed September 19, 2023. <https://research.un.org/en/docs/sc/quick>.

“What Is U.S. Policy on the Israeli-Palestinian Conflict? | Council on Foreign Relations.” Accessed March 5, 2023. <https://www.cfr.org/backgrounder/what-us-policy-israeli-palestinian-conflict>.