

The Impact of International Court of Justice decisions on the Palestinian-Israeli conflict: A legal perspective

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Abstract

This study aims to analyze the role of the International Court of Justice (ICJ) in shaping the course of the Gaza conflict through its decisions and advisory opinions, focusing on its legal and political impact on the Palestinian-Israeli conflict, starting with the advisory opinion on the separation wall in 2004 through the provisional measures issued in 2024. The central issue of the study is embodied in the question: How has the ICJ contributed to shaping the dynamics of the conflict in Gaza through its advisory and arbitration decisions?

The study employed a critical-analytical approach, examining gaps between the theoretical framework of international law and the Court's practical decisions, alongside a comparative analysis of the Court's rulings in cases such as Rwanda and Bosnia relative to the Palestinian cause. The study demonstrated that the ICJ played a pivotal role in the Palestinian-Israeli conflict by legitimizing Palestinian rights, particularly the right to self-determination, as a *jus cogens* norm. However, the Court's decisions have been challenged by the political considerations of the Security Council, and international public opinion has made them a reference for Boycott, Divestment, and Sanctions (BDS) campaigns. The Court has succeeded in legitimizing Palestinian claims and revisiting the international debate on the conflict from the perspective of international law, despite the issues facing the implementation of the decisions.

The study's originality lies in its integrated legal-political analysis of ICJ decisions from 2004 to 2024, assessing international judicial effectiveness in a protracted occupation conflict.

Keywords: ICJ; Israel; Gaza; BDS; Palestine; Provisional measures; Genocide

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أثر قرارات محكمة العدل الدولية على مسار الصراع الفلسطيني الإسرائيلي: منظور قانوني

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ملخص

تهدف الدراسة إلى تحليل دور محكمة العدل الدولية في تشكيل مسار الصراع في غزة من خلال قراراتها وآرائها الاستشارية، مع التركيز على أثرها القانوني والسياسي في الصراع الفلسطيني الإسرائيلي، بدءاً من الرأي الاستشاري حول الجدار العازل عام 2004، وصولاً إلى التدابير المؤقتة والرأي الاستشاري عام 2024.

تتجسد القضية المحورية للدراسة في السؤال الآتي: كيف ساهمت محكمة العدل الدولية في تشكيل ديناميات الصراع في غزة من خلال قراراتها الاستشارية والتحكيمية؟

اعتمدت الدراسة منهجاً نقدياً تحليلياً لفحص الفجوات بين الإطار النظري للقانون الدولي والتطبيق العملي لقرارات المحكمة، مع تحليل سياقات الصراع السياسي في غزة. واستخدمت منهجاً مقارناً لمقارنة قرارات المحكمة في قضايا أخرى، مثل رواندا والبوسنة، بالقضية الفلسطينية.

أثبتت الدراسة أن محكمة العدل الدولية أدت دوراً محورياً في تسليط الضوء على مسار الصراع الفلسطيني الإسرائيلي من خلال إضفاء الشرعية على الحقوق الفلسطينية، لا سيما الحق في تقرير المصير، باعتباره قاعدة أمرة. غير أن قرارات المحكمة واجهت الاعتبارات السياسية التي تحكم مجلس الأمن باعتباره الذراع التنفيذية للمحكمة، وأثرت قرارات المحكمة في الرأي العام الدولي وأصبحت مرجعاً لحملات المقاطعة. وتؤكد الدراسة أن المحكمة نجحت في إضفاء الشرعية على المطالبات الفلسطينية وإعادة النظر في النقاش الدولي حول الصراع من منظور القانون الدولي رغم المشاكل التي تواجه تنفيذ القرارات.

تتجلى أصالة هذه الدراسة في تحليلها القانوني-السياسي المتكامل لقرارات المحكمة من 2004 إلى 2024، مما يوفر إطاراً منهجياً لتقييم فاعلية القضاء الدولي في نزاعات الاحتلال المطول.

الكلمات المفتاحية: محكمة العدل الدولية، إسرائيل، غزة، المقاطعة، فلسطين، التدابير المؤقتة، الإبادة الجماعية

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1. Introduction

The intricate historical narrative of the Gazan geopolitical conflict, which began in the early 20th century, is a tale of clashing national identities, as well as deep-set animosities and grievances of the territory. It encompasses episodic strife, violence, and military confrontations alongside severe humanitarian disasters, and often includes Israeli and Palestinian factions, particularly Hamas in the Gaza Strip. Of paramount importance in the political environment of this area are numerous foreign policies, notably a plethora of international legal systems such as the International Court of Justice (ICJ), which has made crucial decisions vis-à-vis the conflict and which profoundly influences the political climate through the legal rhetoric on the conflict.

The ICJ's role in the Palestinian- Israeli conflict has been important in defining the legal boundaries of state behaviour during War, the civilian population, and the interpretation of international humanitarian law. The Court's 2004 advisory opinion regarding the legality of the construction of Israel's separation barrier provided important legal precedents on the use of international law with regard to the sovereign borders of the territory controlled by Israel.

The ICJ determined that the barrier constructed in Palestinian territory is an illegal piece of international structure and a borderline hostility by infringement on the Fourth Geneva Convention, which deals with the protective rights of civilians in occupied territories.

1.1 The study problem and its questions

The study examines the role of the International Court of Justice (ICJ) in the ongoing conflict in Gaza, addressing a fundamental question: How has the ICJ contributed to shaping the dynamics of the Gaza conflict through its advisory and arbitration decisions, and to what extent do these decisions affect the legal and political realities of the parties involved?

This problem arises from the discrepancy between the supposed role of the Court as an assurer of universal justice as dictated by the UN Charter and the context within which its decisions are, in many instances, ineffectively executed within the scope of the Palestinian- Israeli conflict, specifically in Gaza. Similarly, the Court has made important rulings, for instance, the 2004 advisory opinion concerning the separation wall and the 2024 advisory opinion wherein the occupation was deemed illegal and characteristically essential.

Nevertheless, they have not been accomplished as tangible alterations due to Israel's failure to comply and the absence of enforcement means and frameworks. Moreover, political and legal factors overlap in the international community's handling of the conflict, raising questions about the ability of the international judiciary to transcend geopolitical biases.

Accordingly, the study aims to answer the following questions: **What role does the International Court of Justice play in the Gaza conflict under international law?** What are the consequences that stem from the legal and political reality for and concerning carrying out the Court's determinations?

Especially, what are the legal and political substructures for implementing the Court's decision on the Legality of the Occupation in 2024?

How do the positions of central states, including the United States, affect the effectiveness of the Court's decisions? How do the Court's decisions affect the political trajectory of the conflict in Gaza? For example, how does this characterization contribute to the redefinition of conflict within the framework of international humanitarian law? These questions arise as Israel continues its genocidal War on Gaza and its impact on regional and global tensions.

1.2 The objectives of the study

The objectives of the study revolve around several points:

- 1- Analyzing the legal role of the International Court of Justice in the Palestinian-Israeli conflict, with a focus on Gaza, by studying its decisions and advisory opinions and their impact on the legal and political status of the concerned parties, especially in light of the latest advisory opinion issued in 2024 on the Israeli occupation.
- 2- Assessing the effectiveness of the Court's decisions in protecting Palestinian rights, notably the right to self-determination and stopping legal violations related to occupation, settlements, and discriminatory policies, and the impact of this on the political process of the conflict in Gaza.
- 3- To analyze how the International Court of Justice's decisions and advisory opinions, particularly the Wall opinion, the provisional measures on Gaza, and the 2024 advisory opinion, have contributed to consolidating the legitimacy of Palestinian rights and reshaping the international legal discourse on the Israeli-Palestinian conflict, with a focus on the right to self-determination and the illegality of the occupation.
- 4- To examine the limits and effectiveness of the mechanisms for implementing the International Court of Justice's decisions in the Palestinian context, by assessing the roles of the Security Council, the General Assembly, international public opinion, and boycott campaigns, and how these factors have influenced the standing of the Palestinian cause and Israel's position in the international system.

1.3 The study's hypothesis

The study is predicated on a fundamental hypothesis: The ICJ plays a pivotal role in shaping the course of the Gaza conflict through its decisions and provisional measures, as these decisions contribute to strengthening the status of the Palestinian cause legally and politically in the international arena.

1.4 The significance of the study

This study holds significant academic and practical importance due to its close relationship with developments in international humanitarian law and human rights, as well as its direct implications for understanding the operational mechanisms of international justice in addressing protracted conflicts such as the Israeli-Palestinian context. The case of Gaza, in particular, constitutes a distinctive and critical example for examining the efficacy and limitations of international justice in situations characterized

by chronic occupation and the persistent absence of effective enforcement mechanisms. As such, Gaza serves as an empirical model for assessing both the challenges and potentialities inherent in applying international legal norms under prolonged conflict conditions.

1.5 The limits of the study

The boundaries of the study start from the beginning of the parties' recourse to the ICJ regarding Gaza (with a focus on cases and opinions issued since 2004 on the separation wall, up to provisional measures and the 2024 advisory opinion on the occupation and the recent War on Gaza), while the spatial boundaries are limited to the Gaza Strip as the main case, concerning the legal and political relationship with the rest of the Occupied Palestinian Territory (OPT) only when vital to understand the legal context.

1.6 The study methodology

The study is contingent upon a critical-analytical approach to examine the gaps between the theoretical framework of international law and the practical application of the Court's decisions while analyzing the contexts of the political conflict in Gaza. Additionally, it draws on a comparative approach to compare the Court's decisions in other cases (such as Rwanda or Bosnia) with the Palestine case to assess the consistency of judicial practices.

1.7 Previous literature review

Obaide (2024): South Africa's Genocide Claim Against Israel before the ICJ

- **The study of Mohammad Obaide (2024): South Africa's claim that Israel committed genocide in the Gaza Strip (Reading of the decision of the International Court of Justice)**; this study elucidates South Africa's case against Israel before the International Court of Justice, in which it accused Israel of committing the crime of genocide against Palestinians in the Gaza Strip since October 27, 2023, based on Israel's violation of its obligations under the 1948 Genocide Convention, which guarantees the protection of the Palestinian people in Gaza from genocide. The study revealed that the Court did not decide to compel Israel to immediately cease military action, as it did in other cases (such as Ukraine v. Russia), and settled for less severe measures, which can be explained by the Court being influenced by Western political pressure. The study highlights that the South African case before the ICJ represents a real test of the effectiveness of the international legal system in protecting people from genocide and reveals the limits of international justice in light of global political balances.

Dib and Djimaoui (2024): UN Human Rights Work and International Justice

- **The study of Mohamed Dib and Nouredine Djimaoui. (2024): A reading of the United Nations' work in the field of human rights (South Africa's lawsuit against the Zionist entity before the International Court of Justice is an example).** The study reviewed the developments of the humanitarian situation in the Gaza Strip after October 7, 2023. The study argues that the South African case before the International Court of Justice represents an

important precedent in activating international law mechanisms to protect people from genocide and highlights the need to strengthen the role of the United Nations and international bodies in protecting human rights, especially in times of armed conflict. Furthermore, it outlines how the case demonstrates the failure of the international framework to serve as a deterrent for serious violations, prompting reflection on the adequacy of legal instruments within international law designed for the administration of justice and the safeguarding of human dignity.

Flej (2024): Mechanisms for Implementing ICJ Judgments

- **Guzlan Flej's study (2024) entitled: Effective Mechanisms for Implementing the Judgments of the International Court of Justice against the Zionist – UN Security Council Model-**, The study aimed to analyze the legal and political bases for the implementation of the International Court of Justice (ICJ) judgments issued against the Zionist entity, focusing on the role of the UN Security Council as a key mechanism in this context, reviewing the obstacles to implementation and proposing solutions to enhance the effectiveness of these mechanisms. This study identifies the ICJ's Political Realism and Governance; the ICJ's jurisdiction as its boundaries. It provides additional scrutiny at the international level, which has to be done regarding the structural and political implementation impediments. s

All these studies illuminate the ICJ's decision regarding Gaza in terms of the effectiveness of these decisions, their implementation mechanism, and their humanitarian impact on the situation in Gaza.

2. International Court of Justice Decisions on Palestine and Gaza

Article 92 of the Charter of the United Nations defines the International Court of Justice as “the principal judicial organ of the United Nations, which shall carry out its work by its Statute annexed to this Charter, which is based on the Statute of the Permanent Court of International Justice and is an integral part of this Charter.”¹

The Court has a dual jurisdiction; it has the authority to consider disputes that arise between states and the authority to issue an advisory opinion (Advisory Opinion), i.e., it has two types of authorities, one judicial and the other advisory.²

In the subsequent section, the study provides insight into the most important decisions of the International Court of Justice (ICJ) concerning the Palestinian situation. The study will discuss the recent ICJ decisions on taking provisional measures to protect civilians in Gaza, in addition to the advisory opinions that dealt with the legality of the Israeli occupation and their political and legal impact on the course of the conflict in Gaza.

1 Article 92: The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based on the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.’ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 92.

2 أنيس فوزي قاسم، الجدار العازل الإسرائيلي: فتوى محكمة العدل الدولية، مركز دراسات الوحدة العربية، بيروت، 2007، ص 23.

2.1. Provisional measures to prevent genocide, open crossings, and facilitate aid

South Africa's filing of a case against Israel with the International Court of Justice marked a qualitative shift in the Israeli- Palestinian conflict in general and directly affected the War in Gaza.

South Africa based its claim against Israel on the 1948 UN Genocide Convention, Article 9 of which granted the ICJ jurisdiction over any dispute between Contracting Parties concerning the interpretation, application, or implementation of the Convention, including any dispute relating to the responsibility of a state for genocide.

The filing of such a case before the International Court of Justice came as a surprise to Israel. Before the legal response, the Israeli Foreign Ministry issued a statement criticizing South Africa's position and explicitly accusing it of being the legal arm of the Hamas terrorist organization, and that South Africa's lawyers are official representatives of Hamas³.

According to the Court's official website, Nicaragua submitted an official request to intervene in the case on January 23, 2024, along with South Africa, Colombia, Libya, Chile, Mexico, 2024, and Palestine. Furthermore, it submitted a request to join the case as a third party. The support continued until 2025, when Ireland formally joined the case on January 7, 2025.⁴

The study believes that the fact that many countries have joined the South African lawsuit indicates an increase in international solidarity with Gaza, and this solidarity is important in increasing international pressure on Israel to stop the War in Gaza and prevent acts of ethnic cleansing and extermination of the civilian population.

In the operative part of the Court's decision, the Court ordered the state to take measures within its authority to prevent and punish public incitement to commit genocide against Palestinians, to provide basic services and humanitarian aid, and to take measures to prevent the destruction of any evidence related to allegations of genocide.⁵

The study poses the following question: Was the International Court of Justice influenced by international politics and pressure from the United States, or did its independent nature contribute to its decision to compel Israel to take the interim measures mentioned?

Before responding to the question, the study reviews some of the ICJ's decisions in similar cases, including Bosnia and Herzegovina, Gambia v. Myanmar, and Ukraine v. Russia:

3 Mohamed Dib and Nouredine Djimaoui, 'A Reading of the United Nations' Work in Human Rights: South Africa's Lawsuit against the Zionist Entity before the International Court of Justice as an Example' (2024) 10(2) Journal of Legal and Political Studies 6.

4 International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Order on the Request for the Modification of Provisional Measures (24 May 2024) General List No 192, para 2.

5 محمد عبيدي، «ادعاء جنوب إفريقيا بارتكاب إسرائيل إبادة جماعية في قطاع غزة (قراءة في منطق قرار محكمة العدل الدولية)»، المجلة الأكاديمية للبحوث القانونية والسياسية، مج 8، ع 1، 2024، ص 225.

- One of the most famous cases in which the International Court of Justice issued a ruling is the Bosnia and Herzegovina case (2007). Bosnia and Herzegovina brought the case in 1993, alleging that Serbia committed acts of genocide during the Bosnian War (1992-1995), in particular the Srebrenica massacre (1995), in which some 8,000 Bosnian Muslim men and boys were killed. The case was based on Article IX of the Genocide Convention, which gives the Court jurisdiction over violations of the Convention.⁶

The ruling set a legal precedent on the responsibility of the state to prevent genocide.⁷ The Court did not condemn Serbia for the direct commission of genocide but found it in breach of its obligations to prevent genocide, as it did not use its influence on Serbian forces to stop the massacre.⁸

In doing so, the Court applied a very strict standard of proof for allegations of genocide and relied on a narrow understanding of attribution, requiring “fully conclusive” evidence to link the genocidal acts and *dolus specialis* of the Bosnian Serb forces to the Serbian state.⁹

Several commentators have argued that, although the judgment was pathbreaking in affirming state obligations to prevent and punish genocide, its doctrinal choices on attribution, complicity and standard of proof significantly limited the practical possibility of holding Serbia directly responsible for the commission of genocide under the Convention.¹⁰

The study notes that scholarly critiques of the ICJ’s judgment in the Bosnian Genocide case have highlighted how the Court’s reasoning reflected a tension between legal consistency and political considerations, particularly the desire to avoid destabilizing Serbia and the broader regional context.

In light of these analyses, the Court’s reluctance to directly condemn Serbia for the commission of genocide can be understood as an attempt to strike a diplomatic balance between acknowledging the gravity of the crimes and mitigating potential political repercussions, which suggests that the development and application of the law of genocide in this case were not entirely insulated from prevailing political constraints.¹¹

6 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro)), Preliminary Objections, Judgment ICJ Rep 595; see also Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 8 April 1993 ICJ Rep 3; and Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 13 September 1993 ICJ Rep 325.

7 Sotirios Palassis, ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)’ (2008) 9(1) Melbourne Journal of International Law 341.

8 Kaisa Marttinen, *State Responsibility for Genocide: The International Court of Justice’s Judgment in the Genocide Case and Its Aftermath* (Bachelor’s thesis, Lund University 2016) 17.

9 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) ICJ Rep 43, para 209.

10 Marko Milanović, ‘State Responsibility for Genocide: A Follow-Up’ (2007) 18 European Journal of International Law 669, 670.

11 Nikolas Rajković, ‘On “Bad Law” and “Good Politics”: The Politics of the ICJ Genocide Case and Its Interpretation’ (2008) 21 Leiden Journal of International Law 897, 902

- At this juncture, the study proceeds to examine the decision of the International Court of Justice (ICJ) in the case filed by Ukraine against Russia, where the study notes that the Court's letter to Russia was to immediately suspend military operations in Ukraine and even ensure that any military units or militias supported by it refrain from continuing operations.¹² The Court's jurisdiction over the Russian-Ukrainian conflict is limited due to the lack of Russian consent, making the effectiveness of the decisions weak, especially since the party refusing to implement them is a permanent member of the Security Council with veto power.¹³ This decision highlighted the limitations of the international system in enforcing international court rulings against permanent members of the Security Council.¹⁴

The study notes the Court's paradoxes in dealing with the cases brought before it. Simultaneously, it ordered Russia to cease military operations immediately, and the Court avoided explicitly ordering a ceasefire in its first decision and asked Israel to prevent acts of genocide and ensure humanitarian access.

Nonetheless, in a later judgment (May 24, 2024), the Court mandated stopping military activities in Rafah governorate specifically, while leaving the crossing open.¹⁵ Such inconsistencies are indicative of the convoluted nature of the international legal system and the degree to which overarching political realities and the might of the countries involved shape it.

Among the pending cases before the ICJ is the case filed by the Gambia against the State of Myanmar in 2019 for its gross violations of Muslim rights against the Rohingya Muslim minority during the years 2016 and 2017.¹⁶

The study refers to one of the defences the State of Myanmar raised against Gambia: it does not have the capacity and interest. Consequently, the non-affected states parties to the Genocide Convention do not have the legal capacity to sue another state before this Court.¹⁷

What this case has in common with the case brought by South Africa against Israel is that neither South Africa nor the Gambia is the party being subjected to genocide; hence, the Court emphasized in

12 Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation), Provisional Measures, Order of 16 March 2022, General List No 182.

13 Rini Wulandari, 'Jurisdiction Issues of the International Court and the Effectiveness of ICJ's Decision in the Russia-Ukraine Dispute Resolution' (2022) 22(2) Nurani: Jurnal Kajian Syari'ah dan Masyarakat 346.

14 European Parliamentary Research Service, 'ICJ Orders Russia to Halt Military Operations in Ukraine: Ukraine v Russian Federation (Genocide Allegations)' (2022).

15 Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Order on the Request for the Modification of Provisional Measures (24 May 2024) General List No 192.

16 سوسن شقري، «موقف محكمة العدل الدولية من شكوى غامبيا ضد ميانمار»، رسالة ماجستير، كلية الحقوق والعلوم السياسية، جامعة محمد الأمين دباغين سطيف 2، 2020.

17 زكريا معاوي، «الدفع الابتدائي لدولة ميانمار أمام محكمة العدل الدولية بخصوص قضية أقلية الروهينغا»، مجلة الفكر القانوني والسياسي، مج 7، ع 2، 2023، ص 609-625.

its response to Myanmar's arguments that all states parties to the Genocide Convention have a common interest in ensuring that genocide is prevented, suppressed, and punished.¹⁸

From the preceding, the study found that although the ICJ's provisional measures decision was a favorable step in an attempt to stop the genocide taking place in Gaza, and although many countries joined the lawsuit filed by South Africa against Israel, these steps remained ineffective in the face of what is happening in Gaza. On the other hand, the study found that the lawsuit itself put Israel in an intricate position due to the increase in calls from international human rights organizations and pressure from the international community due to the number of civilian victims. This marked a shift in the Palestinian-Israeli conflict and gave legitimacy to calling what is happening in Gaza a genocide, even if Israel denies it.

2.2 Advisory opinion on the legality of the Israeli occupation and its legal implications

The War in Gaza contributed to reshaping the Israeli-Palestinian conflict; as a result, the international community became interested in resolving this conflict to the end and making it a priority for international peace and security. The United Nations General Assembly asked the International Court of Justice to issue an advisory opinion on the legality of the continued Israeli occupation of Palestinian lands since 1967, settlement policies, annexation, and discriminatory legislation, and the consequent legal obligations on Israel, other states, and the United Nations.¹⁹

The Court affirmed that Israel's presence in the Occupied Palestinian Territory (West Bank, East Jerusalem, Gaza) is illegal under international law and violates the principle of the inadmissibility of the acquisition of territory by force and the right of the Palestinian people to self-determination. Likewise, the Court based its decision on the Fourth Geneva Convention and international humanitarian law when it highlighted Israel's settlement policy and population transfer to the West Bank and Gaza Strip as serious violations.²⁰

The West Bank experienced a never -before- seen surge of Israeli -inflicted violence and control during the time Israel was at war with Gaza, effectively turning the region into a site of conflict in tandem with Gazan warfare and employing comparable military strategies. An elaborate crisis encompassing dire humanitarian and legal issues was created as a result of aggressive military actions alongside infrastructure dismantlement, settler-initiated violence legalized by the state, and unending law enforcement.

18 صالح بن محمد الخثلان، قضية الإبادة الجماعية ضد إسرائيل: الاسترشاد بقضية غامبيا ضد ميانمار وقضايا أخرى، مركز الخليج للأبحاث، الرياض، 2024، ص 12.

19 Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Advisory Opinion on the Legal Consequences of the Israeli Occupation of the Palestinian Territory, General List No 186 (2024).

20 Michael A Becker, 'Introductory Note to Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (Advisory Opinion) (ICJ)' (2024) 64(4) International Legal Materials 23.

With reference to the advisory Opinion issued on July 19, 2024, the study finds that the Court assessed Israeli policies from several aspects: The Court affirmed that Israel must end its occupation of the OPT, cease settlement activity and evacuate settlers, and urged other states not to recognize the legal status resulting from the illegal presence and to promote efforts to find a just and lasting solution to the conflict.²¹

As a matter of fact, settlement activity in the West Bank and the attempt to control all of Jerusalem returned to the forefront during the War on Gaza. However, these plans are not new, as Israeli ministerial committees have developed plans, including the so-called “Jerusalem Metropolitan Plan,” which covers about 40% of the West Bank.²²

This plan, if implemented, will lead to a fundamental transformation of the central area of the West Bank through an expansionist strategy that prevents any meaningful Palestinian sovereignty in and around Jerusalem, undermines the opportunity for any Palestinian economic development, and imposes permanent Israeli control over Jerusalem and its environs.

The decisions of the International Court of Justice have had an impact on the Palestinian- Israeli conflict, especially in East Jerusalem. Where the Court confirmed that East Jerusalem is an occupied territory under international law, especially after the construction of the separation wall that isolated 85% of its area and considered it part of the Palestinian state while maintaining its territorial integrity with the West Bank.

Although this advisory Opinion came at a time when the Palestinian cause is at a critical juncture, there are criticisms of this Opinion, the most important of which is the promotion of fragmentation²³ by separating the legal analysis from the demographic reality, which reinforces the Israeli narrative of “a separate Gaza”.²⁴

21 Diakonia International Humanitarian Law Centre, ‘Summary of the International Court of Justice’s Advisory Opinion of July 19, 2024, on the Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem’ (July 2024) 10.

22 Jan de Jong, ‘Israel’s “Greater Jerusalem” Engulfs the West Bank’s Core’ (1997) (105) *Journal of Palestine Studies* 129.

23 In this study, the term promoting fragmentation refers to legal and political approaches that treat parts of the occupied Palestinian territory, particularly the Gaza Strip, as discrete and selfcontained units rather than as components of a single territorial and demographic whole. It denotes a mode of analysis and policymaking that normalizes the separation of Gaza from the rest of the occupied Palestinian territory, thereby entrenching a fragmented legal and territorial reality and weakening comprehensive understandings of Palestinian rights to selfdetermination, return, and the termination of occupation.

24 BADIL Resource Center for Palestinian Residency and Refugee Rights, ‘The Gaps and Failures of the ICJ’s 2024 Advisory Opinion on Palestine: A Critical Analysis of the ICJ’s Advisory Opinion on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem [Position Paper]’ (October 2024) 12.

3. The binding nature of ICJ decisions and the limits of their implementation

It is worth clarifying that the mandatory enforcement of judgments is different from the mandatory implementation of these judgments; the former is a judicial act of a legal nature, while the latter is a political issue of a procedural nature²⁵.

This is emphasized in Article 94 of the UN Charter and Article 59²⁶ of the Statute of the International Court of Justice, which states that its decisions are binding and must be implemented by all relevant state organs.²⁷

According to the aforementioned texts, the study finds that the dispute is not over the binding nature of the ICJ's decisions, such as its decision that Israel must take provisional measures to prevent genocide in Gaza, but rather the extent to which these rulings are mandatory and binding on the international community and its members.

According to Article 65 of the Statute, moreover, the study points out that advisory opinions are not binding but carry moral and legal weight.²⁸

The subsequent section will discuss the extent to which these resolutions are binding on states that are parties to the conflict and non-parties that are members of the international community.

3.1 The dual legal effect of ICJ decisions: Binding parties and guiding the behaviour of others

Article 59 of the Statute of the International Court of Justice establishes that the decisions of the ICJ are binding only on the parties to the dispute in the case at hand and do not acquire binding force vis-à-vis others or in other cases.

This study consolidates Article 94/1 of the UN Charter, which stipulates that all member states of the UN are obliged to comply with the Court's decisions in any case, which are binding only on the parties to the case and not on other states.

The International Court of Justice's decision in the *Nicaragua v. United States of America* case 1986 discussed the extent to which these decisions are binding. The Court confirmed the binding nature of its decisions when the United Nations General Assembly called on all parties, particularly the United

25 حمزة محمد أبو صالح، «القيمة القانونية للحكم القضائي الصادر عن محكمة العدل الدولية»، *المجلة العصرية للدراسات القانونية*، الكلية العصرية الجامعية، مج 2، ع 2، 2024، ص 280.

26 Article 59: "The decision of the Court has no binding force except between the parties and in respect of that particular case. The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party." Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) art 59.

27 Christopher Mik, 'Obligation to Comply with ICJ Decisions: The "Jurisdictional Immunities" Saga within the Italian Legal Order' (2024) 102 *Studia Iuridica* 111.

28 Andrés V Huneeus, 'Compliance with International Court Judgments and Decisions' (Legal Studies Research Paper Series, Paper No 1219, University of Wisconsin Law School 2013) 23 <<https://ssrn.com/abstract=2198595>> accessed 25 August 2025.

States, to comply fully and immediately with the judgment of the International Court of Justice issued on June 27, 1986, in the Nicaragua case, by the provisions of the United Nations Charter. The General Assembly also requested the Secretary-General of the United Nations to follow up and report on the implementation of this decision²⁹.

A distinction must be made here between advisory opinions and the ICJ's decisions issued in disputes brought before it under Article 65, which grants the Court the power to issue advisory opinions on any legal matter other than its competence to adjudicate disputes between states. These opinions are not legally binding but carry great moral and legal weight and are considered an official interpretation of international law.

In this regard, the General Assembly passed several resolutions (22/42/52/43) encouraging the use of the mechanism of requesting an advisory opinion from the Court to promote international peace and security and prevent conflicts.³⁰

Perhaps the most famous Advisory Opinion issued by the International Court of Justice is the 2004 advisory opinion on the illegality of the separation wall built by Israel inside the West Bank. Moreover, its importance: For the first time, the Court recognized the applicability of the Fourth Geneva Convention to the Palestinian territories occupied in 1967, meaning that the Court considered the Israeli presence in the West Bank to be an occupation and also recognized the applicability of human rights conventions, especially the two International Covenants and the Convention on the Rights of the Child, to the occupied Palestinian Territories.³¹

The advisory opinions of the ICJ are considered a "natural extension of its judicial role." Although not formally binding, they have great legal and moral authority, contribute to the development and interpretation of international law, and constitute a source of reference to guide the conduct of states and international organizations in contemporary international society³².

The study asks: What is the legal value of ICJ decisions vis-à-vis third parties other than the parties to the dispute?

Although ICJ decisions are not legally binding on states that are not directly party to the dispute, they have legal value and significant normative influence, which is manifested in the possibility of partially binding intervening states under Article 62, as the judgment may be partially binding on the

29 United Nations General Assembly, Judgment of the International Court of Justice of 27 June 1986, concerning military and paramilitary activities in and against Nicaragua: need for immediate compliance UNGA Res 41/31 (3 November 1986) UN Doc A/RES/41/31.

30 United Nations, Repertory of Practice of United Nations Organs: Supplement No 7, vol VI, art 96 (United Nations Publications 1990).

31 عبد الفتاح أمين ربيعي، «القيمة القانونية لفتوى محكمة العدل الدولية حول الجدار العازل في الأراضي الفلسطينية المحتلة»، *المجلة العصرية للدراسات القانونية، الكلية العصرية الجامعية*، مج 1، ع 1، 2023، ص 110.

32 Esther Stoeger, How Do States React to Advisory Opinions? Rejection, Implementation, and What Lies in Between' (2024) 118 AJIL Unbound 112–116.

intervening state on matters related to the subject matter of its intervention even though it is not an original party to the dispute. This intervention aims to “protect a legal interest of the state” that may be affected by the future judgment and not to add a new case.³³

3.2 The role of the UN Security Council and General Assembly in implementing ICJ decisions

Article 94/2 of the Charter of the United Nations addresses the role of the Security Council in implementing the Court’s decisions, stating that “in the event that a party to a dispute fails to execute a judgment of the International Court of Justice, the other party may appeal to the Security Council, which may make recommendations or take measures to enforce the judgment.”

The study notes that the wording of Article 94/2 gives the Security Council discretionary power to compel parties to implement ICJ decisions. In a study published in the *Journal of Law and Criminal Justice* in 2018, the study criticized the wording of the article, which used discretionary phrases such as “if it deems it necessary”. It used the word “may” rather than “shall”.

The core problem is in the political role of the Security Council in executing the ICJ decisions. States are prone to ignore compliance with the Court’s decisions if its compliance proves harmful to their politically and economically crucial national interests, which is a common occurrence in international politics where relations and coalitions supersede legal duties, fostering widespread disregard for obligations.³⁴

In this context, the study asks the following question: Does the Security Council have the power to review the International Court of Justice (ICJ) decisions, i.e., to overturn or appeal them?

Article 60 of the Statute of the International Court of Justice recognizes the principle of the finality of judgments, meaning that a judgment issued by the International Court of Justice is final and not subject to appeal. When there is a dispute over its meaning or importance, the Court interprets it at the request of any of the parties. The only exception to this principle is the provision of Article 61, which stipulates that a petition to review the judgment based on a new decisive fact in the case that was not present when the judgment was issued is a motion for reconsideration.

Despite the clarity of the texts, Hans Kelsen’s theory is that Article 94/2 of the UN Charter provides a type of appeal procedure, meaning that giving the Security Council the discretion to implement ICJ decisions constitutes a type of judicial review.³⁵ The study tends to argue that the Security Council does not have the power to review or appeal the decisions made by the International Court of Justice, but

33 Zeno Crespi Reghizzi, *The Objects and Effects of Non-Party Intervention before the International Court of Justice* (2022) 35(1) *Leiden Journal of International Law* 170.

34 S Sagar, *Enforcing International Law: An Analysis of ICJ Decisions* (2023) 11(4) *International Journal of Creative Research Thoughts (IJCRT)* 421.

35 Abiodun Amuda-Kannike and Sylvanus Abila, *A Critical Examination of the Enforcement of ICJ Decisions through the Organs of the United Nations* (2018) 6(1) *Journal of Law and Criminal Justice* 32.

rather that the Security Council does have the power to enforce the decisions of the Court, particularly when the relevant parties to the dispute refuse to do so voluntarily.

The Security Council's involvement in the War on Gaza was reflected in several resolutions, which included the two Resolutions (2728) and (2735) of 2024, which stressed the necessity to immediately stop fire while also providing the assistance that is of great need on Humanitarian grounds.³⁶

The International Court of Justice has interpreted the Security Council's powers and responsibilities several times, particularly in its advisory opinions. For example, the Court emphasized that Security Council decisions can be binding on all member states regardless of whether they participated in drafting them. However, the Security Council has never used its power to enforce a Court judgment, even though the parties have requested it on several occasions³⁷, such as in Nicaragua after the Court's 1986 judgment, and even in the Gaza case, the Security Council did not use its authority to stop the ceasefire.

In contrast to the Security Council, to which the UN Charter grants specific power to enforce ICJ decisions under Article 94(2), there is no similar power for the General Assembly expressly provided in the Charter. However, this does not mean that the Charter excludes such a power for the General Assembly, so no "a contraries" argument can be inferred based on Article 94(2) to deny the general scope of the General Assembly's functions and powers set out in Article 10 and emphasized in Article 11(4) of the Charter. Article 10 provides for the general competence of the General Assembly to discuss and make recommendations on any matter within the scope of the Charter, which allows it to intervene in cases of non-compliance with the Court's decisions.

The most prominent role of the UN General Assembly is its ability to use the "Uniting for Peace" resolution adopted in 1950 as a basis for the Assembly's work in cases where the Security Council fails to fulfil its responsibilities due to the use of the veto.³⁸ This resolution states that if the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security due to a lack of unanimity among the permanent members and in the event of a breach of the peace or act of aggression, the General Assembly can recommend the use of armed force and convene an emergency special session within 24 hours at the request of the Security Council or the majority of UN members.³⁹

The General Assembly used the Uniting for Peace resolution in 2023 in favour of Gaza after the

36 United Nations Security Council, Res 2728 (25 March 2024) UN Doc S/RES/2728; Res 2735 (2024) UN Doc S/RES/2735; and United Nations, 'Adopting Resolution 2735 (2024) with 14 Votes in Favour, Russian Federation Abstaining, Security Council Welcomes New Gaza Ceasefire Proposal, Urges Full Implementation' (Press Release, 10 June 2024).

37 Taha Wiheba, A Primer on the Relationship between the Security Council and the International Court of Justice' (HLS PILAC UNSC Primer Series, November 2024) 24.

38 Alberto Tanzi, Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations' (1995) 6(4) European Journal of International Law 545.

39 Andrew J Carswell, 'Unblocking the UN Security Council: The Uniting for Peace Resolution' (2012) 1(1) International Law Journal 22.

United States foiled a draft resolution in the Security Council calling for a ceasefire in Gaza and indeed adopted a resolution calling for an immediate and permanent humanitarian truce between Israeli forces and Hamas militants in Gaza, and demanded the continuous, adequate and unimpeded provision of life-saving supplies and services to civilians trapped inside the Strip, and activates the role of the General Assembly after the Security Council failed four times to reach a consensus for action, which envisions the primary purpose of the Uniting for Peace resolution: To enable the General Assembly to act when the Security Council is unable to fulfil its responsibilities for the maintenance of international peace and security due to lack of consensus among the permanent members.⁴⁰

Despite the ineffectiveness of Security Council and General Assembly resolutions due to Israel's non-compliance with these resolutions, the study is witnessing progress in the Palestinian-Israeli conflict, such as the international community's recognition of the principle of the two-state solution and even statements by representatives of some European countries condemning Israel's killing of civilians in Gaza, which reflects that Israel is heading for international isolation.

4. The legal and political implications of the International Court of Justice's verdicts within the context of the Palestinian-Israeli war:

The ICJ's decisions represent a serious advancement in the legal framework concerning Palestinian rights and Israel's responsibility within the international legal system. Despite this, it promotes Palestinian rights in the international arena, the ineffectiveness of the UN Security Council and UN General Assembly resolutions, and the limited immediate implementation.

4.1 Promote and legitimize Palestinian rights internationally:

The decisions of the International Court of Justice contributed to legitimizing Palestinian demands and strengthening their right to self-determination. This began when the Court, in its 2004 advisory opinion on the separation wall, affirmed the right of the Palestinian people to self-determination and noted that the wall impedes the establishment of an independent Palestinian state, which constitutes a violation of international humanitarian law and the rules of belligerent occupation.⁴¹

According to the International Court of Justice (ICJ), the right to self-determination has a general *jus cogens* character (*erga omnes*), meaning that all states are obliged to respect it and ensure its realization.⁴² In the 2024 Advisory Opinion on the Legal Status of the West Bank and East Jerusalem, the Court elevated this right to the status of (*jus cogens*), i.e., rules that cannot be agreed to be violated. The Court based this characterization on precedents from East Timor (1995) and Western Sahara (1975),

40 United Nations Office at Geneva, 'UN General Assembly Adopted the Gaza Resolution, calling for an Immediate and Sustained "Humanitarian Truce"' (27 October 2023).

41 Dieter Oeter, Analysis of the 2024 International Court of Justice Decision on Gaza: Legal and Humanitarian Perspectives' (forthcoming 2024) 25. See also Marko Milanović, 'The Notion of an Illegal Occupation in the ICJ's Palestine Advisory Opinion' (2025) *International and Comparative Law Quarterly*.

42 Antônio Augusto Cançado Trindade, 'Jus Cogens: The Determination and the Gradual Expansion of Its Material Content in Contemporary International Case-Law' (2023) *International Law Journal* 30.

where it emphasized that a violation of the right leads to the nullity of an international agreement.⁴³

The Advisory Opinion pertaining to the West Bank and East Jerusalem delivered in 2024 was groundbreaking in that the Court placed self-determination within the framework of a *jus cogens* norm for legal justification regarding foreign occupation. The Court found that Israeli actions like the construction of settlements and the alteration of the demographic makeup of East Jerusalem systematically erode the possibility for Palestinians to achieve autonomy. End of occupation, dismantling of settlements, and reparation to victims are required from Israel.⁴⁴

This resolution affirmed that the protection of human rights does not cease in situations of armed conflict or occupation and that states are obliged to respect human rights when they exercise their authority outside their territories, especially in the occupied territories, and obliged the international community not to recognize the illegal situation resulting from the Israeli occupation and not to assist in the continuation of illegal situations and to establish compensation mechanisms for victims and a registry for damages resulting from violations.⁴⁵

In light of the text above, the study notes the ICJ decisions. However, Israel did not abide by them, created legitimacy for Palestinian rights in international forums, and became a reference point to which the General Assembly and the Security Council refer when issuing a resolution related to Palestinian demands. This legal effect contributed to exerting pressure on Israel and engaging it in international isolation after some demands from European parliaments to boycott Israel and prevent the export of arms to it.

4.2 The role of ICJ decisions in guiding the international community and solidifying the principles of BDS campaigns:

International Court of Justice (ICJ) decisions have shone a spotlight on the Palestinian cause and BDS campaigns by reshaping the global legal and political discourse, even as they face hurdles in implementation.

This influence has been evident in strengthening the BDS movement and directing state citizens to take positions to pressure their states to take firm stances on violations of international law and genocide, as evidenced by the Court's numerous jurisprudences and recent developments in the Palestinian case.

As outlined below, the study addresses the impact of BDS campaigns on international public Opinion and the role of BDS campaigns in changing the shape of the conflict in Gaza from a regional

43 Tamara Čapeta, 'Eleventh Europa Lecture: Tamara Čapeta on the Role of Advocates General' (Europa Institute, Leiden University, 8 June 2023) 12.

44 Atul Alexander, Right to Self-Determination, Jus Cogens and Semantics in International Court of Justice' (Cambridge International Law Journal Blog, 4 October 2024) 16.

45 Christophe Maia and Juliette Poissonnier, 'Avis de la CIJ de 2024 relatif à l'occupation du Territoire palestinien: une analyse au prisme du droit international des droits humains' (2024) La Revue des droits de l'homme 11.

conflict to an international one.

ICJ decisions have given legitimacy to social movements such as BDS, and this influence has been reciprocal. Several studies, including one published in 2024, have demonstrated the effectiveness of BDS campaigns in influencing the international legal process by mobilizing audiences and employing effective public pressure strategies. The movement has drawn attention to specific issues, depending on its goals, and pressured legal entities to define their positions.⁴⁶

Other studies have shown the economic impact of BDS movements on major companies that support Israel, including Starbucks, where the company's market value decreased by 11 billion dollars, and McDonald's lost nearly a billion dollars; KFC's growth decreased from 15% to 10%⁴⁷. This economic impact began after the International Court of Justice's decision in the South Africa v. Israel case, in which the Court ordered Israel to take urgent measures to prevent the killing of civilians in Gaza.

In a 2020 doctoral dissertation, scholar Jennifer Hitchcock noted that BDS's success in influencing social and racial justice activists in the West is due to its ability to frame itself within a global discourse of justice and rights while maintaining a consistent and contextualized discourse. However, the study points out that there are laws that have been enacted in the US that delegitimize BDS movements. US legislation targeting political boycotts has been developed, and the most recent legislation is modeled after anti-BDS laws that have proliferated in more than 30 US states since 2015; such legislation violates freedom of expression and weakens public debate, especially when the boycott is part of a collective political movement.⁴⁸

The decisions of the International Court of Justice, although not binding, carry great moral and symbolic weight, which influences public Opinion, especially in democratic societies that care about their international reputations and human rights issues⁴⁹. Therefore, social movements such as BDS movements rely on the Court's opinions to justify their campaigns and gain popular support; judicial rulings give them a legal and moral basis that enhances their legitimacy in front of public Opinion.⁵⁰

In the Palestinian context, the Court's jurisprudence has thus provided a concrete legal framework within which BDS campaigns can be understood as more than symbolic protest.

By affirming the illegality of the occupation, characterizing certain Israeli practices as serious

46 Fatimah Azzahra Mutmainnah, *The Influence of Social Movements on the International Legal Process: A Case Study of the Israeli-Palestinian Conflict in the International Court of Justice* (Undergraduate thesis, University of Muhammadiyah Malang 2024) 35.

47 Siti Fatimah Azzahro and Indra, 'Sentiment Analysis on Boycott Movement: NVivo Approach' (2024) 13(2) *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 399.

48 Kali Venable, 'From Anti-BDS to Anti-ESG: The Next Generation of Boycotting the "Boycott" Is Slightly Less Problematic' (2024) 81 *Washington and Lee Law Review* 1701.

49 Jordan J Paust, 'Domestic Influence of the International Court of Justice' (1998) 26(5) *Denver Journal of International Law and Policy* 793.

50 Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2005* (Martinus Nijhoff Publishers 2006) 20.

violations of peremptory norms, and emphasizing states' duties of non-recognition and non-assistance, ICJ decisions supply a normative foundation for calls to suspend economic, cultural, and military cooperation with Israel until those violations cease.

BDS strategies can therefore be framed as one modality through which third states, institutions, and private actors seek to align their conduct with international obligations to prevent genocide, uphold the right of self-determination, and avoid contributing to an unlawful situation. This linkage between the Court's findings and boycott practices has been central to reframing BDS not as an arbitrary political campaign, but as a legally grounded response to continuing breaches of international law.

5. Conclusion

The study demonstrated that the International Court of Justice played a pivotal role in shaping the course of the conflict in Gaza through its historic decisions, beginning with the advisory opinion on the separation wall in 2004, continuing with the provisional measures in the case of South Africa v. Israel, and culminating in the advisory opinion in 2024. The Court's decisions succeeded in establishing basic legal principles, most notably affirming the right of the Palestinian people to self-determination as a (*jus cogens*) norm, recognizing the illegality of the Israeli occupation, and applying the Fourth Geneva Convention to the occupied Palestinian territories. The Court also established precedents clarifying the responsibility of states to prevent genocide. These resolutions strengthened the international legitimacy of the Palestinian cause because they reframed the debate on the Palestinian-Israeli conflict before international public opinion, which led to Israel's international isolation and increased global solidarity with Gaza.

Despite the legal and moral importance of these decisions, the study revealed major issues in implementation, such as the predominantly political nature of the Security Council in implementing the decisions as the executive arm of the Court and the weakness of international enforcement mechanisms, which reflects the gap between the enactment of the theory represented in the Court's decisions and the application represented in the implementation of these decisions.

The future of the Palestinian-Israeli conflict will be determined by activating mechanisms to implement the Court's decisions internationally and continuing legal and diplomatic efforts to ensure international accountability.

The study emphasizes that, despite its limited role, the ICJ remains an important tool in promoting international justice and protecting the rights of peoples. Its decisions, dating back to the beginning of the Palestinian-Israeli conflict, have established a legitimate status for Palestinian claims within the international community.

These findings give rise to two principal recommendations:

- 1- Palestinian stakeholders should embed ICJ precedents, particularly those on *jus cogens* status and occupation illegality, as foundational benchmarks for all diplomatic and legal initiatives,

ensuring that political demands remain anchored to established law.

- 2- Member states should strengthen compliance mechanisms by expanding recourse to the General Assembly's "Uniting for Peace" procedure when the Security Council is paralyzed, and by establishing concrete sanctions and institutional consequences for non-compliance with Court judgments on matters of self-determination and genocide prevention.

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