Indonesian Red Crescent Humanitarian Journal
published by Bulan Sabit Merah Indonesia

p-ISSN: 2829-8497, e-ISSN: 2829-8500
Vol.4, No.2 Suppl. 1 (2026), hal. 31-53
https://doi.org/10.56744/irchum.v4i2s1.119

The United Nations and the Paralysis of International Justice: Critical Overview of the UN's Role in the Gaza Conflict

Ribka Levina Wibisono*, Nelsen Wibisono Sutikno, Gita Venolita Valentina Gea
Faculty of Law Universitas Surabaya
(Jl. Raya Kalirungkut, Kali Rungkut, Kec. Rungkut, Surabaya, Jawa Timur 60293, Indonesia)
***Correspondence author:** ribkalev05@gmail.com

Abstract. The Israel-Palestine conflict has endured for decades without a definitive resolution, resulting in catastrophic humanitarian consequences. The United Nations (UN), as the mandated guardian of peace, has undertaken numerous efforts, such as establishing the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), executing its mandates through Security Council resolutions, and proceedings before the International Court of Justice (ICJ). However, the persistence of Israel's violence demonstrates the UN's failure in enforcing peaceful measures and accountability for violations in Gaza. This has raised a new perspective concerning the UN's institutional credibility and its ability to uphold the principles under the UN Charter. This paper aims to analyze the effectiveness of the UN's role in addressing the Gaza conflict and to evaluate its actions in carrying out its resolution. Thus, the paper conducts a juridical-normative method, utilizing statutory, conceptual, and case approaches to examine the actions between both parties, the application of general principles of law, and how structural power dynamics undermine the UN's ability to enforce and uphold justice in the Gaza conflict. The findings show that the UN's role remains far from optimal in resolving the Gaza conflict, primarily due to the restrictive mechanisms within the organization itself that paralyze effective action. These structural and procedural limitations, such as bureaucratic constraints on its subsidiary bodies, have hindered the UN's responsiveness towards the crisis. Consequently, the very mechanisms intended to safeguard international peace and protect human rights have instead constrained the UN's ability to intervene effectively and alleviate the ongoing humanitarian suffering in Gaza. Therefore, this institutional amendment is essential to strengthen the UN's decisiveness, uphold humanitarian principles, and effectively maintain peace in resolving the Gaza conflict.

Keywords: Gaza Conflict, Humanity, United Nations

Introduction

The conflict between Israel and Gaza is deeply rooted in the broader Israeli–Palestinian dispute, originating from the establishment of the State of Israel in May 1948, which marked a profound injustice toward the Palestinian people. The Nakba, which meant "catastrophe", refers to the mass displacement and dispossession of Palestinians during the 1948 Arab–Israeli War, (Manna', 2013) which dismantled a previously multi-ethnic and multi-cultural Palestinian society.

Originally part of the British Mandate for Palestine, the Gaza Strip was envisioned as part of a future Arab state but came under Egyptian administration following the 1948 Arab–Israeli war, during which Israel declared independence and more than half of the Palestinian population was forcibly displaced, turning Gaza into a major refuge for refugees and a lasting focal point of conflict. The UN General Assembly's 1947 partition plan, proposing separate Jewish and Arab states with Jerusalem under UN control, was rejected by Arab states as unjust

and inconsistent with the UN Charter. (United Nations, UNISPAL History) After Israel seized Gaza during the Six Day War in 1967, it established a military government and argued that Gaza did not constitute an occupied territory under international law because no sovereign state had been displaced, asserting that thus, Israel claimed that Gaza was administered under Israel and the area was placed under Israeli military control until 2005 leaving the Palestinian Authority to govern the area. (Reuters, 2023) Despite the formal withdrawal, Israel has continued to exercise effective control through its dominance over Gaza's airspace, maritime access, and internal military operations, and Israel is in full control over the movement of people and goods to and from Gaza and is able to shut crossings from Gaza at will. (Bisharat, 2009)

The most recent conflict arise during October 7th 2023, Hamas militants infiltrated Israel and targeted communities and army bases surrounding the Gaza Strip. (Brown, 2010) This assault resulted in a mass tragedy, claiming the lives of over 1,100 Israeli civilians, soldiers, and foreign citizens, with 248 people abducted and taken to the Gaza Strip, including infants, children, women, and elderly people. Moreover, around 85 percent of the territory's 2.3 million residents were displaced, and over one million people faced acute food insecurity, raising serious concerns about an impending famine in the region (AlJazeera, 2024), resulting in devastating effects on civilians both in Israel and in Gaza, including mass casualties, injuries, and displacement of civilians. (Gavrielov, N. (2023) As all these violents are happening, one would expect the United Nations, whose primary objective of saving "suceeding generations for the scourge of war, to play a meaningful role in resolving the conflict. (UN Charter, Preamble)

The United Nations (UN) is an international organization of 193 member states primarily established to maintain international peace and security in accordance with the UN Charter. Beyond this mandate, the UN promotes human rights, self-determination, and international cooperation to support global stability and economic, social, cultural, and humanitarian development. (Vienna Declaration and Programmed of Action, 1993) Through its organs, which the main bodies consisting of; the General Assembly, Security Council, The Secretariat General, The Economic and Social Council, and the International Court of Justice, the UN coordinates collective action among member States to maintain global peace, security, and stability. (United Nations, Main Bodies) However, in the case of Palestine, the UN's approach took a unique form. In response towards the mass displacement of Palestinians, the United Nations, as a global peace organization, established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) as the principal body addressing Palestinian refugee affairs, providing long-term social, educational, health, and emergency assistance to millions of registered refugees across Jordan, Lebanon, Syria, the West Bank, and the Gaza Strip. It remains the only UN agency dedicated exclusively to a single national refugee population, with the majority of its staff being refugees themselves.

Despite UNRWA's long-standing humanitarian role, the United Nations Security Council (UNSC) has faced significant political barriers in addressing the Gaza conflict. Throughout October 2023 towards April 2024, the UN Security Council attempted on four occasions to pass a resolution calling for an immediate, unconditional, and permanent ceasefire between Israel and Hamas, however the US, a permanent member of the Security Council, vetoed three of these resolutions, while a fourth truce resolution, a US-drafted resolution, was blocked by Algeria, Russia and China. As such, the UNSC's inability to effectively resolve the Israeli-Palestinian conflict has spurred debate about the relevance and effectiveness of its structure in addressing such humanitarian crises. (Setiawan, A. (2025) On 29 December 2023, South Africa filed a case against Israel before the ICJ, alleging that Israel's military operations since 7 October 2023 amounted to genocide against Palestinians (ICJ, 2023) in Gaza under Article 6

of the Rome Statute (Rome Statute of the International Criminal Court, 1998). The application cited mass killings, the imposition of destructive living conditions, and statements by Israeli officials as evidence of genocidal intent, while affirming South Africa's obligation under the 1948 Genocide Convention to prevent genocide and seek accountability. The ICJ then establish provisional measures requiring Israel to immediately suspend its military operations in and against Gaza and halt attacks by forces under its control, yet till this day Israel shows non-compliance.

These developments collectively give rise to a range of unresolved legal and institutional questions. First, uncertainty persists regarding the legality of Israel's actions in restricting or suspending UNRWA operations, particularly when assessed against obligations under international humanitarian law and international human rights law, as well as the normative hierarchy established under Article 103 of the UN Charter. Second, the continued reliance on veto power within the United Nations Security Council raises concerns about the capacity of collective security mechanisms to function effectively when responses to humanitarian crises become entangled in political deadlock. Third, while provisional measures issued by the International Court of Justice are generally regarded as legally binding, their practical significance remains contested in the absence of effective enforcement mechanisms, especially where implementation ultimately depends on Security Council action subject to political constraints.

Within this context, the Gaza conflict provides a salient case study for examining the operational limits of international justice within the United Nations system. Ongoing challenges in ensuring compliance with humanitarian obligations, safeguarding United Nations agencies, and giving effect to judicial determinations prompt critical examination of how far existing UN mechanisms can respond to serious humanitarian violations in situations marked by institutional constraint and political impunity. Accordingly, this article focuses on assessing the effectiveness of the United Nations in addressing such violations in Gaza, while situating these challenges within the broader structural framework of the UN system.

Methods

This study employs a juridical-normative research method, focusing on the analysis of legal norms, principles, and doctrines governing the role of the United Nations in the Gaza conflict. The research is based on secondary legal materials, including international treaties, United Nations instruments, judicial decisions, and scholarly works in international law. The juridical-normative approach is appropriate for examining the coherence between legal norms and institutional practices within the UN framework, particularly in relation to international justice and humanitarian protection. The research utilizes three primary analytical approaches. First, the statute approach is applied to examine relevant international legal instruments, including the United Nations Charter, the Rome Statute, the Statute of the International Court of Justice, Security Council resolutions, General Assembly resolutions, and other binding and non-binding UN documents. This approach is used to assess the legal authority, obligations, and limitations of UN organs in maintaining international peace and security and enforcing accountability for violations of international law.

Second, the conceptual approach is employed to analyze key doctrines and theoretical frameworks in international law, including the concepts of humanitarian intervention, jus cogens, erga omnes obligations, and the supremacy of the UN Charter. This approach allows the study to critically evaluate how fundamental legal principles are interpreted and applied in

the context of the Gaza conflict, as well as how political considerations may undermine the normative force of these principles within the UN system. Third, the case approach is used to examine relevant judicial and quasi-judicial decisions, particularly proceedings before the International Court of Justice, such as Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel) and The Gambia v. Myanmar. Through the analysis of these cases, the study evaluates the role of the ICJ in addressing alleged violations of international law and the extent to which its decisions are constrained by institutional and political dynamics within the United Nations. The collected legal materials are analyzed using qualitative legal analysis, with emphasis on systematic interpretation, normative consistency, and critical evaluation. This methodology enables the study to identify structural and procedural limitations within the UN that contribute to the paralysis of international justice and to formulate normative recommendations aimed at strengthening institutional independence and accountability

Result and Discussion

Normative and Institutional Foundations of the United Nations and Its Principal Organs

The United Nations is an international organization founded in 1945 to maintain international peace and security, protect human rights, deliver humanitarian aid, promote sustainable development, and uphold international law. The name “United Nations” was first introduced during the Second World War by the States who were fighting against the Axis Powers. In a declaration signed in Washington D.C. on January 11, 1942, these nations pledged to concentrate all efforts toward defeating the enemy and not to negotiate separate peace agreements. They also endorsed the principles put forward by President Franklin D. Roosevelt and Prime Minister Winston Churchill in the 1942 Atlantic Charter.

Although The Charter did not envisage the establishment of an organization or association of States that could replace the League of Nations, it did emphasize, however, the necessity of creating a collective security system after the war capable of discouraging aggression and of establishing strong cooperation between the States in economic and social matters. Collective security and co-operation in economic and social matters are today the fundamental aims of the United Nations (UN). Following the San Francisco Conference held from April 25 to June 26, 1945, all participating states unanimously adopted and signed the UN Charter. In accordance with Article 110, the Charter officially came into effect on October 24, 1945, after being ratified by the five permanent members of the Security Council along with a majority of the other signatory states.

The provision of Article 2 (7) of the UN Charter regulates that the United Nations may not intervene in matters “which are essentially within the domestic jurisdiction of any State” The vagueness of its purposes, which gives the UN the nature of a political entity, can be immediately perceived from the listing in Article 1 of the UN Charter, which includes: maintenance of international peace and security; development of friendly relations among Nations, based on respect for the principle of equal rights and the self-determination of peoples; the achievement of international co-operation regarding economic, social, cultural, and humanitarian issues; promoting respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion. (Conforti & Focarelli (2016)

Article 7 of the Charter establishes as principal organs the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat. Amoung them, the Security Council and the General Assembly

have a fundamental role. The Council consists of 15 members of whom are 5 permanent members, enjoying the veto power, and 10 are elected for a two-year period by the General Assembly. The Security Council is the organ in the Organization with the greatest powers, responsible for deciding measures to be taken against States responsible for aggression or for threats to the peace. Meanwhile, the General Assembly includes all member states, each with an equal vote. Although it may deliberate on any matter covered by the Charter, its authority is largely limited to issuing recommendations or adopting non-binding resolutions. It can also encourage cooperation among states, including through treaties requiring national ratification before coming into effect. Lastly, the Secretariat serves primarily as the UN's administrative arm.

Importantly, the United Nations Charter provides the legal basis for the creation of subsidiary organs to support the execution of UN mandates. Article 7(2) affirms the existence of such organs, while Article 22 authorizes the General Assembly to establish subsidiary bodies as necessary to carry out its functions. This provision has been essential in enabling the UN to respond to emerging international challenges, including humanitarian crises and protracted conflicts. For years, the United Nations has undertaken several actions to combat and respond to the Israel–Palestine situation, utilizing the authority granted under the UN Charter. As the UN's constitutive instrument, the Charter provides the primary legal basis that defines the scope of the Organization's powers, responsibilities, and institutional structure. It establishes the purposes of the UN, most notably maintaining international peace and security, promoting humanitarian cooperation, and protecting fundamental human rights, and allocates these responsibilities across its principal organs. Through its provisions, the Charter not only empowers the United Nation Security Council to take action in response to threats to peace but also authorizes the General Assembly to create subsidiary bodies to address humanitarian and social needs arising from conflicts.

The Role of the UNRWA

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or "the Agency") was established as a subsidiary organ of the General Assembly pursuant to General Assembly resolution 302 (IV) of 8 December 1949 and commenced operations on 1 May 1950. The Agency is a subsidiary organ of the General Assembly, and of the UN as a whole, established under Article 7 (2) and 22 of the UN Charter. (Secretary-General's Bulletin, Organization of UNRWA, UN Doc. ST/SGB/2000/6 (2000).) UNRWA's chief executive offices is the Commissioner-General, an Under-Secretary-General of the UN, who is "responsible to the General Assembly for the operation of the programme". UNRWA is one of only two UN agencies that report directly to the General Assembly, the Agency's staff is selected and appointed by the Commissioner-General under the Agency's own staff rules and regulations. (Bartholomeusz (2009). The principal source of UNRWA's mandate is the resolutions of its principal organ, the General Assembly. Other sources include requests from other organs, including the Secretary-General. UNRWA does not have a constituent instrument (unlike the World Health Organization (WHO) or a statute (unlike the Office of the United Nations High Commissioner for Refugees (UNHCR), its mandate is not conveniently stated in one place and must be derived from alll relevant resolutions and requests.

UNRWA functions as the primary United Nations body mandated to deliver humanitarian assistance and essential services to Palestine refugees, operating in response to the continuing humanitarian consequences of the Israel-Palestine conflict. Its core responsibilities encompass the provision of education, healthcare, relief and social services, emergency assistance, and shelter to refugee populations located within its five mandates fields of operation: The Gaza

Strip, the West Bank including East Jerusalem, Jordan, Lebanon, and Syria. (Fiddian-Qasmiyeh (2019) Structurally, the Agency is led by a Commissioner-General, and under Secretary-General of the United Nations, who reports directly to the General Assembly. UNRWA's institutional framework further comprises its headquarters and field offices, which coordinate and implement programmatic activities in collaboration with host governments and international actors.

Palestine refugees are defined as "persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict." (UNRWA (2024). UNRWA services are available to all those living in its area of operations who meet this definition, who are registered with the Agency and who need assistance. The descendants of Palestine refugee males, including adopted children, are also eligible for registration. When the Agency began operations in 1950, it was responding to the needs of about 750,000 Palestine refugees. Today, some 5.9 million Palestine refugees are eligible for UNRWA services. The protracted nature of the conflict has resulted in a large-scale displacement of Palestinians who are compelled to seek safety and basic protection outside their original homes. However, these displaced persons cannot be classified as "refugees" within the legal meaning of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. This is primarily due to the exclusion clause prescribed under Article 1(D) of the Convention which regulates that individuals already receiving assistance or protection from organs or agencies of the United Nations other than UNHCR are excluded from its scope. (UNGA Res. 63/93 (2008). As a consequence, the office of UNHCR lacks both jurisdiction and legal authority to extend protection measures or to administer humanitarian relief to Palestine refugees.

It is precisely this normative gap, combined with the urgent humanitarian needs arising from the displacement, that necessitated the creation of UNRWA. The Agency was therefore established to fill the institutional and legal vacuum in protecting and assisting the Palestine refugee population, ensuring that they do not remain outside the coverage of international protection frameworks. Through successive mandates issued by the General Assembly, UNRWA continues to serve as the primary mechanism for safeguarding fundamental human rights, human dignity, and essential welfare of Palestine refugees.

So far, its Mandate can be seen through several activities including: to provide basic subsistence support to family members of registered refugee women married to non-refugee husbands; mobilize large-scale emergency disaster responses as needed; in cooperation with other Agency programmes; to improve the quality of life for camp residents living in substandard habitat by means of integrated social and physical action which promotes environmentally and socially sustainable neighborhoods in accordance with strategic camp development plans; to improve environmental health confitions in refugee camps by ensuring safe-water supply and solid waste management' to foster and promote amongst teaching staff and students the awareness and understanding of human rights, conflict resolution, and tolerance; engaging in indirect credit provision through community-based lending; opening up the prospects of savings to poor refugees and other marginal groups that do not have access to the banking sector because they are unable to meet the minimum deposit requirements; and to meet all the direct sosts of business development training from participation fees and only the overhead and administrative costs are subsidised from donor contributions. (UNRWA (2009).

Its existence not only reflects the international community's recognition of the exceptional and unresolved nature of the Palestinian refugee question but also underscores the ongoing need for a dedicated institutional response until a just and durable solution to their plight is achieved. However, despite UNRWA's crucial role in providing humanitarian

assistance, the Agency does not possess the authority to address the root causes of the conflict or enforce peace. These responsibilities lie instead with the United Nations Security Council, whose mandate centers on maintaining international peace and security. Therefore, an examination of the Security Council's structure and powers becomes necessary to understand how the UN addresses the political and security dimensions of the Israel–Palestine issue.

The role of the Security Council and the Veto Rights

The Security Council was originally composed of 11 member states, including five permanent members (the United States, the Soviet Union, the United Kingdom, France, and the Republic of China) and six non-permanent members, who were elected by the United Nations General Assembly. Through the 1965 amendment to the UN Charter, the total membership was expanded to fifteen, allowing broader representation while maintaining the dominance of the five permanent members, whose status is considered foundational to the Council's institutional balance as expressly affirmed under Article 23 of the Charter. Leadership within the Council rotates monthly through the presidency, enabling each member state to guide its agenda in turn. Moreover, the permanent members possess the veto power, a unique privilege that underscores geopolitical realities within decision-making processes and often shapes outcomes on contentious global security matters, including those related to the Middle East.

Institutionally, the Security Council is a standing organ headquartered at the United Nations Headquarters in New York, operating continuously with the capacity to convene at any time deemed necessary to address emerging crises. While New York remains its primary seat, the Council may hold meeting outside the headquarters if deemed necessary, where The President has the authority to summon the members. Although the Council comprises only 15 members, its deliberative scope is not exclusive. Any UN Member State whose rights or interests are directly implicated may be invented to participate in discussions if the meeting specifically concerns that state's interests. Furthermore, both member and non-member states may be invited by the Security Council to participate in discussions regarding matters affecting them, albeit without voting rights. Thus, the Council's institutional design balances exclusive decision-making authority with broad consultative inclusion.

Additionally, sessions may be conducted through several procedural ways intended to ensure imminent dangers to peace cannot be ignored. These includes: (1) a formal request from any Member State; (2) when the General Assembly refers a matter that requires the attention of the Security Council because it threatens peace, or submits an issue for the Council's resolution, as regulated under Article 11; (3) when the Secretary-General brings to the Council's attention a matter considered to endanger international peace and security; (4) when a member state or a non-member state requests the Council's attention regarding a matter or situation that could lead to disputes between states, thereby posing a threat to international peace, as regulated Article 35). These mechanisms collectively institutionalize the Council's readiness to engage in preventive diplomacy.

For decisions that are important and influential to international peace and order, nine votes are required, provided that all permanent members vote in favor. If one of the five permanent members disapproves of a decision, it can veto it with a dissenting vote. This right to veto is called the "veto" right. The veto power was originally designed to maintain stability. The founders of the UN recognized that if major powers felt unsafe within the international system, they could act outside it and engage in aggression, form rival alliances, or even create a new order. Therefore, to prevent major conflict, a compromise system was devised: major powers were granted privileges in exchange for remaining involved, but then as a consequence,

the veto power is used to ensure the continuation of major powers not as a mechanism to adjudicate justice or humanitarian claims.

For eight decades, the veto power has been a major obstacle to achieving justice and a more equal world peace. This was especially true during the Cold War, which lasted from 1947 to 1991. The Cold War was a conflict between the Western bloc, namely the United States, Great Britain, France, and other Western countries with liberal democratic ideologies, and the Eastern bloc, namely the Soviet Union, the People's Republic of China, and other Eastern countries with communist ideologies. During this Cold War, a war of ideologies and interests arose between Western and Eastern countries to prove which ideology was most successful, thus influencing all countries in the world and also influencing resolutions and the UN Security Council. In 1991, the Soviet Union dissolved, with Russia as the successor to the Soviet Union. Russia remains a permanent member of the UN Security Council. (Centre for European Studies (CVCE), 2011.

However there are certain limitations towards the veto right. This veto right does not apply to procedural matters, provided that nine votes in favor are obtained. The absence of a major country from the vote does not mean that it has vetoed the decision. Article 24 of the Charter explicitly entrusts the Security Council with primary responsibility for the maintenance of international peace and security. This responsibility must always align with the Purposes and Principles of the United Nations, including sovereign equality, peaceful dispute settlement, non-intervention, and respect for human rights. Within this framework, the Council's functions may be broadly categorized into peaceful conflict resolution and enforcement actions. The decisions made by the Security Council on all other matters are handled by affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Furthermore, as stipulated under Article 33 of the UN Charter about peaceful settlement of disputes, The Council may recommend or facilitate a range of peaceful measures, reinforcing diplomacy as the preferred avenue for addressing international disputes. These methods include negotiation, inquiry, mediation, conciliation, arbitration, and judicial settlement. The Charter's reference to "other peaceful means of their own choice" further allows states to adopt innovative or context-specific methods that align with amicable resolution. Here, the Council acts as a mediator, facilitator, and sometimes supervisor to ensure that disputes do not escalate into armed conflict. (M. Hutaruk, S.H, 1983)

When peaceful mechanisms fail, or when threats escalate rapidly, the Council retains the authority to determine the existence of threats to peace, breaches of peace, or acts of aggression. It may impose sanctions, authorize peace operations, or employ military enforcement under Chapter VII. While the UN Charter prioritizes collective enforcement, Article 51 recognizes the inherent right of individual or collective self-defense until the Council has taken necessary action. This safeguard ensures that victims of armed attack are not rendered defenseless pending diplomatic intervention. To support its operational mandate, the Council is assisted by key subsidiary bodies, including the Military Staff Committee, the Disarmament Commission (in cooperation with the General Assembly), and UN Peacekeeping Forces authorized to deploy in volatile or post-conflict environments.

The role of the International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations, as enshrined in Article 92-96 of the UN Charter and in the Court's Statute, and this ensures the rule of law functions as a core pillar of the UN system. It was established by the

United Nations Charter in June 1945 and began its activities in April 1946. However, its origins trace back to earlier international legal institutions developed in response to the growing recognition that peaceful mechanisms were needed for resilving disputes between states. After the World War 1, with the creation of the League of Nations, the international community recognized the need for a permanent court, thus the Permanent Court of International Justice (PCIJ) was formed with Permanent judges elected by states, a formal statute defining jurisdiction and procedures which showcase the essence of having a basic instrument, and the authority to issue both contentious judgments and advisory opinions. However, the PCIJ weakened as the League of Nations collapsed. World leaders then sought to rebuild a new international order capable of preventing another catastrophic conflict, which then during the 1945 San Francisco Conference, states agreed to the ICJ.

The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States; and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. (ICJ, Press Release, 2024) In exercising its judicial functions, the International Court of Justice operates on the basis of its Statute, which forms an integral part of the United Nations Charter. All Member States of the United Nations are, by virtue of their membership, ipso facto parties to the Statute of the Court; however, this does not automatically confer compulsory jurisdiction in all disputes. The Court's jurisdiction is fundamentally grounded in the principle of state consent, a core doctrine of international adjudication that reflects the sovereign equality of States and preserves their autonomy in selecting peaceful means of dispute settlement. (Dewanto, 2005) Consequently, the ICJ may only adjudicate contentious cases where jurisdiction has been explicitly accepted by the disputing parties, whether through special agreements, optional clause declarations under Article 36(2) of the Statute, or compromissory clauses contained in bilateral or multilateral treaties. (KOLB, Robert, 2009)

First, States may jointly submit a specific dispute via a special agreement (compromis), allowing them to precisely define the scope of the Court's mandate and applicable procedures. Second, jurisdiction may arise from compromissory clauses embedded in bilateral or multilateral treaties, enabling parties to refer disputes concerning the interpretation or application of such treaties to the Court. Third, under Article 36(2) of the ICJ Statute, States may lodge Optional Clause Declarations recognizing the Court's compulsory jurisdiction vis-à-vis other States that have made similar declarations, with the reciprocity principle determining the extent of mutually binding commitments. Through these consent-based pathways, the Court may adjudicate disputes involving the interpretation of treaties, questions of international law, the determination of facts constituting a breach of an international obligation, and the nature or extent of reparation for such breaches. (Jonathan I. Charney, 1987)

Complementing its contentious jurisdiction, the Court also exercises advisory jurisdiction under Article 96 of the UN Charter, allowing the General Assembly, the Security Council, and other duly authorized UN organs and specialized agencies to request advisory opinions on legal questions. Advisory proceedings before the Court are only open to five organs of the United Nations and 16 specialized agencies of the United Nations family or affiliated orgnizations. The United Nations General Assembly and Security Council may request advisory opinions on "any legal question". Other United Nations organs and specialized agencies which have been authorized to seek advisory opinions can only do so with respect to "legal questions arising within the scope of their activities". (Thirlway, Advisory Opinions, 2021) When it receives a

request for an advisory opinion the Court must assemble all the facts, and is thus empowered to hold written and oral proceedings, similar to those in contentious cases.

The written proceedings are shorter than in contentious proceedings between States, and the rules governing them are relatively flexible. Written and oral submissions may also be provided by states and international organizations whose interests are affected. Participants may file written statements, which sometimes form the object of written comments by other participants. The written statements and comments are regarded as confidential, but are generally made available to the public at the beginning of the oral proceedings. States are then usually invited to make oral statements at public sittings. These opinions are non-binding in nature. The requesting organ, agency or organization remains free to give effect to the opinion as it sees fit, or not to do so at all. However, certain instruments or regulations provide that an advisory opinion by the Court does have binding force (e.g., the conventions on the privileges and immunities of the United Nations). Nevertheless, the Court's advisory opinions are associated with its authority and prestige, and a decision by the organ or agency concerned to endorses an opinion is as it were sanctioned by international law, therefore, they retain considerable persuasive authority. (ICJ, 2023)

In addition to its contentious and advisory jurisdiction, the International Court of Justice is vested with the authority to indicate provisional measures as an incidental yet crucial function of its judicial role. This power is expressly provided under Article 41 of the Statute of the International Court of Justice, which enables the Court to prescribe measures that ought to be taken to preserve the respective rights of the parties pending the final decision. Provisional measures serve a preventive and protective function, aiming to avert irreparable harm and to ensure that the Court’s eventual judgment is not rendered ineffective by the continuation of acts that may permanently alter the legal or factual situation in dispute. Their indication reflects the Court’s recognition that certain disputes, particularly those involving armed conflict or allegations of grave violations of international law, require immediate judicial intervention even before the merits of the case are fully examined.

The legal character of provisional measures has undergone significant doctrinal development within the jurisprudence of the Court. While initially regarded as merely recommendatory, the ICJ clarified their binding legal force in its landmark judgment in LaGrand (Germany v United States), subsequently reaffirmed in Avena and Other Mexican Nationals. In these cases, the Court held that provisional measures create international legal obligations for the parties concerned.

The Failure of the United Nations in Upholding International Justice Towards the Gaza Conflict

Israel Bans UNRWA from Operating

On 28 October 2024, the Israeli Knesset adopted two legislative acts aimed at terminating the operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), namely the Law for the Cessation of UNRWA Activities (2024) and the Law for the Cessation of UNRWA Activities in the State of Israel (2024). These laws revoke the 1967 exchange of letters permitting UNRWA’s presence, prohibit all official cooperation with the Agency, criminalize interaction with its personnel, and ban UNRWA activities within territory claimed by Israel, including East Jerusalem. The central legal issue arising from these measures is whether Israel may lawfully prohibit the operations of a United Nations organ through domestic legislation. The stated justification advanced by Israel is that UNRWA allegedly poses security risks and that some of its personnel were involved in or affiliated with Hamas, thereby rendering the Agency incompatible with Israel’s national security interests.

From Israel's perspective, the adoption of these laws reflects a long-standing position that UNRWA perpetuates the Palestinian refugee issue and undermines Israel's security, a view that intensified following the 7 October 2023 Hamas attacks. Israel has repeatedly asserted that UNRWA facilities were misused by armed groups (terrorist) and that continued cooperation with the Agency could expose Israel to security threats. These claims formed the political and strategic rationale underpinning the legislative effort to sever institutional ties with UNRWA. (Riccardo Bocco, 2010)

Furthermore, The Israeli government has implemented restrictive measures in the Occupied Palestinian Territory, including the closure of checkpoints, imposition of curfews, and the sealing of roads in several areas of the West Bank. Their reason being justified by reference to national security and the inherent right of self-defence under Article 51 of the United Nations Charter. Israel has asserted that UNRWA facilities were allegedly misused by Hamas and that certain UNRWA personnel were involved in or affiliated with hostile activities, thereby framing the Agency as a security threat rather than a neutral humanitarian actor. UNRWA has frequently been affected by these policies. Israel then destroyed UNRWA facilities on the grounds that they were used by Hamas militants. Israel also attacked seven Gaza shelters, resulting in the deaths of approximately 44 Palestinians, nine staff members, and 227 others injured.

From the perspective of international law, Israel lacks the legal authority to unilaterally terminate UNRWA's mandate. Article 51 permits defensive measures only in response to an armed attack and subject to the requirements of necessity and proportionality. Even where an armed attack exists, self-defence does not operate in isolation from other international legal obligations. In situations of occupation, the occupying power remains bound by international humanitarian law, particularly the Fourth Geneva Convention of 1949, which obliges it to ensure the welfare of the civilian population and to facilitate humanitarian assistance. Measures adopted in the name of self-defence must therefore be narrowly tailored and may not result in the generalized obstruction of humanitarian relief.

Israel's invocation of self-defense does not provide a sufficient legal basis for the blanket restriction of UNRWA's operations. UNRWA was established by the UN General Assembly through Resolution 302 (IV) and functions as a subsidiary organ of the United Nations. As such, its mandate can only be modified or terminated by the General Assembly itself. Israel's legislative measures therefore do not extinguish UNRWA's legal existence or its international mandate, but merely reflect Israel's refusal to cooperate at the domestic level. Israel does not possess sovereign authority over the West Bank and Gaza, which are internationally recognized as occupied territories under numerous UN Security Council and General Assembly resolutions, such as UNSC 242 and 2334, which demands Israeli withdrawal from the said territory. (UNGA, GA/12737 (2025) As the occupying power, Israel is bound by international humanitarian law, particularly the Fourth Geneva Convention of 1949, to ensure the protection and welfare of the civilian population, including facilitating humanitarian assistance. UNRWA, as a subsidiary organ of the UN General Assembly, enjoys privileges and immunities under the 1946 Convention on the Privileges and Immunities of the United Nations, safeguarding its operational independence from host State interference. By enacting domestic legislation that prohibits UNRWA operations, criminalizes cooperation with its personnel, and mandates the closure of its facilities, Israel breaches these obligations and unlawfully obstructs humanitarian operations within an occupied territory.

Moreover, Israel's domestic laws cannot supersede its obligations under international law. Article 103 of the Charter states that United Nations member states' obligations under the Charter prevail over their obligations under "other international agreement[s]": "In the event of

a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." (UN Charter, 1945) As a result, article 103 places the Charter above other international obligations within the legal order. (Liivoja (2008) Therefore, in the event of conflict between Israel's duties to cooperate with United Nations organs, particularly in the protection of humanitarian relief, and its domestic laws restricting such cooperation, the Charter obligations prevails.

However, academic scholarship remains divided on the exact scope of Article 103: whether it applies only to conflicts with Charter provisions or also to binding decisions of UN organs; whether its supremacy extends beyond treaties to customary norms; whether it suspends or nullifies conflicting obligations; and how it interacts with jus cogens norms. (Eran Sthoeger, 2024) Nonetheless, the prevailing position recognizes Article 103 as establishing a constitutional hierarchy in the international legal order, one that places UN Charter obligations above inconsistent domestic legislation. In this context, Israel's laws restricting UNRWA's functions constitute a direct breach of that hierarchy.

Despite the enactment of these laws, UNRWA continues to operate because its legal authority derives not from Israeli consent but from the UN General Assembly. While Israel's non-cooperation has severely constrained UNRWA's access, staffing, and logistics, it has not legally terminated the Agency's mandate. UNRWA's continued operations by utilizing its existing stocks, (Integrated Food Security Phase Classification (2023) providing shelter (UNRWA, 2024) and first aid (UN, Report of the Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 2023). From mid-November 2023, importing fuel to sustain essential services (UN, 2023) including bakeries, water desalination plants, hospitals, communications infrastructure, and education for fulfilling humanitarian operations. This reflect the enduring validity of its UN mandate and the inability of domestic legislation to nullify obligations arising under the UN Charter. In sum, Israel's legislative effort to prohibit UNRWA operations is driven by articulated security and political concerns; however, such concerns do not legally justify the suspension of a UN-mandated humanitarian agency. The laws adopted by the Knesset conflict with Israel's obligations under international humanitarian law and violate the supremacy of the UN Charter as articulated in Article 103.

The Security Council's Veto Power Hindering Resolutuions Towards Gaza and Israel

The veto power exercised by the permanent members of the United Nations Security Council (UNSC) reveals an inherent tension between the Council's mandate to maintain international peace and security and the pursuit of national interests by powerful states, as reflected in Article 24(1) of the United Nations Charter. Under this provision, the Security Council is entrusted with primary responsibility for determining the existence of threats to peace and for adopting binding measures to address such threats. However, in the context of the Gaza conflict, the effective exercise of this mandate has been significantly constrained by the repeated use of veto power, particularly by the United States.

The veto is expressly permitted under Article 27(3) of the UN Charter, which requires the concurring votes of all permanent members for the adoption of substantive decisions. While procedurally lawful, the recurrent invocation of the veto in situations involving serious violations of international humanitarian law exposes a fundamental tension between procedural legality and the substantive objectives of the Charter. As a result, despite the persistence of large-scale humanitarian harm, the Security Council has been unable to act decisively, thereby undermining its role as the central organ of collective security. Historically, the UNSC has

exercised its authority to establish no-fly zones as a measure to protect civilian populations in armed conflict. No-fly zones are created through binding resolutions that authorize member states to restrict military air operations in order to prevent further escalation and facilitate humanitarian relief. To date, the Council has established no-fly zones on only two occasions, namely in Bosnia and Herzegovina in 1992 and in Libya in 2011. (Gillard (2024). In the case of Bosnia and Herzegovina, the Council explicitly determined that a ban on military flights constituted an essential measure to ensure the safe delivery of humanitarian assistance and to contribute to the cessation of hostilities, while exempting flights conducted in support of United Nations operations. (UNSC Res. 781 (1992). These precedents confirm that the establishment and enforcement of no-fly zones fall squarely within the Council's mandate under the UN Charter.

Regarding the current case, the first and most important action that should be taken by the UNSC is to adopt a resolution to establish a no-fly zone over Gaza Strip due to the war and military actions faced by Israel. When the SC adopts this resolution, it will be the third resolution adopted to establish a nofly zone in its history since the establishment of UN, and it falls within the scope of the Council's enforcement powers under Chapter VII. By a resolution emphasizing non-intervention in a state's internal affairs as a fundamental legal obligation under international law, the UNSC would force Israel to protect Palestine's sovereignty, territorial integrity, and political independence. (Awara Hussein Ahmed, 2025) Such a measure would represent a lawful exercise of the Council's responsibility to maintain international peace and security, while reinforcing the protection of civilians and respect for international humanitarian law. However, the inability of the Security Council to even consider such measures illustrates how veto use constrains the operationalization of existing legal authority. The issue, therefore, is not the absence of competence, but the political paralysis produced by veto power.

Between October 2023 and April 2024, the Security Council attempted on multiple occasions to adopt resolutions calling for an immediate ceasefire between Israel and Hamas. Three draft resolutions were vetoed by the United States, while a fourth, proposed by the United States itself, failed to secure sufficient support. Under Chapter VII of the Charter, the Council is empowered to take early and decisive action when a situation threatens international peace and security. The repeated blocking of ceasefire resolutions foreclosed the Council's preventive function, allowing hostilities to continue and normalizing prolonged armed conflict. This outcome runs counter to the Charter's emphasis on the peaceful settlement of disputes and early intervention, as articulated in Article 1(1). On 25 March 2024, the Council adopted Resolution 2728, following a United States abstention. The resolution called for an immediate ceasefire for the Muslim fasting month of Ramadan, leading to a lasting and sustainable cessation of hostilities, the unconditional release of all hostages, compliance with international law in relation to detainees, and the facilitation of unhindered humanitarian access. (UNSC Resolution no. 2728, 2024) Nevertheless, the limited scope and implementation of the resolution demonstrated the constrained impact of UNSC action in the absence of consensus among permanent members. Although Israel withdrew some ground forces in early April, military operations continued, highlighting the limited practical effect of non-coercive measures.

The Security Council's historical engagement in the Israel-Palestinian conflict shows a recurring pattern of inaction and inefficiency, caused mostly by political factors and internal disagreements among members. The US has had significant influence, and has used its veto power at least 34 times to block UNSC resolutions that were critical of Israel. This prompted a perception that the Council favors Israel and undermines its credibility as an impartial mediator. Therefore, aligning with this, the veto in theory and in practice has is solely different. The veto

has frequently been employed to shield allied states from accountability and to block preventive or protective measures aimed at safeguarding civilian populations. In the context of Gaza, the repeated use of veto power reveals structural limitations inherent in the UNSC's design. The Gaza case thus exemplifies how the veto, originally conceived as a stabilizing instrument, has evolved into a mechanism that entrenches paralysis and undermines the credibility of international collective security. This structural failure underscores the urgent need for institutional reform or normative restraint in the exercise of veto power in situations involving large-scale humanitarian harm.

The Provisional Measures by the International Court of Justice

The case brought by South Africa against Israel before the ICJ is based on the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (the Genocide Convention). As both South Africa and Israel are State Parties to the Convention, South Africa possesses locus standi to initiate proceedings before the ICJ for alleged violations pursuant to the Genocide Convention, even without being a directly affected party, by invoking the principle of obligations erga omnes partes. (Lu Bingbin, 2004) This was affirmed in the ICJ's ruling in The Gambia v Myanmar, where the Court recognized that every state party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide has the right to institute proceedings. (ICJ, 2025) The ICJ's jurisdiction in this case is regulated on Article IX of the Genocide Convention, which confers jurisdiction on the Court over disputes relating to the interpretation, application, or fulfilment of the Convention. (ICJ, 2024)

Aside from the legal basis references the principle of erga omnes partes, which grants every state party to the convention the right to bring claim, even without being directly affected by the violation, this lawsuit also highlights South Africa's awareness of the jus cogens nature of the prohibition of Genocide, which constitutes a peremptory norm of international law. (Hakkı Hakan Erkiner, 2024) The initiation of proceedings thus reflects not only treated-based jurisdiction, but also the protection of fundamental norms from which no derogation is permitted. From the perspective of the Statute of the International Court of Justice, access to the Court is governed primarily by Article 35, which limits standing to States parties to the Statute. Based on Article 35(1), the ICJ is open to states parties to the Statute of the International Court of Justice. This includes all member states of the United Nations, as membership in the United Nations automatically makes a state a party to the Statute. This is further explicitly affirmed by Article 34(1) of the Statute of the International Court of Justice, which states: 'Only states may be parties in cases before the Court'. (ICJ Statute) As both South Africa and Israel are members of the United Nations, they are automatically parties to the ICJ Statute, Israel has been a member of the United Nations since May 11, 1949, and is a party to the 1948 Genocide Convention, thus bound by its provisions. The fact that both countries are parties to the Statute of the International Court of Justice and the 1948 Genocide Convention should provide the legal basis for the ICJ to review this case.

Even though the 1948 Genocide Convention grants the ICJ legal standing, the case is hindered by Israel's arguments regarding its own national sovereignty. Israel asserts that actions taken against Palestine, such as military operations, settlement construction, and security policies, are domestic matters and part of national defense strategy, thus arguing that these issues fall outside the scope of international law jurisdiction, including the jurisdiction of the ICJ. (Sadat, 2024) Israel also argues that lawsuits filed with the ICJ by countries supporting Palestine is a political motivated step to delegitimize Israel's position on the international stage. (Berman, L. (2023) Therefore in this case, Israel has not expressed consent to the ICJ's jurisdiction over the lawsuit filed by South Africa. Pending a final judgment on the merits, the

ICJ, exercising its authority under Article 41 of the ICJ Statute, issued provisional measures which ought to be taken to prevent irreparable harm and safeguarding the rights granted under the Convention. Whilst the aims and purposes of Article 41 is to preserve rights of each party to a dispute until the final judgement, it must be notes that the provision left a wide discretion to the Court, allowing the Court to create its own objective test as to when 'circumstances so require' measures to be indicated. ((International Court of Justice [ICJ], 1990; Brownlie, 2008) The Provisional Measures issued against Israel on 26 January 2024, marks the international community's boldness in asserting legal boundaries against actions that could lead to crimes against humanity, and therefore demonstrates that modern armed conflicts are no longer solely a domestic matters for states but are subject to global scrutiny when they involve severe human rights violations. (Goldstone, R. J. and Nicole Fritz, 2000) It ordered Israel to take all measures to prevent any acts that could be considered Genocidal under the Genocide Convention. (ICJ, 2024)

Beyond their binding character, provisional measures serve an important preventive and normative function within international adjudication. Their primary objective is not to prejudge the merits of the case, but to prevent irreparable harm to rights protected under international law while proceedings are ongoing. In genocide-related cases, this function acquires heightened significance due to the irreversible nature of the harm alleged. The indication of provisional measures in such circumstances reflects the Court's acknowledgment that delays in compliance may permanently frustrate the object and purpose of the Genocide Convention. Accordingly, provisional measures operate as an early-warning legal mechanism, reinforcing the preventive dimension of international law, particularly where jus cogens norms are implicated.

The ICJ, in its order, states that "Gaza has become a place of death and despair. In fact, areas where civilians were told to relocate for their safety have come under bombardment, and medical facilities are under relentless attack. About 180 Palestinian women are giving birth daily amidst this chaos, people are facing the highest levels of food insecurity ever recorded, and famine is around the corner", (ICJ, South Africa and Israel, 2025) and that "the past 12 weeks have been traumatic for children, there is no food, water, or school. There is nothing but the terrifying sounds of war, Gaza has simply become uninhabitable, and the people are experiencing daily threats to life."

"The Court considers that, with regard to the situation described above, Israel needs to take all measures in its power to fulfill its obligations under the Genocide Convention, in relation to Palestinians in Gaza. This aims to prevent all acts in scope of Article II of this convention, namely (a) killing members of the group, (b) causing serious bodily or mental harm to members of the group, (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, and (d) imposing measures intended to prevent births in the group. The Court recalls that these acts fall in the scope of Article II of the Convention when they are committed with the intention to destroy a group. The Court further considers that Israel needs to ensure with immediate effect that its military forces do not commit any of the above described acts".

The ICJ has an opinion "that Israel needs to take all measures within its power to prevent and punish the direct and public incitement to commit Genocide in relation to members of Palestinian group in Gaza Strip." In fact, the court imposes an important duty on Israel to prohibit and prosecute anyone who promotes genocide. Despite their binding nature as regulated under Article 60 of the ICJ Statute, the ICJ lacks effective enforcement mechanisms to compel the losing party in a case to comply with its ruling. However, the effectiveness of provisional measures is undermined by the absence of graduated legal consequences for non-compliance. While the Court may request reports on implementation or reiterate obligations, it

lacks procedural tools to escalate enforcement internally. Compliance with provisional measures heavily relies on voluntary compliance, international consensus, and diplomatic channels, rather than coercive enforcement by the Court itself.

Israel's failure or reluctance to fully comply with the ICJ's provisional measures may be understood through an analysis of state interests and security considerations. From Israel's perspective, the continuation of military operations is often justified as a matter of national security and self-defence against Hamas. This prioritization of perceived existential security concerns over international judicial obligations illustrates the tension between international legal norms and realist state behaviour. And, while the ICJ judgements are generally compiled with, in the case of Israel's noncompliance, a party (South Africa) can petition the Security Council to enforce the judgment, (United Nations, 1945, art. 94) which may make recommendations or decide upon measures to ensure compliance with the order. Under Article 94 (2) of the UN Charter, if a State fails to comply with a judgment of the ICJ, the other party may bring the matter before the United Nations Security Concil, which may then decide upon measure to give effective judgment. However, in practice, this mechanism is severely constrained by the veto power of the permanent members of the Security Council. The UNSC becomes a site of political deadlock rather than legal enforcement. When a permanent member or its closed ally is involved, enforcement efforts may be blocked, effectively neutralizing the binding force of ICJ decisions.

This structural arrangement reveals a fundamental limitation of international adjudication: once provisional measures are ignored, there is effectively no further legal remedy within the ICJ itself. The Court cannot impose sanctions, compel performance, or initiate enforcement proceedings independently. As a result, compliance with provisional measures ultimately depends on the political will of the Security Council, where enforcement may be obstructed by veto power. This institutional gap underscores that, although provisional measures are legally binding, their effectiveness is significantly weakened by the absence of autonomous enforcement mechanisms, rendering international judicial protection normatively authoritative yet practically fragile.

Reforming the United Nations' Role: Structural Paralysis, Legal Limits, and the Urgency of Institutional Restructuring

The United Nations was established in the aftermath of World War II with an ambitious and normative objective: to prevent the recurrence of large-scale armed conflict and mass atrocities through a system of collective security grounded in international law. As reflected in Article 1 of the UN Charter, the Organization's primary purposes include the maintenance of international peace and security, the suppression of acts of aggression, and the promotion of human rights and justice. The UN was envisioned not merely as a forum for diplomacy, but as an institutional guarantor of peace, capable of responding decisively to threats against humanity. However, the ongoing conflict in Gaza exposes a profound disjunction between these foundational aspirations and the contemporary functioning of the UN system. Despite extensive documentation of civilian suffering, repeated warnings of humanitarian catastrophe, and the invocation of peremptory norms of international law, the UN has struggled to translate legal authority into effective protection. This gap invites critical reflection on whether the UN's institutional design remains fit to fulfil its original peacekeeping mandate.

The Gaza conflict illustrates a structural crisis of international governance, where legal norms exist in abundance but enforcement mechanisms remain politically constrained. The failure to halt hostilities, ensure humanitarian access, or compel compliance with international judicial decisions reflects not an absence of law, but an absence of institutional resolve. This

condition raises a fundamental question: to what extent can the United Nations still function as a peacekeeper when its most powerful organs are immobilized by political interests? Addressing this question requires moving beyond case-specific failures and examining the systemic weaknesses embedded within the UN's institutional architecture, particularly the veto power of the Security Council and the limited coercive capacity of humanitarian and judicial organs such as UNRWA and the ICJ.

The veto power and the crisis of collective security

The veto power vested in the permanent members of the United Nations Security Council (UNSC) under Article 27(3) of the UN Charter has long been justified as a political compromise essential to securing the participation of major powers in the post-1945 collective security system. In theory, this mechanism was intended to preserve international stability by preventing direct confrontation among powerful States. In practice, however, the veto has frequently functioned as an instrument of institutional paralysis, particularly in situations involving grave humanitarian crises. Responsibility to Protect (R2P) is a principle adopted by the United Nations which affirms that sovereignty entails an obligation to protect populations from mass atrocity crimes. Where a State manifestly fails to fulfil this responsibility, the international community bears a residual responsibility to act, particularly in situations involving violations of ius cogens norms. Repeated instances in which the veto has been used to block collective responses to mass atrocities have raised fundamental questions regarding its compatibility with the purposes and principles of the United Nations.

From a constitutional perspective, Bruno Simma argues that while the veto power is formally recognised under the UN Charter, its exercise must be interpreted in light of the Charter's object and purpose. (Pellet, 2003) Viewing the Charter as a constitutional instrument of the international community, Simma emphasises that all powers conferred upon UN organs must be interpreted teleologically, in light of Article 1 of the Charter, which prioritises the maintenance of international peace and security, the promotion of human rights, and respect for international law. Accordingly, the veto cannot be treated as an unfettered political privilege, but must be exercised in good faith and in a manner consistent with the fundamental values underlying the UN legal order.

Simma further argues that while the veto remains legally valid as a matter of positive law, its use to obstruct collective action in situations involving genocide, crimes against humanity, or other serious violations of ius cogens risks undermining the institutional legitimacy of the Security Council. (Compare Georg Nolte, Charter Commentary) Such practice conflicts with the hierarchical structure of international law, in which obligations owed to the international community as a whole (erga omnes) and ius cogens norms occupy a superior position. When the veto is employed to shield States from accountability for mass atrocities, it transforms a mechanism designed to safeguard peace into a source of institutional dysfunction, thereby weakening the credibility of the United Nations as the guardian of international peace and security.

While Simma's analysis establishes the constitutional framework within which the veto must be interpreted, it also invites further inquiry into the substantive legal constraints that limit Security Council discretion in practice. Building upon this approach, Jennifer Trahan advances a more normatively specific critique which are three areas of law that undercut the common absolutist understanding of the veto: the development of the legal concept of peremptory norms or jus cogens; the gradual fleshing out in practice of the somewhat abstract Purposes and Principles contained in the Charter; and developing treaty obligations to act in common against

what the Preamble to the Rome Statute of the International Criminal Court calls 'unimaginable atrocities that deeply shock the conscience of humanity'.

With respect to ius cogens, Trahan observes that although the concept was not firmly embedded in international law at the time of the Charter's adoption in 1945, it has since crystallised through Article 53 of the Vienna Convention on the Law of Treaties and the work of the International Law Commission. The existence of non-derogable norms prohibiting genocide, crimes against humanity, and war crimes imposes substantive limits on State conduct and challenges any interpretation of the veto that would allow such violations to persist through inaction. In this regard, the veto cannot be understood as operating outside the normative hierarchy of international law.

Trahan further emphasises that the Charter itself contains internal normative guidance that constrains veto use. Article 1 of the Charter links the maintenance of peace and security to conformity with justice and international law, as well as to the achievement of international cooperation in solving humanitarian problems and promoting respect for human rights. Although these objectives have often been subordinated to security considerations, Trahan argues that such an imbalance is neither inevitable nor legally justified. This interpretation is reinforced by Article 2(2) of the Charter, which obliges Member States to fulfil their Charter obligations in good faith, a requirement that carries particular weight when States contemplate using the veto to protect those responsible for atrocity crimes.

Trahan's final argument is based primarily on post-1945 treaty obligations. The obligation in the Geneva Conventions to 'ensure respect' (by others) of the rules and principles contained therein is a strong one, if not always upheld. By the same token, the Genocide Convention contains an obligation to prevent that evil, an obligation given revived attention by the International Court of Justice's decision in Bosnia and Herzegovina v. Serbia and Montenegro. (Trahan, J. 2020) These treaty-based duties further erode the notion that Security Council members may lawfully exercise the veto without regard to the consequences for civilian populations. In light of these doctrinal limitations, the veto power should no longer be treated as an absolute and exclusive prerogative of the permanent members of the Security Council. One possible reform proposal would be to reconceptualise the veto mechanism within a broader, more representative decision-making framework, in which the collective will of United Nations Member States plays a greater role. Under such a model, veto authority could be transformed into a qualified voting mechanism, whereby resolutions may be blocked only when a substantial number of Member States object. While such a proposal would require profound institutional reform, it aims to promote greater equality among Member States, reduce political domination by a small group of powerful States, and enhance the legitimacy of Security Council decision-making. Ultimately, recalibrating the veto in this manner seeks to align the UN's institutional structure more closely with its foundational purpose of maintaining peace and protecting humanity.

The need for a new independent humanitarian enforcement mechanism

To effectively address humanitarian crises, a dedicated mechanism within the UN framework is essential, given the existence of ius cogens norms. However, the persistent inability of the UN to respond effectively to situations involving jus cogens violations reveals a deeper structural deficiency within the international legal order. Although sovereignty remains a core principle of international law, it cannot serve as a legal shield for systematic violations of peremptory norms. International law recognizes that certain obligations, such as the prohibition of genocide, are owed to the international community as a whole and admit no derogation.

Moreover, it is clear that the UN has often prioritized respect for State sovereignty over the enforcement of humanitarian norms. This tendency was showcased through the Gaza conflict demonstrates how political considerations repeatedly overshadows the obligation to prevent and suppress mass atrocities, the UN's role is reduced from that of a guardian of peace to a passive observer of humanitarian collapse. The failure to act decisively in the face of jus cogens violations reduces the UN's role from that of a guardian of peace to a passive observer of humanitarian collapse. This condition is incompatible with the hierarchical structure of international law, which demands that peremptory norms prevail over conflicting political interests. Without an effective enforcement mechanism capable of operating independently of political deadlock, the UN's commitment to human rights risks becoming purely rhetorical. Accordingly, a special humanitarian enforcement mechanism must be developed to address situations involving serious ius cogens violations. Such a mechanism should operate independently of political deadlock and should not depende solely on the discretionary approval of the Security Coundil. Where respect for sovereignty consistently obstructs the prevention of mass atrocities, it must yield to the imperative of protecting humanity.

Strengthening UNRWA and the ICJ towards institutional autonomy and coercive capacity

UNRWA occupies a unique position within the UN system as the primary provider of humanitarian assistance to Palestinian refugees. Its mandate encompasses the delivery of essential services, including food, healthcare, education, and shelter, thereby ensuring the minimum conditions necessary for human dignity. In the context of Gaza, UNRWA has functioned as the operational backbone of the humanitarian response, despite severe restrictions and political pressure. (Gea, 2024) However, UNRWA's effectiveness is significantly undermined by its financial and political vulnerability. Its reliance on voluntary donor contributions exposes the Agency to external influence and conditionality, allowing States to instrumentalize humanitarian assistance for political purposes. This dependence threatens UNRWA's operational independence and compromises its ability to fulfil its mandate in accordance with international humanitarian and human rights law.

To address this structural weakness, UNRWA's funding mechanism should be reformed by incorporating it into the UN's assessed contributions system. Mandatory financing would enhance predictability, reduce political leverage, and strengthen the Agency's capacity to operate independently. Such reform is essential to ensuring that humanitarian assistance remains insulated from geopolitical bargaining. To prevent undue intervention, the UNRWA must be granted autonomous and independent authority, even though they remain within the institutional framework of the United Nations. (Diastiti & Mulyani, 2025)

The International Court of Justice plays a central role in upholding the rule of law within the UN system. Through its contentious and advisory jurisdiction, the Court provides authoritative interpretations of international law and contributes to the development of legal norms. However, the effectiveness of the ICJ is fundamentally constrained by its reliance on political organs for enforcement. While ICJ judgments and provisional measures are legally binding, their implementation ultimately depends on the Security Council under Article 94(2) of the UN Charter. In situations involving powerful States or their allies, this enforcement pathway is frequently blocked by the veto, rendering judicial decisions practically ineffective. This structural dependence undermines the credibility of international adjudication and weakens the deterrent effect of international law.

To restore the effectiveness of international justice, the ICJ must be granted greater institutional autonomy. This may include the development of alternative compliance mechanisms or enhanced monitoring procedures that reduce reliance on political enforcement.

Without such reforms, international adjudication risks remaining normatively authoritative yet practically impotent. The Gaza conflict exposes a fundamental crisis within the UN system: a widening gap between legal authority and political reality. The failure to reconcile power politics with humanitarian imperatives underscores the urgency of institutional reform. Without meaningful restructuring of the veto mechanism, humanitarian enforcement, and judicial authority, the UN risks drifting further from its foundational purpose. Reform is therefore not optional but essential to preserving the UN's legitimacy as a guardian of peace, justice, and humanity.

Conclusion

This article concludes that the management of the Gaza conflict reflects deep structural weaknesses within the United Nations system. Although the United Nations was established to maintain international peace and security, protect human rights, and uphold international law, its role in the Gaza conflict remains significantly constrained by institutional and political limitations. The International Court of Justice and the United Nations Relief and Works Agency for Palestine Refugees in the Near East have played crucial roles in protecting humanitarian interests in Gaza. However, their effectiveness has been weakened by political intervention, dependence on state interests, and the absence of strong enforcement mechanisms.

The findings show that the paralysis of international justice in Gaza is not caused by the absence of legal norms, but by the inability of existing institutions to enforce those norms consistently and impartially. The Security Council's veto mechanism has limited the UN's capacity to respond decisively to serious humanitarian violations, while UNRWA's dependence on voluntary funding exposes its humanitarian mandate to political pressure. At the same time, the ICJ's authority remains limited because compliance with its judgments and provisional measures ultimately depends on political will, particularly through the Security Council.

Therefore, structural reform is necessary to restore the credibility and effectiveness of the United Nations in addressing humanitarian crises. UNRWA's funding should be strengthened through a more stable and mandatory contribution mechanism, reducing its vulnerability to political manipulation. The ICJ should also be supported by stronger compliance and monitoring mechanisms so that its decisions do not remain merely normatively authoritative but practically weak. More broadly, the exercise of veto power in situations involving grave humanitarian violations should be normatively restrained to prevent the Security Council from becoming an instrument of political paralysis. Without such reforms, international justice risks becoming selective, dependent on geopolitical interests, and detached from the foundational principles of humanity, accountability, and the rule of law.

References

Ahmed, A. H., & Ali, H. S. (2025). The implications of UNSC resolutions in shaping the dynamics of the Palestinian–Israel peace process: The Israel–Hamas war as a case study. Journal of International and Strategic Studies, 6(1), 1–24.

Al Jazeera. (2024, April 23). By the numbers: 200 days of Israel's war on Gaza. https://www.aljazeera.com/news/2024/4/23/by-the-numbers-200-days-of-israels-war-on-gaza

Bartholomeusz, L. (2009). The mandate of UNRWA at sixty. Refugee Survey Quarterly, 28(2–3), 452–474.

Berman, L. (2023, January 2). Israel has claimed some wins in UN vote — but the ICJ process is a serious threat. The Times of Israel. https://www.timesofisrael.com

Bisharat, G. E. (2009). Israel's invasion of Gaza in international law. Denver Journal of International Law and Policy, 38, 41–68.

Bocco, R. (2010). UNRWA and the Palestinian refugees: A history within history. Refugee Survey Quarterly, 28(2–3), 229–252.

Brown, I. (2008). Principles of public international law (7th ed.). Oxford University Press.

Brown, N. J. (2010). The Hamas–Fatah conflict: Shallow but wide. The Fletcher Forum of World Affairs, 34(2), 35–49.

Centre for European Studies (CVCE), [The Cold War (1945–1989)], CVCE Publication (2011), available at https://www.cvce.eu

Charara, L. (2018). The legal architecture of United Nations peacekeeping: A case study of UNIFIL. Michigan Journal of International Law, 40, 385–432.

Charney, J. I. (1987). Compromissory clauses and the jurisdiction of the International Court of Justice. American Journal of International Law, 81(4), 855–887. https://doi.org/10.2307/2203414

Conforti, B., & Focarelli, C. (2016). The law and practice of the United Nations. Brill.

Dale, W. (1974). UNRWA – A subsidiary organ of the UN. International and Comparative Law Quarterly, 23, 582–583.

Dewanto, W. A. (2005). Mahkamah internasional. CV Citramedia.

Diastiti, H., & Mulyani, L. W. (2025). Reformasi hak veto atas indikasi abuse of power dalam upaya perdamaian dunia. Jurnal Hukum To-Ra, 11(2), 101–118.

Erkiner, H. H. (2024, March 22). The legal foundations of South Africa's genocide case against Israel at the International Court of Justice. The Platform.

Emanuela-Chiara Gillard, *Enhancing the Security of Civilians in Conflict*, Chatham House (2024), https://www.chathamhouse.org/2024/04/enhancing-security-civiliansconflict/07-no-fly-zones (accessed 24 Oct. 2024).

Fiddian-Qasmiyeh, E. (2019). The changing faces of UNRWA: From the global to the local. Journal of Humanitarian Affairs, 1(1), 28–41.

Gaeta, P. (Ed.). (2009). The UN genocide convention: A commentary. Oxford University Press.

Gea, G. V. V. (2024). Statement in Forum 15 Bincang Hukum UBAYA. Faculty of Law, Universitas Surabaya.

Gavrielov, N. (2023, December 27). Hamas and other militant groups are firing rockets into Israel every day. The New York Times. https://www.nytimes.com

Gillard, E.-C. (2024). Enhancing the security of civilians in conflict. Chatham House. https://www.chathamhouse.org

Goldstone, R. J., & Fritz, N. (2000). “In the interests of justice” and independent referral. Leiden Journal of International Law, 13(3), 655–679.

Hugh Thirlway, Advisory Opinions, Oxford Public International Law, Max Planck Institute for Comparative Public Law and International Law (2021–), under the direction of Anne Peters and Rüdiger Wolfrum.

Hutaruk, M. (1983). Kenallah PBB (Perserikatan Bangsa-Bangsa). Erlangga.

Integrated Food Security Phase Classification. (2023). Gaza Strip: IPC acute food insecurity, November 2023–February 2024.

International Court of Justice. (1990). Arbitral award of 31 July 1989, provisional measures. ICJ Reports, 64–69.

International Court of Justice. (2020). Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures. https://www.icj-cij.org

International Court of Justice. (2023). Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Press Release No. 2023/77. https://www.icj-cij.org

International Court of Justice. (2024). Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel), Provisional Measures Order. https://www.icj-cij.org

Kolb, R. (2009). The compromissory clause of the convention. In P. Gaeta (Ed.), The UN genocide convention (pp. 407–424). Oxford University Press.

Liivoja, R. (2008). The scope of the supremacy clause of the United Nations Charter. International and Comparative Law Quarterly, 57(3), 583–612.

Lu, B. (2004). Reform of the International Court of Justice—A jurisdictional perspective. Perspectives, 5(2), 1–15.

Manna’, A. (2013). The Palestinian Nakba and its continuous repercussions. Israel Studies, 18(2), 86–99.

Pellet, A. (2003). The Charter of the United Nations: A commentary of Bruno Simma’s commentary. Michigan Journal of International Law, 25(1), 1–28.

Rain Liivoja, The Scope of the Supremacy Clause of the United Nations Charter, 57 International and Comparative Law Quarterly 583, 612 (2008); see also Wood & Sthoeger, supra note 14, at 9–10.

Reuters. (2023, October 11). A brief history of Gaza’s 75 years of woe. https://www.reuters.com

Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002.

Sadat, L. (2024). Explainer part II: The Israel–Hamas war and the International Court of Justice. JURIST. https://www.jurist.org

Sarooshi, D. (1997). The legal framework governing United Nations subsidiary organs. British Yearbook of International Law, 67, 413–478.

Secretary-General's Bulletin, Organization of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UN Doc. ST/SGB/2000/6 (17 Feb. 2000); see also Dale (1974); Sarooshi (1997).

Setiawan, A. (2025). Assessing the United Nations' capacity to address genocide allegations in Gaza. Asian Journal of Multidisciplinary Research, 2(3).

Sthoeger, E. (2024). Article 103 of the United Nations Charter: Uncharted possibilities? Michigan Journal of International Law, 45(2), 153–196.

Thirlway, H. (2021). Advisory opinions. Oxford Public International Law. https://opil.ouplaw.com

Trahan, J. (2020). *Existing legal limits to Security Council veto power in the face of atrocity crimes*. Cambridge University Press.

United Nations. (1993). Vienna Declaration and Programme of Action. https://www.ohchr.org

United Nations. (2000). Secretary-General's Bulletin: Organization of UNRWA (UN Doc. ST/SGB/2000/6).

United Nations. (2023). Secretary-General's opening remarks on the situation in Gaza. https://www.un.org

United Nations General Assembly. (2008). Resolution 63/93: Operations of UNRWA.

United Nations General Assembly, Eightieth Session, 53rd & 54th Meetings (AM & PM), General Assembly Adopts Texts Demanding Israeli Withdrawal from Occupied Territories, UN Doc. GA/12737 (2 December 2025).

United Nations Security Council. (1992). Resolution 781 (1992).

United Nations Security Council. (2024). Resolution 2728 (2024).

United Nations Relief and Works Agency for Palestine Refugees in the Near East. (2009). Programme budget 2008–2009 (UN Doc. A/62/13/Add.1).

United Nations Relief and Works Agency for Palestine Refugees in the Near East. (2024). Situation report #59. https://www.unrwa.org

United Nations. (n.d.). Main bodies. https://www.un.org/en/about-us/main-bodies

United Nations. (n.d.). UNISPAL history. https://www.un.org/unispal/history/