

Even the Greatest Violations of Human Rights are Legal: How International Legal Frameworks Failed Human Rights in Palestine

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ABSTRACT

The study aims to analyse how the Palestinian people have been suffering at the hands of legal jurisdictions and how this potentially could have been prevented. In cases of human conflicts, it is natural to wonder how such occurrences take place when we would like to assume as an international community, we have advanced so far legally, instead, we are reminded that perhaps legislation and legal frameworks have not caught up to where they need to be in addressing these situations of crisis. However, it is also valuable to consider any ways in which legal frameworks have indeed developed over time and were able to play an active role in preventing crimes against humanity, perhaps their shortcomings are without deliberateness. This very dilemma has been faced by the people of Palestine for decades now with their basic freedom and independence in the shadow as a result of the diaspora they are facing.

The main question the study will critically address is how the devastating fate that has been endured by Palestinians has essentially been aggravated by the failures of legal frameworks from the United Nations systems, governmental structures and the international courts. In doing this, it also aims to offer understandings of how these jurisdictions failed to adequately protect and prioritise Palestinian human rights and highlight where alternative legal action could have prevented the catastrophic losses faced by the Palestinian people.

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I - INTRODUCTION, HISTORY & LEGAL ISSUES

INTRODUCTION

It has always been valuable to critique and question the shortfalls of legal jurisdictions whose functions are to, at the least protect our basic human rights.¹ But perhaps now more than ever it is valuable to interrogate why legal factors have failed preliminarily and beyond October 7th, 2023, which arbitrarily highlighted to the West that the crisis in Palestine cannot be trivialised any further. It is overwhelmingly concerning how potentially manipulated legal frameworks have become, the United Nations General Assembly are unreasonably struggling to enforce international law, the International Court of Justice is under pressure to recognise war crimes in Gaza and the United States governing body is facing criticism for not only its veto of a UN Security Council resolution that would have allowed for a humanitarian ceasefire but also for their overall actions that have enabled the crisis.² There is justifiable uproar against these bodies for their lack of urgency, ignorance and incompetency in addressing the oppression of Palestinians. It was best stated by Arnold Toynbee, who remarked how *'right and wrong are the same in Palestine as anywhere else. What is peculiar about the Palestine conflict is that the world has listened to the party that committed the offence and has turned a deaf ear to the victim'*.³ The nature of this conflict may very well inadvertently have manipulated jurisdictions to dismiss and trivialise a human rights crisis, regardless, Palestine is on the precipice of another historic era, and it is worthy to analyse how legal frameworks have contributed to the cruel fate that the people of Palestine have and are still enduring.

The framing of this tragedy is not solely about the occupying force's *'right to defend itself'* but is a larger discussion on the prolonged oppressions and occupation of Palestine.⁴ To better understand such a dire situation, we must examine the roles in which international frameworks

¹ Hanna Tuominen, 'Effective Human Rights Promotion and Protection? The EU and its Member States at the UN Human Rights Council' (2022) 61 Journal of Common Market Studies 935-937.

² United Nations Regional Information Centre, 'Israel-Palestine: The Role of International Justice' (2023) United Nations, Available at <https://unric.org/en/israel-palestine-the-role-of-international-justice/> accessed 20th November 2023.

³ Arnold Toynbee, Ibrahim Abu-Lughod, 'The Transformation of Palestine' (1971) 2nd Ed. (Northwestern University Press) at foreword.

⁴ Eve Benhamou, 'The 2014 Israel-Hamas Conflict Repercussions on French Foreign and Domestic Policy' (2021) 36 Israel Studies Review 47.

have played throughout the conflict. For many communities, there is a major reliance placed on international jurisdictions to protect and service their human rights, particularly in cases where their governing legal mechanism is failing to do so or is complicit in the oppression of their basic human liberties.⁵ International jurisdictions act as representatives of a basic standard expectation that should be met on a global level, they provide the terms of how global power should be exercised.⁶

Unfortunately, in the development of international humanitarian law, frameworks that are to reinforce the concept have seen the bounds of human rights law blurred in the lines of political strategies and interest.⁷ This dissertation argues that international organisations struggle to maintain the protection and security of human rights within international legal order in analysis of their failure of preserving Palestinian human rights, querying how we arrived at this critical juncture. The argument is theoretical as well as empirical of how legal jurisdictions have failed to adequately protect the international human rights of Palestinians as drawn from history and current times.

HISTORY AND STATEHOOD

To begin to understand the roots of the conflict, it is vital to consider at what point and how Palestinian's human rights were under threat, alongside acknowledging the complexities that stem from the fact that the initial isolated targeting of Palestine was rooted in a time that predates the establishment of modern international legal frameworks. The cause of Palestinian suffering is neither a result of it being a religious conflict, nor a humanitarian tragedy, it has fundamentally grown into a case of indigenous people and their struggle, in fighting for the return of refugees to their homelands and the reclamation of their rights against political weapons.⁸

⁵ David Kennedy, *'The International Human Rights Regime: Still Part of the Problem?'* in Dickinson, Katselli, Murray & Pederson *'Examining Critical Perspectives on Human Rights'*, (Cambridge University Press, 2012) at 21.

⁶ Ibid at 20.

⁷ Ibid n (5) at 22.

⁸ Rinad Abdulla, *'Colonialism and Apartheid Against Fragmented Palestinians: Putting the Pieces Back Together'* (2016) 5 State Crime Journal at 51-52. Abdulla writes how it is unjust to ignore Israel's settler-colonial framework, the nature of the Zionist enterprise and how it embedded an apartheid system when addressing initial hostilities towards Palestine.

ROOT OF CONFLICT

In highlighting how and when the fate of Palestine became that of vulnerability, it is compelling to consider the roots of the Zionist agenda and how its initial intentions and progressions played a role that would grow beyond the establishment of a Jewish nation in Palestine into that of a total disregard to the rights of those indigenous to the land.⁹ It is evident from the foundations of Zionism that there was no care of how the colonial nature would affect the Palestinian people regardless of whether it started as a restorationist project.¹⁰ It is vital to mention that factors such as the Ottoman Empire, its rulers and other Western powers all additionally contributed to the cruel fate of Palestinian life but the Zionist enterprise and its Israeli State establishment led the preclusion of any respect for Palestine and non-discrimination.¹¹ Alongside this, the Middle East was located as a prime strategic point for many European leaders interested in establishing an ally in that region to ultimately benefit their own interests.¹² None of these ulterior motives should even be considered to justify even the murder of one person.

INITIAL LEGAL ISSUES – THE BALFOUR DECLARATION

In 1881, the rise of Zionism in Palestine was heightened by the growing antisemitic attacks and displacement being faced by Jews under the Russian Empire which eventually led to the first settlers' arrival to Palestine.¹³ Efforts of stopping Zionists from the Ottoman Empire ruling over Palestine at the time were futile, despite passing prohibitions on Jewish immigration in 1882, as British pressure had the restrictions eased by 1888.¹⁴ It is important to acknowledge and shine light to the fact that there are details of an expansive history of various movements, agreements and riots that lay between the displacement of the Jewish community to the implementation of settlements that may not have any immediate legal relevance but are worthy to acknowledge how the tension continuously grew and had cause for concern.¹⁵ Palestine, in discussions was

⁹ Shamir Husan, *'The Zionist Project and the British Mandate in Palestine'* (2014) 75 Proceedings of the IHC at 967-969. Husan underscores how the primary objectives of Zionism were enunciated at the first Zionist Congress which met in Basel, Switzerland in 1897.

¹⁰ Ibid at 967.

¹¹ Ilan Pappé, *'A History of Modern Palestine'* 3rd Ed. (Cambridge University Press, 2022) at 13-33.

¹² Ibid n (9) at 967-969.

¹³ Ibid n (11) at 36-37.

¹⁴ Ibid n (11) at 37.

¹⁵ Ibid n (11) at 22-39. Pappé states how there were other common features to the issue such as the appropriation of the country's history as a settlers' narrative and expunging the indigenous population from history. The natives were

entangled in pre-war alliances and counter alliances and as a result of its geography was either utilised for protection through the Suez Canal or as a pawn to the balance of powers.¹⁶

In respect of the events that occurred and actions taken at the time, it was the Balfour Declaration that raised initial legal solidification of the establishment of a home for the Jewish community in Palestine despite the statement having no real legal foundation at the time of its publication.¹⁷

The Balfour Declaration was published in November 1917, notably, at a period of apprehension for governing bodies during World War I, which provides for the vagueness of the statement, additionally, the Zionist leadership had already begun persuading the British government that establishment of a Jewish colony in Palestine would be in Britain's best interest.¹⁸ The Balfour declaration itself was a letter from the British Secretary of State for Foreign Affairs, Arthur Balfour, to Walter Rothschild, a leading figure in the Jewish community in Britain.¹⁹ The 117-word letter from the foreign secretary to Rothschild expressed two objectives; for the creation of '*a national home for the Jewish people*' in Palestine, without violating the '*the civil and religious rights of the existing non-Jewish communities*'.²⁰ The declaration never defined what it meant by '*national home*' so it did not necessarily mean a Jewish State.²¹ The language in the second objective of '*existing non-Jewish communities*' is a prime example of the disingenuous intentions towards Palestinian natives as at the time the population held a 90% majority of Palestinian Arabs, for them to be dismissed and trivialised as a 'non-Jewish community' in this letter and from later publications by the British government, we can understand that this 'promise' to

depicted as aliens while the settlers indigenized themselves. Many of these features apply to Zionism and yet it has also its own peculiar characteristics, such as strong religious connection to the colonized space. But its depiction of the natives, the actual policies towards them and the construction of the country's narrative and future development sit well within the paradigm of settler colonialism.

¹⁶ Ibid n (11) at 61-63.

¹⁷ Ruth Lapidoth '*Is the Balfour Declaration a Legally Binding Document?*' (2017) Jewish Political Studies Review at 42. Lapidoth realises that unilateral declarations are not recognised under the Vienna Convention on the Law of Treaties, and it was only in 2006 that the issues of acknowledging the legality of unilateral declarations were addressed by the International Law Commissions through providing guiding principles.

¹⁸ Michael Adams, '*What Went Wrong in Palestine?*' (1988) Journal of Palestine Studies 71. See also Ibid n (11) at 62-63.

¹⁹ Ibid n (11) at 37. Rothschild was the richest Jew in Europe at the time as a Jewish banker. He not only funded the earliest settlers, but he also sent agriculturists and experts to help the settlers plan and structure the colonisation of the land only to be shortly replaced by the Zionist Organisation for the Settlement of the Land of Palestine.

²⁰ Ibid n (18) at 72. See also International Relations and Security Network, Primary Resources in International Affairs for Balfour Declaration.

²¹ Ibid n (18) at 72.

protect the rights of the indigenous Arab population was in turn deceitful.²² One of the greater perplexities of the legal background to this conflict starts with how a letter such as that of the Balfour Declaration that held no legal ground, set in motion decades worth of legal casualties, as noted by Koestler, in short what the Balfour declaration was, that of where '*one nation solemnly promised to a second nation the country of third*'.²³ If there were proper consideration given to the potential consequences of the declaration and the continued unlawful reaffirmation of it, the fate of Palestine may have been different today.

With British forces having captured Palestine from the Ottomans as an outcome of World War I, the publication of the Balfour Declaration and similar statements in support of the Zionist movement, Zionism was at a beneficial turning point.²⁴ Palestine began to see changes under British civil administration and as a result of World War I, the very first intergovernmental body was established, the League of Nations, acting as a predecessor to the United Nations.²⁵ Upon its creation, the League of Nations acted as a sign of hope for refugees and displaced individuals from World War I, that a peaceful solution was possible but unfortunately, this hope did not last very long for Palestinian lives.²⁶

The League of Nations provided a formal mandate in 1922, further affirming the ambitions of the Balfour Declaration, what the Palestine Mandate did was allow the British Government to settle the terms over Palestine in consultation with Zionist representatives.²⁷ The majority population of Palestine at the time, the Arabs, who would be immediately concerned were not even consulted in the establishment of a mandate that affected them the most.²⁸ The British Government continued to act in accordance and in support of the Zionist organisation, furthering disregard for the rights of those native to the land and in spite of any arguments made by the Arab majority.²⁹ There was an outright rejection of the Palestinian argument that sovereignty

²² Ibid n (18) at 73. See also Balfour in writing to his successor, Lord Curzon '*...we do not propose even to go through the form of consulting the wishes of present inhabitants of the country...And Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land*' (1919) Public Records Office FO.371/4183.

²³ Ibid n (18) at 72. See also Arthur Koestler, '*Promise and Fulfilment*' (1949) Macmillan at 4.

²⁴ Ibid n (11) at 64.

²⁵ Ruth Henig, '*The League of Nations*' 1st Ed. (Haus Publishing, 2010) at 1-5.

²⁶ Ibid at 2.

²⁷ Ibid n (11) at 78.

²⁸ Ibid n (9) at 970.

²⁹ Ibid n (11) at 81-83.

over Palestine rightfully belonged to the Arab inhabitants at the establishment of the Palestine Mandate.³⁰

It wasn't until World War II did the British government resign from its position in Palestine, having been weakened after warfare, subjected to official American pressure and being at odds with Zionists, Palestinians and the growing tensions in the mandated territory.³¹ With Hitler's rise to power in Germany, Jewish survivors of the Nazi Holocaust immigrated into the region which only led to further frustrations in Palestine.

EVOLUTION OF ISSUES OVER TIME

Evidently, Britain failed in their Palestine policy as they abandoned it into the hands of the United Nations, which at the time was not readily equipped to handle the situation.³² Nine months later, that same year, the General Assembly of the United Nations went ahead with the partition plan dividing the country into a Jewish and Arab State, giving rise to the declaration of Israel as one of the two independent states to be established.³³ The legal competency of the General Assembly can be criticised for establishing two States without having any regard for the principle of self-determination.³⁴ In addressing the failures of the partition plan and the intense disorder it raised, it was best stated by General Carlos Rumsos of the Philippines who spoke against the partition plan at the General Assembly holding that; *"The issue is whether the United Nations should accept responsibility for the enforcement of a policy which, not being mandatory under any specific provision of the Charter nor in accordance with its fundamental principles, is clearly repugnant to the valid nationalist aspirations of the people of Palestine"*.³⁵ This was only the beginning of the United Nations' failures to Palestine's statehood.

As the Zionists prepared readily for the war against the Arab army, they instilled fear in the Jewish settlers of it in order to coerce them into military command, to have their distress

³⁰ Ibid n (11) at 71-72.

³¹ Ibid n (9) at 973.

³² Ibid n (18) at 75. The United Nations had only been two years old at this point and unequipped to the handle the international complexities of the situation that Britain only further confused.

³³ Ibid n (11) at 115. Despite being aware of the rejection of the partition plan by Palestinians the UN Special Committee on Palestine, these officials had no experience in the Middle East.

³⁴ Ibid n (11) at 118-120.

³⁵ United Nations General Assembly Debate, 'Future Government of Palestine' (1947) Available at <https://www.un.org/unispal/document/auto-insert-187751/> accessed 25th May 2024.

exploited in order to win a battle over Palestine, every action by the Zionist movement was calculated in its earliest records.³⁶ Up until the passing of the partition plan, there had been clashes between the communities with the rise of political movements, strikes and attacks but these were more scattered, random and uncontrolled.³⁷ Only twelve days after the adoption of the United Nations resolution, what began was a slow deterioration of widespread violence into a Middle East war disintegrating any solution for peace in front of the United Nations.³⁸

Criticism is often shown to the Arab majority who did not accept the United Nations partition plan, although at the time, they certainly could not have imagined the magnitude of the disaster which would occur after their rejection of the plan, but they had definitely understood that if accepted they would be deprived of key agricultural lands and seaports with the way the partition was proposed.³⁹ Before the United Nations could even reassess their strategy for a resolve, mass displacement and the expulsion of Palestinians began, resulting in only 160,000 of 850,000 Palestinians left living in the occupied territories making up the Palestinian minority in then an established Israel, as the name of Palestine disappeared from the atlas of the globe and maps of the nation of states of the Middle East and since the first 1948 war, now commemorated as the *Nakba* in history, destruction and war has only continued.⁴⁰ From the *Nakba* then onto the 1956 and 1967 wars, the Israeli occupation progressed with winning the wars and largely controlling and occupying historic Palestine irrespective of whatever peace agreements were made over the years, new cycles of violence have only continued, giving rise to the establishment of political factions in Palestinian resistance against the occupation only furthering conflict in the region.⁴¹ The United Nations failure to act in 1948 essentially set a precedent for today's legal dilemmas.

³⁶ Ibid n (11) at 116-117. Pappé highlights how Zionists were strategic from the very beginning whether it was the strategic location of villages it settled Jewish immigrants in through planned land purchases, to the accumulation of vital information about the Palestinian villages to record their population, agricultural production and Zionist history to the intensified enlistment of Jews, coercive taxes, the prevention of emigration from the land and increased attempts to bring in new immigrants. It was all part of a well-orchestrated mobilisation.

³⁷ Ibid n (11) at 120.

³⁸ Ibid n (11) at 120-124.

³⁹ Ibid n (11) at 116-118. See also Aljazeera, '*The Nakba Did Not Start or End in 1948*' (2017) Available at <https://www.aljazeera.com/features/2017/5/23/the-nakba-did-not-start-or-end-in-1948> accessed 25th May 2024.

⁴⁰ Ibid n (11) at 126-130. Pappé holds the Israelis' collective memory would depict the war as the act of a national liberation movement fighting both British colonialism and Arab hostility and winning against all odds.

⁴¹ Adel Manna, '*The Palestinian Nakba and its Continuous Repercussions*' (2013) 18 Israel Studies 90-98. The Israelis' collective memory would depict the war as the act of a national liberation movement fighting both British colonialism and Arab hostility and winning against all odds.

LEGAL ISSUES TODAY

Decades on and we see the United Nations are still struggling to adequately manage the responsibility of the Palestinian crisis since when it first accepted responsibility of it in 1947.⁴² The legal concerns from the time of the Balfour Declaration and the Partition Resolution have only become further entangled in violence and acts of war, the crisis has continuously worsened in the hands of international law and by the legal jurisdictions in command of it. The main causes of concern with regard to the legal issues today are similar to what they were decades ago, they still relate to how there were no real protections for the Palestinian fate and future. There needed to be then, consideration shown by the British Government and the United Nations for what affects their actions would have on the people of Palestine and the longevity of their basic rights, instead, by giving power to the Zionist occupation regime that relied on a system of apartheid they were complicit in the oppression and atrocities against civilians in Palestine.⁴³

The United Nations bodies and international organisations now are slowly growing to condemn Israel's war crimes and realising the rights of the Palestinians, but it is too late, as it was in 1948 with the Nakba.⁴⁴ Condemnation is not enough, enforcement and measures of protections in place for Palestinian statehood should have been accounted for at the least after the Nakba in 1948, the breach of human rights in initial instances would have highlighted to any morally just body that there is grave cause for concern here, how it grew into what we are seeing today is a true account of the failure of international intervention.⁴⁵ With how the British actors at the time acted in their own self-interest and how the Balfour Declaration was never formally rejected by

⁴² Ibid n (18) at 75. See also notwithstanding the peace with Egypt, Jordan and the Oslo agreements at 90-98.

⁴³ Although the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) Committee have yet to decide whether Israel's violation of Article 11 of ICERD, Mr. Lynk, the previous Special Rapporteur on the situation of human rights in the Palestinian Territory found a justification in a number of recent reports and opinions issued by respected Palestinian, Israeli and international human rights organizations have come to the same conclusion on the practice of apartheid by Israel.

⁴⁴ Ibid n (11) at 129. Pappé adequately holds how Palestine was lost to the Palestinians in the 1948 war, as much on the diplomatic front as on the battlefield.

⁴⁵ United Nations Meetings Coverage and Press Releases, *'Nakba of 1948 and Today Are Not Separate Events, but Ongoing Process of Palestinian Displacement, Replacement, Speakers Tell Panel, Urging Immediate Ceasefire in Gaza'* (2024) Available at <https://press.un.org/en/2024/gapal1467.doc.htm#:~:text=their%20own%20country.-%E2%80%9CThe%20Nakba%20is%20an%20enterprise%20of%20displacement%20and%20replacement%20of,to%20recognize%20and%20commemorate%20it> accessed 8th June 2024. It took the United Nations 75 years to commemorate the Nakba and acknowledge it following the 2023 Commemorations mandated by the General Assembly in resolution A/RES/77/23 of 30 November 2022.

the United Nations, we see an international body that's foundations are to promote peace, failing to do so in the first instance for this case.⁴⁶

Albeit having been inexperienced in being able to manage the complexities of the conflict when it first admitted responsibility for it, it has been 76 years on from when it first assumed accountability for the situation.⁴⁷ As one of the longest running disputes on the United Nations General Assembly agenda, it is valuable to assess exactly what the United Nations and its principal bodies have done in the case of human rights for Palestinian people.⁴⁸ Unfortunately, what took place more than seventy years ago is what constituted the beginning of the most flagrantly abhorrent breaches of human rights laws that we see today and it is worth now to begin assessing; how have the international bodies assembled to protect these rights done so over this prolonged period of time. The United Nations accepted the responsibility of finding a just solution for the Palestine issue in 1947, and still grapples with this task today.⁴⁹ Decades of strife and political-legal arguments have clouded the basic human rights issues at hand and have obscured the origins and evolution of the Palestine problem, as this evaluation of the initial history and causes for concern hopes to have detailed.

⁴⁶ Ibid n (18) at 75-79.

⁴⁷ United Nations General Assembly, *'Information System on the Question of Palestine'* Available at <https://www.un.org/unispal/data-collection/general-assembly/> accessed 8th June 2024.

⁴⁸ Ibid.

⁴⁹ Ibid n (18) at 75.

II - THE UNITED NATIONS FUNCTIONS, SECURITY COUNCIL & VETO

THE FOUNDATION OF THE UNITED NATIONS

Before attempting to understand and critically analyse the scope of what the United Nations has achieved and mishandled in this human rights crisis, it would be beneficial to acknowledge its foundation, structure and varying operations. International frameworks such as that of the United Nations system are often viewed as creators of international law, instruments of influential power or rather considerably, the main actors in facilitating inter-state cooperation and burden sharing.⁵⁰ Additionally, all contemporary peace enforcement operations take place within the framework, the United Nations is an expansive system with six main organs; its General Assembly, Security Council, Economic and Social Council, Secretariat, International Court of Justice and Trusteeship.⁵¹ For the purpose of those majorly serving the fate of Palestine, it is best to assess the work of the United Nations Security Council, the Special Rapporteurs under the Human Rights Council and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).⁵² As the United Nations system is so extensive in its varying mechanisms, these organisations of focus may be interlinked with other operations within the United Nations Charter.

THE UNITED NATIONS SECURITY COUNCIL

It would have been too straightforward if the United Nations' failures stopped at the Partition Plan resolution which deepened the outright terror in the region.⁵³ Perhaps that contribution was too uncomplicated as the United Nations has since seemingly avoided determining an outright action for peace, having remained elusive for almost the entire lifespan of its management of the crisis.⁵⁴ To begin to understand its involvement since, it is best to firstly fully conceptualise the

⁵⁰ Katharina P. Coleman, *International Organisations and Peace Enforcement, The Politics of International Legitimacy* 1st Ed. (Cambridge University Press, 2007) at 3.

⁵¹ United Nations, *'Delegate The UN Intranet-iSeek for Member States'* (2023) Available at <https://www.un.org/en/delegate/page/un-system-chart> accessed 10th June 2024. Varying specialised agencies, commissions, forums and organisations all fall under the UN Charter.

⁵² Ibid.

⁵³ Ibid n (11) at 115.

⁵⁴ As upheld by Dennis Francis, President of the General Assembly, the Trinidad and Tobago UN Representative at the United Nations Meetings Coverage and Press Releases, *'Tenth Emergency Special Session, General Assembly Overwhelmingly Backs Membership of Palestine to United Nations, Urges Security Council Support Bid'* (2024) Available at

United Nations Security Council, which carries out the United Nations' principal function to maintain international peace and security.⁵⁵ As the main organ of its Charter that carries out this role it is accompanied by comprehensive powers to fulfil this task as reaffirmed by the United Nations Charter.⁵⁶ Not to be confused with the United Nations General Assembly, which was never allocated the same or any substantive powers and rather acts as a meeting place for representatives of all Member States.⁵⁷

The United Nations Security Council is essentially the world's portrayal of a second attempt at developing a more feasible system of collective international security after it saw the failure of the League of Nations.⁵⁸ It was proposed in the Moscow Declaration of 1943 that the 'Big Four', China, the United Kingdom, the United States and the Soviet Union at the time, finally acknowledged the necessity of establishing a general international organisation based on the principle of sovereign equality for peace that would act for the maintenance of international peace and security.⁵⁹

THE RIGHT OF VETO AT THE SECURITY COUNCIL

However, consideration of course had to be shown for how nations would have to give up their national interests especially for those greater powers, who would not want to have their own interests weighed lower than collective security, which is fundamentally the same reason why the United States refused to join the League of Nations or the Rome Statute, in light of concerns for their own national power being undermined at the expense of international security.⁶⁰ In turn, it was agreed that the United Nations in its establishment, should have the function of maintaining international peace through collective measures if necessary over national interests, but in spite of this, they also decided that the 'big four' powers and France should have a 'special position' on the Security Council function, consisting of permanent representation with special voting

<https://press.un.org/en/2024/ga12599.doc.htm#:~:text=The%20only%20viable%20path%20towards,Nations%20and%20relevant%20UN%20resolutions> accessed 10th June 2024.

⁵⁵ N.D. White, *Keeping the Peace, the United Nations and the Maintenance of International Peace and Security* 1st Ed. (Manchester University Press, 1961) at 1-2.

⁵⁶ Ibid.

⁵⁷ Ibid n (55) at 4.

⁵⁸ Ibid n (55) at 4.

⁵⁹ Ibid n (55) at 4.

⁶⁰ Ibid n (55) at 3.

rights which would ensure that no substantive decisions would be taken by the Security Council without their unanimous concurrence thus, giving birth to what we know today as the right of ‘veto’.⁶¹

As faulty as this basis for the Security Council sounds, it is valuable to consider, in light of how without the power of the Veto, the organisation may not have even been created and more importantly, even if the Security Council was then established without the Veto, the Council itself would have not been able to take enforcement against the great powers, particularly the Soviet Union and the United States without devastating repercussions.⁶² Consequently, in 1945 at the Yalta Conference we saw the right of veto become further refined, it was also accepted by other Member States with little challenge possibly because most delegates preferred to lean towards this idealistic vision of unity that provided future security.⁶³

In the present day, we see how this right of veto acts as a geopolitical limitation to the function of the Security Council. In terms of the case of Palestinian suffering and condemning the occupying party, Israel, the right of veto has been used thirty-seven times as of April 2024 to draft resolutions.⁶⁴ Notably, thirty-four of these were vetoed by the United States and two by Russia and China, the majority of these resolutions were drafted to provide a framework for peace in the decades-long conflict, the drafted proposals include asking Israel to adhere to international laws, calling for the self-determination of Palestinian statehood, or would be condemning Israel for the displacement of Palestinians or settlement building in occupied Palestinian territories.⁶⁵ Evidently, the Security Council itself has shown that it understands to a certain degree the importance of condemnation of Israel for collective peace.

⁶¹ Ibid n (55) at 4.

⁶² Ibid n (55) at 5.

⁶³ Ibid n (55) at 5.

⁶⁴ United Nations Global Perspective Human Stories, ‘*General Assembly debates Security Council’s Rising Veto Use*’ (2024) Available at <https://news.un.org/en/story/2024/04/1148896#:~:text=Since%20the%20UN's%20inception%2C%20vetoes,of%20Ukraine%20in%20early%202022> accessed 10th June 2024. Deputy Permanent Representative of Russia Dmitry Polyanskiy said the US has used its veto four times to ensure Israel remains “*unimpeded*” in its operations in Gaza and regarding Palestine’s bid for UN membership and continues to do so, contrary to the will of the majority of UN Members.

⁶⁵ Shakeeb Asrar, Mohammed Hussein, ‘*How the US has used its veto power at the UN in support of Israel*’ (2023) Available at <https://www.aljazeera.com/news/2023/10/26/how-the-us-has-used-its-veto-power-at-the-un-in-support-of-israel> accessed 10th June 2024.

The greater authority behind the Security Council perhaps lies within the Chapter VII provision of the United Nations Charter which granted the Security Council the unprecedented power to take mandatory, economic and military action against an aggressor or to combat a situation which simply threatened international peace and security.⁶⁶ If the Council chose to act under this mechanism, Member States would be obligated to take economic measures or to supply military forces under control of the United Nations.⁶⁷ The potential power at the hands of the Security Council to consider reforms to the veto system could be the great solution to many of the international issues relating to human rights, peace and security that we have seen since its establishment but unfortunately, this approach was definitely not applied to the case of the Palestinian conflict. The Security Council, regardless of how largely improvised and inconsistent since their establishment, they have profoundly affected international relations in both good and bad ways.⁶⁸ With its extensive agenda, it is difficult to pinpoint or provide a summary of its actions from its opaque proceedings to its varying influence in the area of international validity.⁶⁹

THE SECURITY COUNCIL & PALESTINIAN RIGHTS

There have been countless resolutions, drafts and decisions made in regard to the Palestine question with the overall attitude of the Security Council being convulsive through a series of starts and stops with dispersed progress and setbacks.⁷⁰ In respect of human rights violations they have grown towards accepting responsibility for the prioritisation of the protection of human rights specifically those most vulnerable amidst international conflicts.⁷¹ The Council has acknowledged condemnation of the deliberate targeting of civilians by combatants, recognising it to be a violation of humanitarian and human rights laws, highlighting the value of this in the face of inter-state conflicts.⁷² A notable portrayal of this growth process for the function can be seen

⁶⁶ Ibid n (55) at 6-7. See also Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Articles 39-51 of the United Nations Charter.

⁶⁷ Ibid n (55) at 6-7.

⁶⁸ David M. Malone, *'The UN Security Council from the Cold War to the 21st Century'* 1st Ed. (Lynne Rienner Publishers, 2004) at 1.

⁶⁹ Ibid.

⁷⁰ Ibid n (68) at 66.

⁷¹ Ibid n (68) at 66-67.

⁷² Ibid n (68) at 66-67. This can be confirmed from the passing of Resolution 1264 in September 1999, whereby the United Nations Security Council condemned the deliberate targeting of civilians by combatants as a violation of humanitarian and human rights law.

from how it went from failing to act in the face of the Rwandan genocide in 1994 to a more direct engagement in East Timor by mitigating violence as they implemented an emergency visit to prevent further violations in 1999.⁷³ Despite its successful efforts, it seems the Council itself has realised how it risks becoming negligible due to the veto system preventing it from being able to react to critical human rights concerns and from playing a more proactive role in the prevention of crimes against humanity.⁷⁴ The following two instances to be assessed underscore examples of how the United States' ties with Israel have taken priority over calls for peace and human rights with their application of vetoing irrespective of what implications it ever meant for the people of Palestine.

DRAFT RESOLUTIONS AND THE LACK OF IMPLEMENTATION IN 2001

In the first example, one of the earlier key resolutions blocked by the United States which aggravated the human rights crisis was in 2001 whereby the Security Council failed to adopt the draft resolution as sponsored by Egypt and Tunisia, to condemn all acts of extrajudicial executions, excessive use of force and the wide destruction of property in hopes to come to resolve towards a mechanism that would aid all parties.⁷⁵ The Security Council resolution was in response to the Palestinian uprising of 2000 also known as the 'Second Intifada', which started in September of that year and lasted until 2005 when de-escalation began.⁷⁶ Ignited by the act of the Israeli leader at the time, Ariel Sharon, who entered the Al-Aqsa Mosque with heavily armed forces in the Occupied Palestinian Territory to intentionally provoke violence.⁷⁷ This action came at a time when there were already long-simmering frustrations over the failed promises of the Oslo Accords agreements acting as the underlying cause of the second intifada.⁷⁸ The Oslo

⁷³ Ibid n (68) at 66-67.

⁷⁴ United Nations Meetings Coverage and Press Releases, '*Tenth Emergency Special Session, General Assembly Overwhelmingly Backs Membership of Palestine to United Nations, Urges Security Council Support Bid*' (2024) Available at <https://press.un.org/en/2024/ga12599.doc.htm#:~:text=The%20only%20viable%20path%20towards,Nations%20and%20relevant%20UN%20resolutions> accessed 16th July 2024.

⁷⁵ United Nations Press Release SC/7242, '*Security Council Fails to Adopt Resolution on Middle East Situation, to Condemn Use of Force, Encourage Monitoring Mechanism*' (2001) Available at <https://press.un.org/en/2001/sc7242.doc.htm> accessed 7th July 2024.

⁷⁶ Ibid n (65).

⁷⁷ Jeremy Pressman, '*The Second Intifada: Background and Causes of the Israeli-Palestinian Conflict*' (2003) 23 Journal of Conflict Studies at 114.

⁷⁸ Ibid at 118.

Accords which were signed in 1993 by the leader of the Palestinian Liberation Organisation and Israeli Prime Minister at the time, acted as another false promise of hope for peace as it intended to bring an end to Israeli control but ultimately, failed to bring about any lasting change as the occupation only further continued into 2000 with Israeli settlements increasing and expanding.⁷⁹ The Second Intifada was an outcome of Palestinian desperation, after years of losing hope in the peace process that only handed injustice at their door steps as Israel continues to suppress Palestinian national rights.⁸⁰

Bringing the focus back to why the resolution was provided; the Oslo Accords gave rise to the Second Intifada becoming a violently driven confrontation with both sides having military planning in place and prepared, however the Israeli Defence Forces were in full coordination with the Israeli settlers while Palestinians struggled with an absence of democratic governance leading to factionalism clashes.⁸¹ During the approximately five-year uprising, more than 4,300 fatalities were registered and a ratio of Palestinian to Israeli deaths being slightly more than 3-1, in accordance with the Palestinian Center for Human Rights, among them were 1,262 Palestinian children and in accordance with the Defence for Children International more than 10,000 children were wounded over the course of the Intifada.⁸² There were many attempts made by Palestinians to end the violence but the Israeli authorities rejected these, any non-violent demonstration attempts that incurred civil disobedience or stone-throwing were met with excessive force from the Israeli authorities that included rubber-coated bullets and live ammunition.⁸³

This continued excessive use of force is what led Palestinians into a military confrontation, it is valuable to remember here how 80% of those killed in the first month posed no life-threatening danger to Israeli forces as held by Amnesty International.⁸⁴ Additionally, to address the mention of property destruction in the draft resolution, in accordance with the Palestinian Center for

⁷⁹ Ibid n (77) at 118. See also at 120: The Oslo agreements only brought an end to day-to-day policing of most Palestinians by Israeli soldiers, and although gave the Palestinian Authority control over civilian agencies some were still under the mercy of Israeli decisions.

⁸⁰ Ibid n (77) at 122.

⁸¹ Ibid n (77) at 124-126.

⁸² Ibid n (77) at 124-126.

⁸³ Ali Adam, '*Palestinian Intifada: How Israel Orchestrated a Bloody Takeover*' (2020) Available at <https://www.aljazeera.com/news/2020/9/28/palestinian-intifada-20-years-later-israeli-occupation-continues> accessed 8th July 2024.

⁸⁴ Ibid.

Human Rights, the Israeli army also demolished more than 5,000 Palestinians homes and damaged another 6,500 beyond repair.⁸⁵ The very needed draft resolution which would have condemned these acts of violence received twelve votes in its favour with two abstaining from Norway and the United Kingdom and ultimately, it was not adopted due to the right of veto with a negative vote from the United States.⁸⁶ The justification provided by the representative of the United States held that the draft failed to acknowledge the dynamics in the region and found the purpose of the draft was one to be politically isolating one of the parties to the conflict through an attempt to throw the weight of the Council behind the other party, holding that there was a lack of mention of acts of terrorism against Israelis or those responsible for them.⁸⁷

However in analysis of the terms of the draft, what the United States representative fails to state was how the draft resolution meant the Security Council would have demanded the immediate cessation of all acts of violence, provocation and destruction alongside a return to the arrangements prior to the Second Intifada.⁸⁸ Rather than the condemnation of terror on one side, in accordance with the draft it would allow for the condemnation of all acts of terror, in particular those that targeted civilians.⁸⁹ Placing human rights protection at the forefront should have been emphasised at a time where civilian deaths once again were subject to political failures and inaction.

The Security Council if given the opportunity to pass this resolution would have been able to call on the two sides to begin a comprehensive and immediate implementation of recommendations to end the violence, rebuild confidence and resume negotiations alongside encouraging the establishment of a monitoring mechanism to help implement the recommendations and better the conditions for all in the Occupied Palestinian Territories in terms of the draft resolution.⁹⁰ Although we will never know for certain whether the passing of this or of many other draft resolutions that have been presented to the Council would have prevented the atrocities that we see today, it is worth reflecting that draft resolutions such as this, may have reduced further violence on innocent lives through acting as a point of protection for the thousands of deaths

⁸⁵ Ibid n (83) and the draft resolution itself.

⁸⁶ Ibid n (68 and 75).

⁸⁷ Ibid n (68 and 75).

⁸⁸ Ibid n (68 and 75).

⁸⁹ Ibid n (68 and 75).

⁹⁰ Ibid n (68 and 75).

since, that are a testament to the gruesome effects of the right to veto. Instead, the Security Council continues to co-exist with this older approach to international relations that is based on sovereign states pursuing their own varying national interests. The lack of implementation of resolutions only serves as a sign of despair and demoralisation to those who are still alive in an endless battle for their humanity to be provided basic protections.⁹¹ International jurisdictions have highlighted to Palestinians time and time again, that the protection and security they hope is provided to them, cannot be. The Security Council in this first instance portrays the restrictive structure that affirms the position of Palestinian human rights in being secondary to the right of veto.⁹²

THE SECURITY COUNCIL ON PALESTINE IN 2024

In the second analysis, we can look at a more recent case of the Security Council failing to recognise Palestinian rights due to a United States veto of a draft resolution and in complete parallel to the first case in 2001, it is unfortunate that as of April 2024 we see the United States veto lead the same retrospective path that it did more than twenty years ago.⁹³ What the United States vetoed this time was a draft resolution that would have granted Palestine's bid to become a full member of the United Nations.⁹⁴ The proposal was submitted by Algeria, which held how the Security Council members owe it to the Palestinian people to recognise their statehood and to acknowledge the responsibilities of the Council.⁹⁵ It received twelve votes in favour, two abstaining being Switzerland and the United Kingdom, again we see with the single United States negative vote leading to the veto of yet another resolution that upheld Palestine's right to self-determination.⁹⁶

Despite however widely supported the draft resolution was by the other Member States of the United Nations, the United States justified the negative vote through holding that the action of Statehood for the Palestinian people was 'premature', after decades of suffering Palestinians are

⁹¹ Ibid n (68) at 1-2.

⁹² Ibid n (68) at 66-67.

⁹³ United Nations Security Council 15670 Meetings Coverage, '*Security Council Fails to Recommend Full United Nations Membership for State of Palestine, Owing to Veto Cast by United States*' (2024) Available at <https://press.un.org/en/2024/sc15670.doc.htm> accessed 14th July 2024.

⁹⁴ Ibid.

⁹⁵ Ibid n (93).

⁹⁶ Ibid n (93).

so cruelly ruled the same fate due to an inadequate attempt avoiding the core issue.⁹⁷ Instead now, the actions of suppressing Palestinian rights were justified by their lack of reform structure, one of the very reasons why their structure needs reform, now demands from them to follow suit and fit into their membership criteria.⁹⁸ What was distinct about this resolution was what followed in the international jurisdiction, as a month later in May 2024 further consideration of Palestine's rights were brought to reconvening the 1997 Tenth Emergency Special Session pertaining to the matter of illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory after the Security Council was brought to a deadlock by a vetoing power.⁹⁹ The emergency special sessions are one option the United Nation Member States have to debate urgent peace and security matters where decisions at the Security Council were unable to fulfil its primary responsibility to maintain international peace and security, notably only eleven emergency special sessions of the General Assembly have taken place since 1945, with four of these relating directly to Israel's occupation of Palestine.¹⁰⁰

As a result of the emergency special session, the General Assembly adopted a resolution that would upgrade Palestine's rights at the United Nations as an observer State and after debate, urged it to be accepted as a full member by the Security Council, as membership can only be decided by the Council.¹⁰¹ Progress here acts as a gesture of support for Palestinians by the United Nations. Unfortunately, the vote is only an act of symbolic support rather than an act that could prevent crimes against humanity being committed especially in light of how General Assembly resolutions are not binding.¹⁰² The progress made in May 2024 is a testament to how the crisis has not been treated with urgency, from continuous historic injustice to the aforementioned draft resolution in 2001, the General Assembly should have called for the full membership of Palestine as it was afforded to Israel in 1947 with the United Nations Partition Plan.¹⁰³ The failure in the Security Council to initially bring about actual progress lies within the faults of the veto system, the unfolding situation highlights how there is a need for a more transformed and transparent multilateral system.

⁹⁷ Ibid n (93).

⁹⁸ Ibid n (93).

⁹⁹ Ibid n (74).

¹⁰⁰ Ibid n (74).

¹⁰¹ Ibid n (93).

¹⁰² Ibid n (74).

¹⁰³ Ibid n (93).

THE SECURITY COUNCIL NEGLIGENCE TO HUMAN RIGHTS

There needs to be efforts to reform the Security Council with regard to the veto, as underlined by the General Assembly in its 2023 debate wherein the majority agreed that there are needs to limit the veto use in cases of genocide, crimes against humanity and war crimes.¹⁰⁴ Evidently, from the debate there was a general understanding that the indiscriminate use of the veto prevents the Security Council from fulfilling its mandate.¹⁰⁵ What we are seeing happen with the Palestinian fate is an outline of exactly why such limitations on the right to veto should have been put in place.¹⁰⁶

A majority of the resolutions that have been drafted and then simultaneously vetoed were initially provided to highlight a framework for peace, with the United States continuously acting unequivocally to support Israel's military superiority in the region and placing this support over the consideration of Palestinian's suffering, the Security Council is effectively complicit in enabling this.¹⁰⁷ Understandably no international organisation can mount a peace enforcement operation on its own, but in the case of human rights in Palestine at the United Nations, there has been substantial international support backing the international legitimacy of an intervention at the Security Council, yet what is missing here for Palestinians in contrast to their oppressors is the outright, vigorous and consistent support from one of the big five powers such as the United States is for Israel.¹⁰⁸ The Security Council under the system of veto remains a negligent actor to the security of human rights in Palestine and any other disadvantaged minority that is subject to crimes against humanity.

¹⁰⁴ United Nations Meetings Coverage and Press Releases GA/12563, '*Question of Veto Central to General Assembly's Debate on Security Council Reform, with Speakers Urging Its Limited Use as 'Weapon of Hatred and War'*' (2023) Available at <https://press.un.org/en/2023/ga12563.doc.htm> accessed 14th July 2024.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid n (74 and 93).

¹⁰⁷ Ibid n (6).

¹⁰⁸ Ibid n (50) at 3.

III - SPECIAL PROCEDURES & RAPPORTEURS

UNDERSTANDING SPECIAL PROCEDURES

Following on from the Security Council's role, it is valuable to next consider the work of the Special Rapporteurs assigned to the Occupied Palestinian Territory. Special Rapporteurs fall under the Human Rights Council Special Procedures function of the United Nations system, which originates from an understanding that there needed to be a change in the handling of international human rights complaints.¹⁰⁹ It was found that after the 1946 to 1967 period that not enough action was being taken to handle and resolve human rights complaints that were being appointed to the Commission on Human Rights.¹¹⁰

On the 15th of March 2006, the UN General Assembly voted to adopt Resolution 60/251 replacing the Commission on Human Rights with the United Nations Human Rights Council to strengthen the contribution and commitment of Member States in promoting and protecting human rights.¹¹¹ The Human Rights Council was then established and appointed the practice of directing Special Procedures to advancing the United Nations's role in addressing human rights violations and promoting accountability.¹¹² It is worthy to note that what drove this change was a growing demand for managing international relations and a result of international law protections not being provided in varying cases.¹¹³ This led to the necessary establishment of the Special Procedures calling for the appointment of Special Rapporteurs, who are independent experts appointed by the United Nations Human Rights Council to independently report on human rights issues and other thematic or country-specific mechanisms to investigate, monitor and report on

¹⁰⁹ Jeroen Gutter, 'Special Procedures and the Human Rights Council: Achievements and Challenges Ahead' (2007) Human Rights Law Review 93-107 and UN OHCHR, 'Special Procedures' Available at <https://www.ohchr.org/en/hr-bodies/hrc/special-procedures#:~:text=Special%20procedures%20undertake%20country%20visits,contribute%20to%20the%20development%20of> accessed 16th July 2024.

¹¹⁰ Ibid.

¹¹¹ Amnesty International, '2006 Elections to the Human Rights Council: Background Information on Candidate Countries' (2006) IOR 41/006/ 2006 <https://webarchive.archive.unhcr.org/20230607191449/https://www.refworld.org/type,COUNTRYREP,,LBN,45bba8342.0.html> accessed 10 April 2024 at 3.

¹¹² Ibid n (109) at 95-96.

¹¹³ Ibid n (110) at 96.

human rights violations and provide recommendations for action as necessitated, approaching human rights issues candidly.¹¹⁴

As the Special Procedures have developed over time, the quantity and scope of these have also expanded to cover a wide range of human rights issues, including civil, political, economic, social, and cultural rights fulfilling a significant contribution of the Human Rights Council.¹¹⁵ As of June 2015, there were 74 independent mandate holders of the, then, 55 Special Procedures with some of these mandate holders being under working groups where more than one person would be allocated for a special procedure.¹¹⁶ The Special Procedures are split up into categories, with 41 of these independent experts understood by the Office of the UN High Commissioner for Human Rights to be hosting '*thematic mandates*' spreading coverage to a variety of human rights issues such as violence against women, access to water or arbitrary detention.¹¹⁷ The other 14 mandate holders of the 55 were owners of what is considered '*geographic mandates*' providing coverage for specific countries and regions where there was a greater need of coverage for the protection of human rights, these were inclusive of the Palestinian Territories and other areas where there existed international threats to human rights such as Belarus, Democratic People's Republic of Korea, Eritrea, Haiti, Islamic Republic of Iran, Myanmar, Sudan or the Syrian Arab Republic.¹¹⁸

Considerably, those acting as Special Rapporteurs or as part of one of the working groups have made the Special Procedures process a significant function of the Human Rights Council. These actors are now faced with not only addressing issues of civil, social, political, and economic rights in international human rights but also acting as a review mechanism for the assessment of human rights in all UN member states.¹¹⁹

¹¹⁴ Elvira Domínguez-Redondo, 'The History of the Special Procedures: A 'Learning-by Doing' Approach to Human Rights Implementation' in Aoife Nolan et al, '*The United Nations Special Procedures System*' (BRILL, 2017) at 11.

¹¹⁵ Ibid at 1.

¹¹⁶ Ibid n (114) at 12.

¹¹⁷ Ibid n (109) at 12.

¹¹⁸ Ibid n (109) at 12.

¹¹⁹ Bertrand G. Ramcharan, '*Protection Roles of UN Human Rights Procedures*' in Aoife Nolan et al, '*The United Nations Special Procedures System*' (BRILL, 2017) at 1-4.

SPECIAL PROCEDURES FOR PALESTINE

Naturally, questioning of the Special Procedure mandates has become more apparent as they have developed over time, particularly around their validity and abilities to fulfil their purpose in growing international conflicts that present all kinds of limitations and complexities to their work.¹²⁰ In the case of Palestine, we can analyse what has been outlined by the Special Rapporteurs to the geographical mandate alongside, any thematic mandate reports that have also shown Palestinian struggle reference or analysis in their reports. Focusing on the appointment of Special Rapporteurs to Palestine, the reports provided are beneficial in further highlighting the United Nations' consciousness throughout the timeline in addressing the violations of Palestinian human rights, with the first Special Rapporteur to Palestine, Mr. René Felber having been assigned in 1993 to the mandate.¹²¹ Whether the Special Procedures mandates have contributed positively to the promotion and protection of the human rights case can be assessed from an analysis of the work that has been undertaken thus far.

CURRENT SPECIAL RAPPORTEUR ON PALESTINIAN TERRITORIES

Ms. Francesca Albanese is the current mandate holder of the Special Rapporteur position on the situation of human rights in the Palestinian territories occupied since 1967.¹²² Having been appointed by the Human Rights Council at its 49th session in March 2022, Ms. Albanese has provided various reports on the human rights situation since taking up her function, notably her most recent report from March 2024 entitled 'Anatomy of a Genocide' is worthy of assessment. As we can easily come to the same conclusion as her predecessor to the mandate did *'For more than 40 years, the UN Security Council and General Assembly have stated in hundreds of resolutions that Israel's annexation of occupied territory is unlawful, its construction of hundreds of Jewish settlements are illegal and its denial of Palestinian self-determination breaches international law'*, these unlawful acts against Palestinians have continuously been

¹²⁰ Ibid n (109) at 12.

¹²¹ United Nations Office of the High Commissioner on Human Rights, 'Special Procedures' Available at <https://www.ohchr.org/en/hr-bodies/hrc/special-procedures#:~:text=Special%20procedures%20undertake%20country%20visits,contribute%20to%20the%20development%20of> accessed 17th July 2024.

¹²² United Nations Office of the High Commissioner on Human Rights, 'Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967' <https://www.ohchr.org/en/special-procedures/sr-palestine> accessed 17th July 2024.

acknowledged and overlooked.¹²³ But what differentiates the most recent report was how through citing international law, Ms. Albanese was the first to directly report to the United Nations Human Rights Council that Israel has committed acts of genocide, she creates potential to shift international attitudes.¹²⁴

In the report, the crime of genocide as perpetrated by Israel is thoroughly described, providing assurance of Israel's unlawful act.¹²⁵ Despite restrictions from Israel for any visits to the geographical area as owed to the mandate holder, Ms. Albanese's report is based on extensively detailed data and analysis from organisations on the ground, international jurisprudence, investigative reports and consultations with affected individuals, authorities, civil society and experts.¹²⁶ The report's extensive summary in the pronouncement of genocide ranges widely in recognising the crime in this case. From initial criticisms in the report, the rapporteur highlights how historical patterns of genocide demonstrate that persecution, discrimination and other preliminary stages set up a foundational stage of genocide and how this is present in Palestine, from the displacement of the indigenous Arab presence having always been an inevitable part of the forming of Israel as a '*Jewish State*'.¹²⁷ The report goes on to even underline the illegality of the use of human shields under International Humanitarian Law, and how Israeli authorities have characterised churches, mosques, schools, UN facilities, universities, hospitals and ambulances as connected with Hamas in order to reinforce this perception of the whole population being complicit in attempts to justify the killing of civilians.¹²⁸ Transforming Gaza into a world in which even taking shelter in hospitals or fleeing for safety are declared a form of human shielding, for simply being in proximity of potential Israeli targets they hope to justify their

¹²³ United Nations Office of the High Commissioner on Human Rights, '*Israel's 55-year occupation of Palestinian Territory is apartheid – UN human rights expert*' Available at <https://www.ohchr.org/en/press-releases/2022/03/israels-55-year-occupation-palestinian-territory-apartheid-un-human-rights> accessed 17th July 2024.

¹²⁴ Francesca Albanese, '*Anatomy of a Genocide*' United Nations Office of the High Commissioner on Human Rights (A/HRC/55/73) at 1-25.

¹²⁵ Ibid.

¹²⁶ Ibid n (124).

¹²⁷ Ibid n (124) at 3-4. See also cited Uri Davis, '*Palestine into Israel*', (1973) 3 Journal of Palestine Studies at 89: how in 1940, Joseph Weitz, head of the Jewish Colonization Department stated: '*there is no room for both peoples, together in this country. The only solution is Palestine without Arabs. And there is no other way but to transfer all of them: not one village, not one tribe should be left.*'

¹²⁸ Ibid n (124) at 15-17.

actions that contribute to the culmination of their genocidal intent.¹²⁹ In concluding the report's recommendations in hopes to avoid the future does not continue to repeat itself, it was underlined to the Human Rights Council that there is a vital obligation to impose an arms embargo and sanctions on Israel.¹³⁰ Ms. Albanese clearly identified and reported the issues to the Human Rights Council in March 2024 but it would be valuable to compare this report to one of the first reports submitted on the Palestinian territories mandate as of December 1994 before upholding an assessment of the profitability of the Special Rapporteurs process.¹³¹

THE FIRST SPECIAL RAPPORTEUR ON THE PALESTINIAN TERRITORIES

Mr. René Felber was the first mandate holder of the Palestinian territories occupied since 1967, appointed from 1993-1995 and in his earliest reports had raised concerns for the tensions between the Palestinian authority and its political opposition.¹³² Mr. Felber mentions in these earlier reports how in his monitoring of respect for human rights he had, after a year of assuming his position, not been authorised to enter Israel or the Palestinian territories in order to fulfil the mandate. In similarity to Ms. Albanese's current dilemma in 2024, he also had to prepare reports by hearing witnesses outside the territories and was afforded less resources as the range of organisations or investigative reports did not exist at the time and neither the General Assembly nor Commission on Human Rights had the ability to persuade Israel otherwise alongside, having no particular success in the area of enforcement of human rights.¹³³

What is most enthralling upon analysis of Mr. Felber's report is his conclusion of how no specific measures have been taken and how political condemnation is not proving to be effective, additionally, how international public opinion and Israeli public opinion seem to regard security as taking precedence over human rights and how with each terrorist attack this is only further reaffirmed.¹³⁴ This conclusion reigns true today, the same dilemma faced by the first Special

¹²⁹ Ibid n (124) at 15-17.

¹³⁰ Ibid n (124) at 24.

¹³¹ René Felber, *'Question of The Violation of Human Rights in the Occupied Arab Territories, Including Palestine'* Commission on Human Rights (E/CN.4/1994/14) at 1-47 (Report of the 50th Session).

¹³² René Felber, *'Question of The Violation of Human Rights in the Occupied Arab Territories, Including Palestine'* Commission on Human Rights (E/CN.4/1994/14) at 50-65 (Report of the 51st Session).

¹³³ Ibid n (132) at 66-67.

¹³⁴ Ibid n (132) at 66-70.

Rapporteur in his second report on the mandate is disturbingly applicable almost twenty years later.¹³⁵ It seems to be a reoccurring theme in the United Nations timeline of Palestinian history that the human rights failures they have continuously prolonged in confronting have foretold the advanced violations of them today. It is thus entirely justified to question how effective Special Procedures have been in the case of Palestine, where warnings and recommendations of prioritising human rights were made in its earliest reports, yet the human rights situation has increasingly worsened.

LIMITATIONS TO THE SPECIAL RAPPORTEURS

Aside from the isolated mandate on Palestinian territories it is worthy to mention other thematic mandate holders and working groups who have also been reporting on the human rights invasions in the occupied areas, from the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.¹³⁶ Additionally, in hopes of further highlighting the escalation of the extremities of the current situation, the Special Rapporteur on the situation of human rights defenders has raised concerns on the Israeli authorities continued targeting of human rights defenders in the Occupied West Bank, including East Jerusalem, through prolonged administrative detention without charge, humiliation and ill treatment.¹³⁷ The Special Procedures mechanism has continuously raised apprehension for the Human Rights Council and the overall United Nations function of the severities of violations taking place in regards to the Palestinian question.

It is apparent that the Special Procedures play a vital function acting as part of an early warning system for the United Nations and upon analysis of the aforementioned Special Procedures, it is evident that the appointed Special Rapporteurs are also more than qualified to identify issues and

¹³⁵ Ibid n (132) at 75-76.

¹³⁶ United Nations Office of the High Commissioner on Human Rights Press Release, '*Gaza: Killing of Hind Rajab and her family – a war crime too many, warn experts*' Available at <https://www.ohchr.org/en/press-releases/2024/07/gaza-killing-hind-rajab-and-her-family-war-crime-too-many-warn-experts> accessed 21st July 2024.

¹³⁷ United Nations Office of the High Commissioner on Human Rights, Press Release, '*Israeli authorities must stop targeting Palestinian human rights defenders: Special Rapporteur*' Available at <https://www.ohchr.org/en/press-releases/2024/07/israeli-authorities-must-stop-targeting-palestinian-human-rights-defenders> accessed 27th July 2024 where five human rights defenders were arrested between October 2023 and March 2024, either from their home or as they returned from abroad and were ordered to be held in administrative detention for periods ranging from four to six months, subject to unlimited renewal. Two of them have yet to be released.

violations of human rights. The reports that have been submitted are valuable alarms for human rights concerns of the Palestinian territories mandate, they act as indicators of action required and account for the international issues relating to the situation.¹³⁸ Alongside this, the reports submitted since the very first Special Rapporteur also act as a tool for the analysis of the timeline for the concerns raised and provide an accurate depiction of accountability for international jurisdictions to hold states accountable of their obligations under international law.

In consideration of the human rights violations and assessing the situation for Palestinians, the various reports address the situations with more urgency than that of the other United Nations functions. Where the United Nations General Assembly and Security Council have been unable to conduct action against the massacre of Palestinian civilians in its first address of genocide,¹³⁹ the most recent Special Rapporteur implores Member States in their certification of the report ‘Anatomy of a Genocide’ providing thoroughly detailed recommendations to act immediately to end the atrocities alongside holding Israel and any States complicit in the genocide in Gaza accountable.¹⁴⁰ Ultimately, the efforts of the Special Rapporteurs to protect and promote the rights they are appointed to rely on the defence, strengthening and reform of the Special Procedures system.¹⁴¹ Challenges that have frustrated the work of the Palestine mandate holder range from insufficient resources as a result of Israel’s lack of access into areas, alongside the overall lack of enforcement and compliance.¹⁴²

Although extensive recommendations have been made and continue to be made, the lack of action across the United Nations functions to divert human rights catastrophes has a roll-on effect in the Special Procedures process too. However, a complete dismissal of the Special

¹³⁸ Bertrand G. Ramcharan, ‘Origins, Essence and Foundations of Special Procedures’ in in Aoife Nolan et al, *The United Nations Special Procedures System* (BRILL, 2017) at 51-84.

¹³⁹ Yearbook of the United Nations 1982 (excerpts II) ‘*The Question of Palestine*’ Available at <https://www.un.org/unispal/document/auto-insert-195619/> accessed 27th July 2024. See also the very first use of the term genocide by any of the principal organs of the United Nations to condemn criminal acts was the resolution on the massacre of Palestinian civilians at the Sabra and Shatila refugee camps in Lebanon that occurred in September 1982. The General Assembly resolution declaring “*that the massacre was an act of genocide*” was adopted by 123 to none, with twenty-two abstentions yet the United States was able to prevent the Security Council from sending United Nations forces to Beirut and acting against Israel and facilitating the entry of Israeli forces into west Beirut and the refugee camps by withdrawing the multinational buffer force two weeks earlier than had been agreed.

¹⁴⁰ Ibid n (124) at 24-25.

¹⁴¹ Ibid n (124 at 25.

¹⁴² Ibid n (132) at 66-67.

Procedures process would be unfair considering the reporting is a valuable fact reporting mechanism and in other cases has allowed for intervention. In the case of Palestine, as upheld by Mr. Felber in 1994, *'a report may soothe consciences, but its effectiveness should be measured by the impact of the points it makes and by how seriously they are taken by those to whom they are addressed'*.¹⁴³ On examination of the limitations, the Special Procedures system would benefit from a more defined process, a filtering of its recommendations and a concrete focus on enforcement if, it is hoping to achieve effective results from the Special Rapporteurs work and Special Procedures system, of course this is ultimately up to the Human Rights Council to implement. The Human Rights Council and the United Nations function in addressing the reports presented before them fall drastically short in acting for justice to the point where a Special Rapporteur report dated in 1994 could have been published in the present day and still be directly applicable.

¹⁴³ Ibid n (132) at 76-80.

IV - UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINIAN REFUGEES

Before going on to analyse the course of conduct of the International Courts it is valuable to draw attention to the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), which acts as the main international humanitarian agency in support of Palestinians.¹⁴⁴ The UNRWA was founded by the UN General Assembly in the aftermath of the 1948 Nakba to provide basic support, direct relief and carry out works projects in aid to those who were forcibly displaced.¹⁴⁵ Since its establishment, the function has been providing humanitarian aid, education, healthcare clinics and other essential services to millions and at present nearly the entire population of Gaza.¹⁴⁶ Despite the fact that it was supposed to be a temporary fix, the UNRWA mandate has been renewed every three years and the agency has now been in existence for more than half a century.¹⁴⁷

ACKNOWLEDGING UNRWA IN PALESTINIAN PROTECTION

What is most notable about assessing the UNRWA mechanism is that it was never intended to be a part of the political scope, yet over time this has since changed.¹⁴⁸ Through various means, inclusive of being subject to constant scrutiny as a target of Israel, having international managers, relations with the Palestinian Liberation Organisation and even the fact that its function has grown to be solution-oriented, UNRWA has inevitably become a part of Palestinian history and heritage.¹⁴⁹ The work being done by the agency underscores the long-running connections between Palestinian refugees and international order as confined by the United Nations.¹⁵⁰ It is valuable to highlight the UNRWA function at the assessment of the United

¹⁴⁴ United Nations Relief and Works Agency for Palestine Refugees in the Near East, *'Who We Are'* Available at <https://www.unrwa.org/who-we-are> accessed 14th June 2024.

¹⁴⁵ Ricardo Bocco, 'UNRWA and The Palestinian Refugees: A History within History' (2010) 28 Refugee Survey Quarterly at 231.

¹⁴⁶ Ibid n (145) at 233 and see also Aljazeera explainer, *'What is UNRWA and Why is it Important for Palestinians'* (2024) Available at <https://www.aljazeera.com/news/2024/2/1/what-is-unrwa-and-why-it-is-important-for-palestinians> accessed 8th June 2024.

¹⁴⁷ Ibid n (145) at 233 and see also Aljazeera explainer, *'What is UNRWA and Why is it Important for Palestinians'* (2024) Available at <https://www.aljazeera.com/news/2024/2/1/what-is-unrwa-and-why-it-is-important-for-palestinians> accessed 8th June 2024.

¹⁴⁸ Ibid n (145) at 231-232.

¹⁴⁹ Ibid n (145) at 233-239.

¹⁵⁰ Anne Irfan, *'Palestine at the UN'* (2020) 49 Journal of Palestine Studies at 33.

Nation's role in Palestinian human rights, as it seemingly is the only international function directly actioning and offering security to those subject to crimes that have left them displaced.¹⁵¹

In attempts to highlight how the UNRWA has ended up doing more for providing aid than the United Nations has done to prevent the violations of human rights, UNRWA acts as a humanitarian aid for the aftermath of international jurisdictions failures whereas the United Nations provides insufficient enforcement of international laws. The Palestinian civilians who have passed at the hands of unruly excessive use of forces or in the claims of self-defense have been failed and any attempt of a temporary mandate does not justify the failures of intervening in this instance. The UNRWA existence alone is another testament of how prolifically the United Nations have administered injustice to the fate of Palestine.¹⁵²

¹⁵¹ Ibid n (144).

¹⁵² Ibid n (145) at 251-252. See also at 258: The role of the camp in the imagery of Palestinian nationalism has brought them politically centre stage. Like UNRWA, in principle, the camps have been considered "*temporary*". Symbolically, they represent the plight of the Palestinian people and their rights.

V - THE INTERNATIONAL COURT OF JUSTICE & CRIMINAL COURT

UNDERSTANDING THE INTERNATIONAL COURTS

Finally, we draw attention to the two leading International Courts, the International Court of Justice (ICJ) and the International Criminal Court (ICC) in consideration of their obligations to human rights of Palestinians and the roles they have played in perpetuating injustice. It is firstly beneficial to highlight the differentiation between the two courts, with the ICJ being an organ of the United Nations and the ICC contrasting, through its legal independence of the United Nations system, although notably it is endorsed by the General Assembly.¹⁵³ In understanding the cases going to both, the ICJ passes judgment on the legal rights and duties of all States from a position of superiority and supervision, acting as a settlement mechanism of disputes between States, whereas the ICC is a criminal court which brings cases against individuals for war crimes or crimes against humanity.¹⁵⁴ It is valuable to note that although not all UN Member States are parties to the ICC, it can launch investigations and open cases related to alleged crimes committed on the territory in question or by a national of a State party to the ICC or, of a State that has accepted its jurisdiction and in contrast, access to the ICJ is only afforded to the members of the United Nations.¹⁵⁵

An in-depth analysis of both jurisdictions would provide an exhaustive list of every action and omission these Courts have taken in recognising human rights abuses arising from systemic patterns of violations, institutional violence and historical injustice that could assess how many times they have failed in the case of Palestine.¹⁵⁶ Rather this chapter hopes to emphasise the role, functions and gravity of these administrations in commanding the crisis towards further diaspora through its lengthy procedural processes, concerning itself with more trivial aspects of the

¹⁵³ The United Nations Office at Geneva, 'What is the International Court of Justice and Why Does it Matter?' Available at <https://www.ungeneva.org/en/news-media/news/2024/01/89269/what-international-court-justice-and-why-does-it-matter> accessed 14th June 2024.

¹⁵⁴ Hugh Thirlway, *The International Court of Justice* 1st Ed. (Oxford University Press, 2016) at 1. See also *ibid* n (150).

¹⁵⁵ *Ibid* n (153 and 154).

¹⁵⁶ International Criminal Court Investigation, 'State of Palestine' ICC-01/18 Available at <https://www.icc-cpi.int/palestine> accessed 25th July 2024. See also International Court of Justice Press Release, 'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, the Court gives its Advisory Opinion and responds to the questions posed by the General Assembly' (2024) Available at <https://www.icj-cij.org/case/186> accessed 25th July 2024.

catastrophe and ultimately, allowing political terrain to prevail over legal enforcement of human rights.

THE ICJ IN PALESTINE

The ICJ oftentimes referred to as the ‘World Court’ is located at the Peace Palace in the Hague, Netherlands.¹⁵⁷ The ICJ rules on two types of cases, the first being a dispute between States when requested to do so, by one or more States and the second, being its advisory role where the other principal organs of the United Nations and other agencies of its system will refer to the Court for advisory opinions on legal questions.¹⁵⁸

In attempts to summarise the role the ICJ has played in answering a human rights crisis, it is one of limitations and hesitation that seems to have continuously overlooked the gravity of the situation to this day. We can draw this summary from two of its significant advisory opinions that are 20 years apart, the first being the July 2004 advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory and the second being the most recent July 2024 advisory opinion on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem.

THE ICJ ON THE LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY 2004

The earlier 2004 advisory opinion is notably significant for urging a requirement on recognising a breach of international law by Israel against Palestine for Israel’s construction of a ‘security fence’ within Palestinian territories.¹⁵⁹ Israel claimed that the motivation behind it was for security from Palestinian attacks on Israeli military and to maintain the borders of its settlements on disputed territory in order to allow for sole sovereignty, in actuality the wall expanded the existing boundaries of the occupying power.¹⁶⁰ Despite Israel’s claims of its purpose, it evidently

¹⁵⁷ Ibid n (153).

¹⁵⁸ Ibid n (154) at 4.

¹⁵⁹ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) International Court of Justice, Advisory Opinion. Available at: <https://www.icj-cij.org/case/131> accessed 26th July 2024.

¹⁶⁰ Ruth Wedgewood, *The ICJ Advisory Opinion on the Israeli Security Fence and the Limits of Self-Defence* (2005) 99 *The American Journal of International Law* 52.

raised serious international law concerns relating to Palestine's right to self-determination.¹⁶¹ Alongside this, the wall allowed Israel to control water access into Palestine, this later leads us to breaches of Israel's obligations to act in accordance with the right to water of Palestinian residents.¹⁶²

The UN General Assembly had requested from the ICJ a recommendation on the legal consequences of this and the Court had emphasised Palestine's right of self-determination and rejected Israel's assertion that the human rights provisioned by the UN General Assembly did not apply to Palestine and instead held that human rights law applies both to the acts of States within their own territories and the exercise of a State's jurisdiction outside its own territory.¹⁶³ The UN General Assembly then also passed a resolution in support of the ICJ's call to dismantle the wall and Israel rejected the ruling, accusing the ICJ of being politically motivated, continuing with the construction of the wall.¹⁶⁴ Due to the ICJ's advisory jurisdiction, the opinion had no binding effect and it is clear that it has not influenced Israel's decision-making in relation to Palestine as they have continued with large land seizures and the displacement of Palestinian communities.¹⁶⁵ The advisory opinion made by the ICJ and condemnation by the UN General Assembly held no legal enforcement, they only stand today as sources of legal reasoning for understanding the extent of violations for future breaches that follow. This leads us to the most recent advisory opinion where the ICJ builds on its analysis of the violation to the Palestinian right to self-determination.

THE ICJ ON LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM 2024

As aforementioned the ICJ more recently, on the 19th of July 2024, delivered its advisory opinion on the 'Legal Consequences Arising from the Policies and Practices of Israel in the Occupied

¹⁶¹ Ibid n (11) at 118-120.

¹⁶² Ben White, *'Five Years After ICJ Ruling, Israel Expands Its Illegal Wall onto More Palestinian Land'* (2009) 28 The Washington Report on Middle East Affairs 18.

¹⁶³ Ibid n (159).

¹⁶³ Ibid n (160).

¹⁶⁴ Ibid n (159).

¹⁶⁵ Ibid n (159 and 162).

Palestinian Territory, Including East Jerusalem.¹⁶⁶ The detailed response was issued in response to the questions presented to the ICJ by the UN General Assembly on the 30th of December 2022 and since 2023, there were 57 States and multilateral organisations who submitted written statements followed by the presentation of oral arguments from 53 of these, to the ICJ which were held from the 19th to the 26th of February 2024.¹⁶⁷ The large number of States and organisations arguing the case before the ICJ indicate the gravity and importance of this ruling.

The critical ruling declared that Israel's continued presence of the Occupied Palestinian Territories as unlawful alongside its associated settlement regime, annexation and use of natural resources.¹⁶⁸ What has since been the key takeaway from this judgement was how the Court ruled on Israel's legislation and measures as in breach of Article 3 of the International Convention on the Elimination of Racial Discrimination (ICERD) relating to racial segregation and apartheid.¹⁶⁹ The ICJ mandated Israel to end its occupation, dismantle its settlements, provide full reparations to Palestinian victims and facilitate the return of displaced people.¹⁷⁰

After much deliberation and notably separate to the ongoing case of South Africa v. Israel case, which was initially raised by South Africa for Israel's violation of obligations under the Convention on Prevention and Punishment of the Crime of Genocide, the ICJ continues to act with hesitation in their advisory opinion as they did in the case brought by South Africa.¹⁷¹ Wherein they instructed Israel to prevent its military from committing acts which might be contrary to the 1948 Genocide Convention and to enable humanitarian aid to the people of Gaza but in the end, did not order Israel to suspend its military campaign.¹⁷² Providing again for human rights consideration but not a complete acknowledgement of its duty.

¹⁶⁶ International Court of Justice, '*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*' (2024) International Court of Justice, Advisory Opinion 186 Available at: https://www.icj-cij.org/decisions?type=4&from=2024&to=2024&sort_bef_combine=order_DESC accessed 26th July 2024.

¹⁶⁷ Ibid at 10.

¹⁶⁸ Ibid n (166) at 71-79.

¹⁶⁹ Ibid n (166) at 4.

¹⁷⁰ Ibid n (166) at 74. It also requires the evacuation of all settlers from existing settlements and the dismantling of the parts of the wall constructed by Israel that are situated in the Occupied Palestinian Territory, as well as allowing all Palestinians displaced during the occupation to return to their original place of residence. See also the CERD is among the oldest conventions in the UN Human Rights Office function to target oppression and discrimination.

¹⁷¹ International Court of Justice Press Release, '*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*' (2024) Available at <https://www.icj-cij.org/case/192> accessed 26th July 2024.

¹⁷² Ibid.

The very same broad approach as applied to the case reoccurs again in their advisory opinion in July 2024, which is the first comprehensive analysis by the ICJ of Israel's policies and practices in the Palestinian Territories with significant reaffirmation from States and international organisations.¹⁷³ Despite the fact that the Court indeed held for a violation of Article 3 of CERD, which accounts for both racial segregation and apartheid, what is most notable here is how the Court acknowledged the breach without drawing further on which of the two had been violated.¹⁷⁴ At this point in the extended and ongoing proceedings, every aspect of any judgement presented by the ICJ is crucial and consequential to the fate of Palestine yet we see once again from a review of the judges' separate opinions that they hesitate in being completely explicit in whether Israel is constituting for war crimes.¹⁷⁵

As found by Judge Nolte, *'the advisory opinion cannot be understood as finding that the prohibition of apartheid has been violated by Israel, given the absence of any discussion of the subjective element of apartheid, the specific intent, which is a core element of the prohibition'*, portraying his belief of how there was not sufficient information before the Court to rule for apartheid.¹⁷⁶ We can conclude here that there was not a determined ruling for apartheid creating a gap in the Court's ruling at a time where the legal complexities are already out of reach. The further prolonging only continues, whilst the Court had finally ruled for an end to the violations inclusive of calls for an arms embargo and targeted sanctions, this judgement is only the beginning in recognising Palestinian people's fundamental rights at an international level.¹⁷⁷ As recognised by the ICJ itself in the report, they reaffirm the Wall Advisory Opinion with direct reference of how there is an urgent necessity for the United Nations to bring the conflict to a speedy conclusion.¹⁷⁸

¹⁷³ Ibid n (166)

¹⁷⁴ Ibid n (166) at 4 and 64.

¹⁷⁵ Ibid n (166). See also International Court of Justice, *'Summary of the Advisory Opinion of 19 July 2024'* (2024) Available at <https://www.icj-cij.org/node/204176> accessed 26th July 2024.

¹⁷⁶ International Court of Justice, *'Separate Opinion of Judge Nolte'* (2024) Available at <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-08-en.pdf#page=4> accessed 28th July 2024. See also International Court of Justice, *'Summary of the Advisory Opinion of 19 July 2024'* (2024) Available at <https://www.icj-cij.org/node/204176> accessed 26th July 2024.

¹⁷⁷ International Court of Justice, *'Separate Opinion of Judge Nolte'* (2024) Available at <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-08-en.pdf#page=4> accessed 31st July 2024.

¹⁷⁸ Ibid n (166) at 77 paragraph 282.

It is becoming increasingly more difficult to commend the work of the ICJ recently, with the United Nations system having been assigned the task for over 76 years and only continuing to struggle with a focus on how to categorise what type of crimes against humanity are taking place, what jurisdiction do they have or what their actions would mean for the political terrain, such questions are taking priority over the growing death toll of innocent Palestinians.¹⁷⁹ The ICJ has the privilege to sit and debate the extents of its condemnation and yet, still hesitate on what type of legal shape this conflict should fit into.¹⁸⁰ The highest court of the United Nations body, that is afforded countless reports and arguments on the crimes against humanity conveniently prolongs justice. In a case where urgency has been highlighted from the beginning, the ICJ only delivers another means of a steppingstone, at a grave time where a determined settlement that encompasses the legal, political, practical and security dimensions of the conflict is significantly required.¹⁸¹

As reality constantly changes on the ground, the conflict only further complicates itself, the sheer contrast in the detrimental escalation of the situation from the advisory opinion on the wall to the most recent opinion are a testament to this.¹⁸² In the final analysis, although the advisory opinions hold no legal enforcement and Israel has proven to not cooperate with the proceedings, the hesitations in the ICJs' decisions only further limits the international community's scope in being able to address the situation for what it is. The limitations and hesitation of the ICJ have allowed for and continue to allow for a further lack of action being taken to address the concerning breaches of international law.

CHALLENGES TO THE CRIMINAL COURT ON PALESTINIAN JUSTICE

Finally, we draw attention to the only body working separately to the United Nations, the ICC which was established only in 2002 under the Rome Statute, which is the treaty that provides for its function to hold accountable the most serious violations of human rights in cases when national justice systems have failed to do so.¹⁸³ The Rome Statute itself acts as a benchmark for

¹⁷⁹ Ibid n (47).

¹⁸⁰ Ibid n (166)

¹⁸¹ Ibid n (166) at 10 and 77.

¹⁸² Ibid n (159 and 166).

¹⁸³ William A. Schabas, *'An Introduction to the International Criminal Court'* 4th Ed. (Cambridge University Press, 2011) at 1-5.

one of the most progressive developments in international human rights. It provides protection for victims of genocide, crimes against humanity, war crimes and the crime of aggression, while also highlighting the bounds and mechanisms of the ICC.¹⁸⁴ The ICC cannot stop the crimes against humanity rather only attempt to hold the criminals of the most severe breaches accountable and potentially create deterrence of such violations.

In the case of criminal acts in Palestine and Israel, the ICC has inevitably also become a contentious player over the past decade in its actions from the Rome Statute entering into force for the State of Palestine in 2015 and then having had the ICC jurisdiction reaffirmed in its case by 2019.¹⁸⁵ The Office of The Prosecutor for the ICC opened its preliminary investigation into Palestine in 2015 which led to questions weighing its jurisdiction and the further development of allegations from the United States, denial by Israel and challenges arising from within and outside the judicial system.¹⁸⁶ The ICC was supposed to be a considerable actor that could combat impunity and ongoing violations. However, despite the passage of time and recent holdings of arrest warrants, even the ICC seems to have not been capable of reducing the ongoing human rights abuses.

More recently, having not accounted for genocide in the list of crimes by the Israeli leaders, it downplays the role these actors have played.¹⁸⁷ The ICC now evades an investigation of genocide in Gaza in contrast to the ICJ ruling that did acknowledge the act, alongside the grounds provided by the current Special Rapporteur, the ICC seems to be over exerted in its attempts of holding the Israeli parties accountable and the continuous criticism from the United States almost ensures it.¹⁸⁸ This can also be applied to its struggle for establishing jurisdiction,

¹⁸⁴ International Criminal Court, 'How the Court Works' Available at <https://www.icc-cpi.int/about/how-the-court-works#:~:text=%22I%20reiterate%20the%20importance%20of,and%20the%20crime%20of%20aggression%22.&text=Learn%20more%20about%20the%20Assembly%20of%20States%20Parties> accessed 31st July 2024.

¹⁸⁵ Jeremy Bracka, 'A False Messiah? The ICC in Israel/Palestine and the Limits of International Criminal Justice' (2021) 54 Vanderbilt Journal of Transnational Law 285. See also *ibid* n (184).

¹⁸⁶ *Ibid* n (185) at 286. See also U.S Department of State Press Statement, 'Warrant Applications by Court' (2024) Available at <https://www.state.gov/warrant-applications-by-the-international-criminal-court/#:~:text=The%20United%20States%20fundamentally%20rejects,with%20warrants%20for%20Hamas%20terrorists> accessed 31st July 2024.

¹⁸⁷ *Ibid* n (185) at 340-341. See also International Criminal Court, 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine' (2024) accessed 31st July 2024.

¹⁸⁸ *Ibid* n (185). See also U.S Department of State Press Statement, 'Warrant Applications by Court' (2024) Available at <https://www.state.gov/warrant-applications-by-the-international-criminal-court/#:~:text=The%20United%20States%20fundamentally%20rejects,with%20warrants%20for%20Hamas%20terrorists> accessed 31st July 2024.

highlighting how not only does the Rome Statute limit the Court to only serious crimes of concern for the international community, but additionally, in finding its jurisdiction in Palestine, its abilities had been restrained to being able to rule on settlement activity from June 2014 onwards.¹⁸⁹ The history, challenges and jurisdictional limitations on complex territorial considerations means that for Palestinian human rights, there cannot be adequate justice provided by the ICC with all the obstacles put in front of it.¹⁹⁰

As sufficiently held by the observer for the State of Palestine at the Tenth Emergency Special Session of the General Assembly, when pleading to afford Palestine as an observer state into the United Nations, he remarked how while Palestinians did not write international law, at the least it should have been applied to them, and until now, they have been denied its protection, holding that occupation, colonialism and death are not the Palestinian people's fate but that is what is imposed on them.¹⁹¹

The complexities of the situation cannot become the justification of why international jurisdictions fail to protect human rights. Irrespective of the burdens and challenges facing the courts, what is owed to the people of Palestine today is not restrictive and limited justice but an acknowledgement of each breach and violation imposed on their fate. The ICC may not serve to be the right tool in the face of this conflict, and it would be beneficial for a more critical approach to transitional justice to be considered or to find a way to overcome the current obstacles before its limitations if hoping to provide a fully developed legitimate contribution.¹⁹² Careful consideration must be taken in every aspect of reaffirming protection of human rights in Palestine, the reparations here must be vast and vindicative to even begin to account for the failure of international legal jurisdictions.

¹⁸⁹ Ibid n (185) at 293.

¹⁹⁰ Ibid n (185) at 287.

¹⁹¹ Ibid n (74).

¹⁹² Ibid n (185) at 341-342.

VI – INTERNATIONAL LAW VS LEGAL FRAMEWORKS

In discussing the role international legal systems have played in the case of Palestine, it is valuable to draw attention to the main factors that affirm the existence of the systems, the legislative force. More specifically, it is worth considering the reoccurring theme throughout the conflict and across all the legal jurisdictions analysed thus far; the constant strain and pivot towards the legislative justification for every action and inaction.¹⁹³ Instead of working towards swift resolutions and negotiations, these international frameworks seemingly treat the situation as one that is beyond the scope of international law.

Various inconsistencies exist throughout the legislative practice of international law, but that cannot mean that human rights violations prolong whilst international organisations try to figure out under which grounds they have for criminalising a breach of law, treaties or agreement. These organisations are tasked with taking action in the scope of humanitarian aid, the international community needs to increase the urgency in which they handle the matter, acknowledge their shortcomings and strive to find a solution for peace and security in the international world order.¹⁹⁴ The obligation is on our international organisations to utilise the law to remedy the ongoing devastating catastrophes rather than permitting the law to be implemented as a mechanism for excusing fault.¹⁹⁵ If international law has failed Palestine, it is only because international legal frameworks allowed it to happen.

As the crisis rages on, it is crucial to remember that innocent civilians – men, women and children, are the ones who have been and continue to be the ones suffering the dire and deadly consequences of the failures of our international frameworks in implementing international law.¹⁹⁶ As best stated by UNRWA Student Parliamentarian, Ahmad Abu Daqqa who addressed the UNRWA Pledging Conference in representing his peers, the 500,000 students of UNRWA schools in June 2023, he underscored how; *'We do not ask for much. We only ask for our rights –*

¹⁹³ Ibid n (5) at 22.

¹⁹⁴ Ibid n (5) at 20.

¹⁹⁵ Ibid n (5) at 22.

¹⁹⁶ Mark Pelmutter, Feroze Sidhwa, *'We Volunteered at a Gaza Hospital. What We Saw Was Unspeakable'* (2024) Available at <https://www.politico.com/news/magazine/2024/07/19/gaza-hospitals-surgeons-00167697> accessed 31st July 2024. See also after the widespread destruction of hospitals in Gaza there are now approximately 1,400 acute care hospital beds for 2.2 million people, more than 88,000 of whom have been seriously injured by military weaponry in the past eight months.

the rights that are enshrined in international law. We want to wake up one day with optimism, not fear'.¹⁹⁷ There are countless gut-wrenching stories of innocent people whose torment and deaths should have been prevented through the actions of international frameworks. The Palestine question was never meant to be a complex issue, when this has always been extremely rooted in a dire matter about human rights.¹⁹⁸ Palestinians have been and continue to be treated as sub-human on their own land and international jurisdictions remain complicit in the act.¹⁹⁹ Legal materials and interpretations have always been flexible enough to enable diverse interpretations, as highlighted by the continued prolonging and struggle for adjudication by legal frameworks.²⁰⁰ Yet, in the midst of understanding the various applications of legislative authority, we have assessed how international jurisdictions fail to bring the human rights concerns to the forefront.

¹⁹⁷ United Nations Relief and Works Agency for Palestine Refugees in the Near East, '*UNRWA Student Parliament Ahmad Abu Daqqa Intervention at the UNRWA Pledging Conference*' (2023) Available at <https://www.unrwa.org/newsroom/official-statements/unrwa-student-parliament-ahmad-abu-daqqa-intervention-unrwa-pledging> accessed 31st July 2024.

¹⁹⁸ Ibid n (11, 83 and 198)

¹⁹⁹ Ibid n (196 and 176).

²⁰⁰ Ibid n (5) at 30.

VII - CONCLUSION

Having analysed the ongoing situation alongside decades of strife and history that pre-dates the existence of current legal jurisdictions, it is apprehensible how the countless justifications and overarching shortcomings of international standards have left the plight of the Palestinian people to be constantly overlooked. Through combining the critiques of the international structures that are at the forefront of addressing this issue, it is evident that without providing consideration for all of the elaborate factors in its history and placing justice for the human rights of Palestinians at a level above inter-personal ties and geopolitical debates, there cannot be a clear-cut negotiation and settlement plan being defined for the future of this conflict. The rights of the Palestinian people need to be better considered from a perspective of deliberative democracy and a sense of exceptional justice by the very same bodies that were founded to protect and promote their security.

In learning from the cruel and unjust fate of Palestine, we can understand that the current systems in place are not good enough, having construed political machines into our international human right protections and security enforcement systems, it becomes increasingly more concerning how our legal systems are allowing this to happen. Whether it is through finally enforcing a limitation to the veto system or actioning accountability in accordance with Special Rapporteurs, substantial measures to be taken are long overdue – there is no justification for the failure of international law in protecting Palestinian humanity, only hope that the failures of these systems now realise the gravity to finally bring about freedom for Palestinian history, present and future.

What is particularly disturbing about the assessment is how often and on varying occasions, these jurisdictions have been afforded the opportunity to provide or act with haste towards a just solution. The disparity of the situation is reminiscent to what was stated by the United States' National Security Adviser, Jake Sullivan, in describing his first reaction to a behind-the-scenes meeting at the Supreme Court; *"There must be another room, somewhere down the hall, where the real meeting is happening, where the real experts are, making the real decisions, because it*

*can't just be us. It can't just be this".*²⁰¹ This is reminiscent in the case of human rights before the international system as it is deeply disturbing that injustice has prevailed for so long and to this day, at every turn of a legal jurisdiction there are inconsistencies and limitations to the establishment of humanity over politics. The overall encompassing approach would lead one to question whether there are more cruel powers at play here.

To conclude, it is evident that legality cannot be used as a guide for morality in this case, with crimes against humanity placing second in a modern society that should not require such distinctions. We can recall how at some point, internationally, slavery was legal or how segregation was legal and in the case of Palestine, the ongoing oppression and injustice is legal. In the absence of meaningful action or enforcement to hold perpetrators accountable for repeated violations of international law—and without any unequivocal call to end egregious injustices—we have, in effect, legalised even the gravest violations of human rights.

²⁰¹ Devin Henry, '*Jake Sullivan: Minneapolis native among those to hatch Iranian nuclear deal*' (2013) Available at <https://www.minnpost.com/dc-dispatches/2013/11/jake-sullivan-minneapolis-native-among-those-hatch-iranian-nuclear-deal/>, accessed 31st July 2024.

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