

CIVILIAN PROTECTION UNDER INTERNATIONAL HUMAN RIGHTS LAW: LESSONS FROM THE GAZA GENOCIDE

Hanifa Abdulmumin*

Abstract

*The ongoing conflict in Gaza, characterized by widespread reports of mass civilian casualties, forced displacement, destruction of civilian infrastructure, and allegations of genocidal acts since October 2023, has exposed critical gaps in the application of international law. The situation, often described in UN reports and scholarly analyses as involving plausible risks or acts of genocide, highlights the interplay between international humanitarian law (IHL) and international human rights law (IHRL) in protecting civilians during armed conflicts and occupations. This article examined civilian protection under IHRL, drawing lessons from Gaza by critiquing the limitations of existing legal regimes when states employ force in asymmetric or occupied territories. It argued that IHRL provides essential complementary protections such as the right to life, freedom from torture, and access to necessities that persist alongside IHL. The research employed doctrinal methodology, through analysis of primary sources including ICJ provisional measures in *South Africa v. Israel*, UN Special Rapporteur reports, and secondary literature on genocide indicators and civilian harm mitigation. The paper advocated for a strengthened integration of IHRL in regulating a nation's use of force, emphasizing that civilian protection must prioritize absolute prohibitions on genocide, crimes against humanity, and disproportionate harm. Part of the findings of the paper included egregious failures: mass killings exceeding proportionality thresholds, deliberate infliction of life-threatening conditions, and erosion of IHRL norms through selective enforcement and third-state support. Recommendations include urgent enforcement of ICJ orders, enhanced third-state due diligence to prevent complicity,*

* LLM, Faculty of Law, Baze University, Abuja. Email: Hanifa.Abdulmumin@bazeuniversity.edu.ng

reforms to accountability mechanisms (e.g., ICC investigations), and advocacy for binding guidelines mandating IHRL assessments in military operations. Ultimately, prioritizing civilian protection through IHRL reinforces global norms against atrocity crimes, urging states to prevent rather than merely react to genocidal risks.

Keywords: Civilian protection, International human rights law, Gaza, Genocide, International Humanitarian law, Use of force.

1. INTRODUCTION

The conflict in Gaza, escalating dramatically since 7 October 2023 following attacks by Hamas and other Palestinian armed groups that killed over 1,200 persons in Israel (including many civilians) and resulted in the abduction of approximately 240 hostages, has triggered a large-scale Israeli military response. This operation has caused massive civilian casualties, extensive destruction of infrastructure, and severe humanitarian distress in the Gaza Strip.¹

Reports indicate that, as of early 2026, Palestinian deaths in Gaza exceed 73,000 (with figures from the Gaza Ministry of Health and independent analyses suggesting higher totals when accounting for indirect deaths), including a significant proportion of women and children. Verified data from the UN Office of the High Commissioner for Human Rights (OHCHR) by September 2024 confirmed over 8,000 killings, predominantly in residential areas, with 70% of fatalities in such locations being women and children.² Displacement has affected over 1.7 million people (approximately 75% of Gaza's population), leading to overcrowded shelters, acute shortages of food,

¹ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Order of 26 January 2024, paras 46–47.

² OHCHR, *Six-month update report on the human rights situation in Gaza* (6 November 2024) 12–15.

water, fuel, electricity, and medical supplies, and widespread risks of famine and disease.³

These developments occur against a backdrop of prolonged occupation and systemic restrictions. Since 1967, Israel's occupation of Palestinian territories—including the Gaza Strip—has involved practices such as settlement expansion in the West Bank (deemed illegal under international law and amounting to war crimes),⁴ and a blockade on Gaza since 2007 that has severely limited movement of people and goods, devastated the economy, and constituted collective punishment.⁵ UN experts and reports have highlighted patterns of discrimination, forced displacement, and violations of international humanitarian law and human rights law predating the current hostilities.⁶

The International Court of Justice (ICJ), in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, found plausible risks of genocide and issued provisional measures in January 2024 (reaffirmed and expanded in March and May 2024), ordering Israel to prevent genocidal acts, ensure humanitarian assistance, and preserve evidence.⁷ Subsequent UN reports, including those from the Independent International Commission of Inquiry and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, have concluded that Israel's actions

³ Ibid 16–18; see also UN OCHA Reports on Displacement and Humanitarian conditions.

⁴ UN Human Rights Council, Report of the UN High Commissioner for Human Rights on Israeli Settlements (A/HRC/55/72, 8 March 2024).

⁵ Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (27 April 2021); UN Special Rapporteur Reports.

meet thresholds for genocide, describing it as a "collective crime" sustained by third-state complicity.⁶

This situation exposes critical tensions between international humanitarian law and international human rights law in regulating state use of force, particularly in occupied or asymmetric contexts, where civilian protections are paramount yet frequently undermined.

2. CIVILIAN PROTECTION UNDER INTERNATIONAL HUMAN RIGHTS LAW: CORE PRINCIPLES AND FRAMEWORK

The protection of civilians under international human rights law (IHRL) constitutes a foundational pillar of the international legal order, providing enduring safeguards that persist even in the exceptional circumstances of armed conflict and belligerent occupation. As a body of law designed to protect the inherent dignity of the human person at all times, IHRL does not cease to apply when hostilities erupt or when territory falls under foreign control; rather, it operates in tandem with international humanitarian law (IHL), offering complementary protections that fill normative gaps and reinforce civilian safeguards.

The continued applicability of IHRL in armed conflict and occupation has been authoritatively affirmed through a shift from earlier debates over displacement to a prevailing complementarity approach. The International Court of Justice (ICJ) has played a pivotal role in this evolution. In its Advisory Opinion on the *Legality of the Threat or Use of nuclear weapons*, the Court held that the protection afforded by the International Covenant on Civil and Political Rights (ICCPR) 'does not cease in times of war, except by operation of article 4 of the Covenant whereby certain provisions may be derogated from in a time of

⁶ ICJ, Orders of 26 January 2024, 28 March 2024, and 24 May 2024.

national emergency'.⁷ This marked a rejection of any notion that IHRL is wholly inapplicable during hostilities. The ICJ further refined this position in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, explaining that some rights may fall exclusively under IHL, others exclusively under IHRL, while many are governed by both branches; in cases of potential inconsistency, IHL may serve as *lex specialis* to interpret IHRL norms, but without displacing the latter entirely.⁸ The Court emphasized that 'the protection offered by human rights conventions does not cease in case of armed conflict', affirming complementarity over mutual exclusivity.⁹

This view aligns closely with that of the UN Human Rights Committee (HRC), which in General Comment No 31 on the nature of the general legal obligation imposed on States Parties to the Covenant, declared that 'the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable', with IHL providing more specific rules that may inform the interpretation of Covenant rights, yet both spheres remaining 'complementary, not mutually exclusive'.¹⁰ Scholarly analysis has reinforced this framework, noting that complementarity maximizes civilian protection by allowing IHRL to address gaps in IHL, particularly in prolonged occupations where long-term human rights obligations—such as those concerning economic, social, and cultural rights—become salient.¹¹

⁷ *Legality of the Threat or Use of nuclear weapons* (Advisory Opinion) [1996] ICJ Rep 226, para 25.

⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, para 106.

⁹ *Ibid* para 105.

¹⁰ Human Rights Committee, 'General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) CCPR/C/21/Rev.1/Add.13, para 11.

¹¹ Orna Ben-Naftali and Yuval Shany, 'Living in Denial: The Application of Human Rights in the Occupied Territories' (2003) 37 *Israel Law Review* 17; Noam Lubell,

Key rights under IHRL central to civilian protection include the right to life and security of person, as enshrined in article 6 of the ICCPR, which prohibits arbitrary deprivation of life. This right remains non-derogable even in emergencies and applies to protect civilians from indiscriminate or disproportionate violence. Closely related is the absolute prohibition on torture and cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), obligations that brook no exception in conflict.¹²

IHRL further safeguards economic, social, and cultural rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR), notably the rights to the highest attainable standard of physical and mental health (article 12), to adequate food (article 11), to safe drinking water (implicit in articles 11 and 12), and to adequate housing (article 11). In occupied territories or conflict zones, these positive obligations require States to ensure access to essential services, preventing deliberate deprivation or obstruction that could endanger civilian survival.¹³

Certain IHRL rights are non-derogable under article 4 of the ICCPR—including the rights to life, freedom from torture, and freedom from retroactive criminal laws—while others may be subject to derogation only in public emergencies threatening the life of the nation, provided

'Challenges in Applying Human Rights Law to Armed Conflict' (2005) 87(860) *International Review of the Red Cross* 737.

¹² Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 2.

¹³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

measures are strictly required by the exigencies and non-discriminatory. Even in derogable contexts, limitations must conform to principles of necessity and proportionality.

The extraterritorial application of IHRL is grounded in the 'effective control' test. The HRC, in General Comment No 31, clarified that article 2(1) of the ICCPR obliges States to respect and ensure rights to 'anyone within the power or effective control' of the State Party, 'even if not situated within the territory', extending to acts by agents abroad.¹⁴ The ICJ endorsed this in the *Wall* Advisory Opinion, holding that human rights instruments apply extraterritorially where a State exercises jurisdiction through effective control over territory or persons.⁹ This test is particularly relevant in occupations, where the occupying power exercises authority over foreign territory, triggering obligations to secure rights akin to those within domestic borders.

State obligations under IHRL are threefold: to *respect* (refrain from interference), to *protect* (prevent third-party violations through due diligence), and to *fulfil* (take positive steps to realize rights).¹⁵ Due diligence requires proactive prevention of foreseeable harm, including in extraterritorial settings where control enables influence over rights enjoyment. In armed conflict or occupation, these duties demand measures to mitigate civilian suffering, ensure humanitarian access, and remedy violations.

In sum, IHRL's core principles and framework offer robust, adaptable protections for civilians, complementing IHL's context-specific rules while emphasizing universality and accountability. This interplay,

¹⁴ Human Rights Committee, 'General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) CCPR/C/21/Rev.1/Add.13, para 10.

¹⁵ Committee on Economic, Social and Cultural Rights, 'General Comment No 3: The Nature of States Parties' Obligations' (14 December 1990) E/1991/23, para 1.

affirmed by judicial and quasi-judicial bodies, underscores the imperative of holistic application to safeguard human dignity amid the gravest threats.

3 THE INTERPLAY BETWEEN IHRL AND IHL IN PROTECTING CIVILIANS

The interplay between international humanitarian law (IHL) and international human rights law (IHRL) forms a critical dimension of civilian protection in situations of armed conflict and belligerent occupation, ensuring layered safeguards that address both the immediate exigencies of hostilities and the enduring dignity of individuals under prolonged control.

IHL serves as the primary normative framework during armed conflict, governing the conduct of hostilities and the treatment of protected persons. Rooted in the Geneva Conventions of 1949 and their Additional Protocols of 1977, IHL imposes core obligations on parties to distinguish between civilians and combatants, ensure proportionality in attacks (prohibiting excessive incidental civilian harm relative to anticipated military advantage), and take feasible precautions to minimize civilian risk.¹⁶ In occupied territory, these rules are supplemented by the detailed regime of the Fourth Geneva Convention (GC IV), which regulates the occupying power's authority and duties toward the population.¹⁷ IHL thus prioritizes the regulation of military operations and short-term protections, reflecting the exceptional context of armed violence.

¹⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, arts 48, 51(5)(b), 57.

¹⁷ Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

IHRL, by contrast, fills normative gaps in IHL, particularly in prolonged occupations where the passage of time transforms the situation from one of temporary military control to a more administrative reality.¹⁸ While IHL provides specific rules for active hostilities—such as the prohibition on starvation of civilians as a method of warfare (Additional Protocol I, art 54)—it offers limited guidance on long-term obligations concerning economic, social, and cultural rights, or on remedies for violations.¹⁹ IHRL, through instruments like the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), imposes positive duties to respect, protect, and fulfil rights even amid conflict, including access to health, food, water, and adequate living standards.²⁰ In occupation, IHRL's complementarity enables scrutiny of systemic deprivations that IHL alone might not fully capture, such as restrictions on movement or denial of basic services over years.²¹

Occupation-specific obligations under IHL, particularly GC IV, require the occupying power to ensure humane treatment (art 27), supply the population with essentials (arts 55–56), and prohibit collective punishment (art 33). These duties are reinforced by IHRL, which demands due diligence to prevent third-party violations and proactive fulfilment of rights.²² The interplay is governed by the

¹⁸ Vassilis Pergantis, 'The Application of International Humanitarian Law and International Human Rights Law in Situations of Prolonged Occupation: Only a Matter of Time?' (2012) 94(885) *International Review of the Red Cross* 165.

¹⁹ Ilias Bantekas, 'Human Rights Obligations of Belligerent Occupiers: Israel and the Gazan Population' (2025) 30(1) *Journal of Conflict and Security Law* 103.

²⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, arts 11–12.

²¹ Noam Lubell, 'Challenges in Applying Human Rights Law to Armed Conflict' (2005) 87(860) *International Review of the Red Cross* 737.

²² Fourth Geneva Convention (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, arts 27, 33, 55–56.

principle that IHL acts as *lex specialis* where norms conflict, interpreting IHRL provisions (e.g., right to life) in light of IHL's military necessity, yet IHRL retains primacy in non-derogable areas or where IHL is silent.²³

The relevance to Gaza is particularly acute in debates over Israel's status as an occupying power post-2005 disengagement. Israel maintains that the withdrawal of ground forces and settlements ended occupation, ceding effective control to Palestinian authorities.²⁴ However, authoritative international positions reject this view. The International Court of Justice (ICJ), in its 2024 Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, held that Israel's withdrawal in 2005 did not entirely release it from obligations under the law of occupation.²⁵ The Court applied a functional approach: obligations remain commensurate with the degree of effective control exercised over Gaza, including border, airspace, maritime access, movement restrictions, and resource controls.²⁶ This position was reaffirmed and strengthened in the ICJ's 2025 Advisory Opinion on *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory*, where the Court found that Israel's effective control over Gaza had increased significantly since 7 October 2023, heightening its occupation duties—particularly regarding humanitarian

²³ *Legality of the Threat or Use of nuclear weapons* (Advisory Opinion) [1996] ICJ Rep 226, para 25; Human Rights Committee, 'General Comment No 31'.

²⁴ 'Israeli Ministry of Foreign Affairs statements post-2005'; Hanne Cuyckens, 'Is Israel Still an Occupying Power in Gaza?' (2016) 63 *Netherlands International Law Review* 275.

²⁵ 'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory', including East Jerusalem (Advisory Opinion) [2024] ICJ Rep (19 July 2024), paras 89–94.

²⁶ *Ibid* para 93.

relief and administration for the population's benefit—without precluding application amid hostilities.²⁷

UN bodies align with this: the Independent International Commission of Inquiry and Special Rapporteur have treated Gaza as occupied, emphasizing continued control enabling violations.²⁸ Scholarly analysis supports this, noting that occupation persists where authority can be asserted without permanent boots-on-ground presence, per Hague Regulations art. 42.²⁹

In Gaza, this interplay reveals how IHL's rules on distinction and proportionality govern active combat, while IHRL addresses siege-like conditions, aid blockades, and long-term deprivations. The dual framework underscores that occupation law demands administration for the population's welfare, not merely restraint during fighting—obligations Israel must fulfil commensurate with its control.

4 THE GAZA CASE STUDY: ALLEGED GENOCIDE AND VIOLATIONS OF CIVILIAN PROTECTIONS

The Gaza case study since the escalation on 7 October 2023 provides a stark illustration of the catastrophic human cost when civilian protections under international human rights law (IHRL) are systematically undermined amid armed conflict and occupation. The scale of suffering has been immense, with documented patterns of

²⁷ 'Obligations of Israel in relation to the Presence and Activities of the United Nations', Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory (Advisory Opinion) [2025] ICJ (22 October 2025), paras 85–87.

²⁸ UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 'Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide' (A/HRC/60/CRP.3, 16 September 2025); Francesca Albanese (Special Rapporteur), Gaza Genocide: a collective crime (A/80/492, 20 October 2025).

²⁹ Orna Ben-Naftali and Yuval Shany, 'Living in Denial: The Application of Human Rights in the Occupied Territories' (2003) 37 *Israel Law Review* 17.

mass civilian harm raising grave questions about compliance with both IHRL and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).

The factual context reveals unprecedented levels of devastation. As of early 2026, Palestinian authorities, corroborated by UN sources, report over 72,000 Palestinians killed in Gaza since October 2023, with figures from the Gaza Ministry of Health and independent analyses indicating totals potentially exceeding 75,000 violent deaths by January 2025 alone, including a high proportion of women, children, and elderly.³⁰ Peer-reviewed studies estimate even higher tolls when accounting for indirect deaths from trauma, disease, and infrastructure collapse, with some projections suggesting 4–5% of Gaza's pre-war population affected by violent mortality.³¹ Over 170,000 injuries have been recorded, alongside near-total displacement of Gaza's 2.1–2.3 million inhabitants at various points, with hundreds of thousands confined to overcrowded shelters, tents, or ruins.³² Infrastructure destruction has been near-total in parts of the territory: hospitals, schools, water systems, and agricultural land have been systematically damaged or rendered inoperable, exacerbating a humanitarian blockade that restricted aid inflows for extended periods. Starvation allegations culminated in the Integrated Food Security Phase Classification (IPC) confirming famine in northern Gaza in August 2025, affecting over half a million people amid deliberate aid obstructions, though partial improvements followed a ceasefire in

³⁰ Gaza Health Ministry Figures as Reported in UN OCHA Updates, for example, Humanitarian Situation Update #357, February 2026).

³¹ M Spagat and others, 'Violent and Non-violent Death Tolls for the Gaza Conflict' (2026) *The Lancet Global Health*; 'Traumatic Injury Mortality in the Gaza Strip' (2025) *The Lancet*, 23.

³² UNRWA Situation Report #209 (February 2026); OCHA data on casualties.

October 2025.³³ These conditions—marked by siege-like restrictions, destruction of life-sustaining resources, and preventable deaths from malnutrition, hypothermia, and lack of medical care—have been described as man-made disasters by UN agencies and humanitarian actors.

This factual matrix has been framed by authoritative sources as constituting genocide under article II of the Genocide Convention. The prohibited acts include killing members of the group, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction in whole or in part, and—in some analyses—imposing measures to prevent births.³⁴ Evidence of specific intent has been inferred from patterns of conduct (systematic attacks on civilian infrastructure, aid denial, and dehumanizing rhetoric) and official statements by Israeli authorities. The UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel concluded in its September 2025 report that Israel has committed and continues to commit four of the five genocidal acts, bearing state responsibility for genocide, failure to prevent it, and failure to punish it.³⁵ Similarly, Special Rapporteur Francesca Albanese's October 2025 report characterized the situation as a 'collective crime' of genocide sustained by third-state complicity.³⁶ The International Court of Justice (ICJ), in provisional measures orders in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the*

³³ IPC Famine Review Committee Report (August 2025); IPC update (December 2025) noting famine reversal post-ceasefire but persistent emergency.

³⁴ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art 2.

³⁵ UN Independent International Commission of Inquiry, 'Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide' (A/HRC/60/CRP.3, 16 September 2025).

³⁶ Francesca Albanese (Special Rapporteur), *Gaza Genocide: A Collective Crime* (A/80/492, 20 October 2025).

Gaza Strip (South Africa v Israel) (Orders of 26 January 2024, 28 March 2024, and 24 May 2024), found a plausible risk of genocide and directed Israel to prevent genocidal acts, ensure humanitarian aid, and report on compliance—measures whose implementation remains contested amid ongoing hostilities and a delayed merits phase.³⁷

Specific IHRL violations are evident across core rights. Mass deprivation of life and security violates article 6 of the International Covenant on Civil and Political Rights (ICCPR), with widespread arbitrary killings and failure to protect civilians from foreseeable harm. Systematic attacks on healthcare, education, and water systems breach rights to health and life (ICCPR art. 6; International Covenant on Economic, Social and Cultural Rights (ICESCR) art. 12), as well as water and adequate housing (ICESCR art 11), rendering essential services inaccessible and causing preventable deaths. Forced displacement and collective punishment contravene ICCPR article 7 (prohibition on cruel, inhuman or degrading treatment) and IHL prohibitions mirrored in IHRL. Restrictions on humanitarian aid represent a failure to fulfil positive obligations under ICESCR articles 11–12 and ICCPR article 6, with due diligence absent in preventing starvation and disease.

Third-state complicity further aggravates these violations. Under article I of the Genocide Convention, states must prevent and punish genocide; continued arms transfers, diplomatic support, and economic ties by certain states have been criticized as enabling violations, potentially amounting to complicity under customary law and the Genocide Convention where aid or assistance facilitates wrongful acts

³⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v Israel*) (Provisional Measures Orders, ICJ, 26 January 2024; 28 March 2024; 24 May 2024).

with knowledge of circumstances.³⁸ UN experts and reports have urged arms embargoes and cessation of support to halt facilitation of alleged genocidal acts.³⁹

The Gaza experience thus crystallizes profound failures in civilian protection, where IHRL's universal guarantees are eroded by unchecked power, prolonged control, and international acquiescence—demanding rigorous accountability to restore the law's efficacy.

5 LESSONS FROM THE GAZA GENOCIDE FOR CIVILIAN PROTECTION UNDER IHRL

The Gaza experience—characterized by authoritative findings of genocide against Palestinians—offers profound and sobering lessons for the protection of civilians under international human rights law (IHRL). These lessons expose systemic vulnerabilities in the application and enforcement of IHRL, particularly in contexts of prolonged occupation, siege, and alleged genocidal acts, while highlighting the urgent need to address structural deficiencies to safeguard the law's universality and efficacy.

One of the most glaring enforcement gaps lies in weak monitoring and accountability mechanisms. Institutions such as the International Criminal Court (ICC) and the International Court of Justice (ICJ) face jurisdictional and political limitations that hinder effective reach. In the *South Africa v Israel* Case, the ICJ's provisional measures orders (26 January 2024, 28 March 2024, and 24 May 2024) directed Israel to prevent genocidal acts and facilitate humanitarian aid, yet compliance has been widely contested and non-implementation persists amid

³⁸ Francesca Albanese (Special Rapporteur), *Gaza Genocide: A Collective Crime* (A/80/492, 20 October 2025); Al-Haq and others, *Statements on Third-state Complicity* (2025).

³⁹ *Ibid*; Amnesty International Responses to CoI Report (September 2025).

delayed merits proceedings (Israel's counter-memorial extended to March 2026).⁴⁰ Similarly, UN Security Council (UNSC) paralysis—driven by veto power—prevents binding resolutions or sanctions, allowing violations to continue unchecked.⁴¹ The UN Independent International Commission of Inquiry's September 2025 report concluded that Israel bears responsibility for genocide, yet the absence of coercive follow-through underscores how monitoring bodies lack enforcement teeth. Scholarly critiques emphasize that such gaps erode IHRL's deterrent value, transforming it into aspirational norms rather than binding obligations in high-stakes conflicts.⁴²

Prolonged occupation and siege serve as potent vectors for IHRL erosion, enabling normalized violations over time. In Gaza, Israel's continued effective control—affirmed by the ICJ's 2024 and 2025 advisory opinions—has facilitated systemic deprivations, for example, aid blockades, infrastructure destruction) that undermine rights to life, health, and food under the ICCPR and ICESCR.⁴³ This normalization desensitizes international responses, allowing cumulative harms to accumulate without triggering decisive intervention, as seen in the

⁴⁰ UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide* (A/HRC/60/CRP.3, 16 September 2025).

⁴¹ UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Legal Analysis of the Conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide* (A/HRC/60/CRP.3, 16 September 2025).

⁴² Emiliano J Verbitsky, 'The Gaza Genocide in Five Crises' (2025) *Journal of Genocide Research*; I Asmar, 'Gaza: Between Global Silence and the Double Standards of Justice' (2025) *PMC* articles.

⁴³ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) [2024] ICJ Rep 19 July 2024; *Obligations of Israel in relation to the Presence and Activities of the United Nations...* (Advisory Opinion) [2025] ICJ 22 October 2025.

transition from occupation ⁴⁴duties to conditions calculated to destroy life under the Genocide Convention.

Genocidal intent, often evidenced through dehumanization rhetoric and patterns of conduct, fundamentally undermines IHRL protections by reframing civilian suffering as collateral or necessary. Official statements and systematic attacks have been cited by UN experts as inferring intent to destroy Palestinians in whole or in part, overriding IHRL's non-derogable safeguards.⁴⁵ This intent logic exposes how IHRL's emphasis on individual dignity can be subordinated to collective security narratives, weakening protections against arbitrary deprivation of life and cruel treatment.

Positive obligations in extraterritorial contexts demand heightened scrutiny, yet remain under-enforced. Occupying powers must prevent foreseeable harm through due diligence, while third states bear duties to prevent genocide under article I of the Genocide Convention—including ceasing arms transfers where risk is evident.⁴⁶ Special Rapporteur Francesca Albanese's October 2025 report framed Gaza's genocide as a "collective crime" sustained by third-state complicity (e.g., military and diplomatic support), urging suspension of ties until compliance.⁴⁷ Failures here highlight how extraterritorial

⁴⁴ Francesca Albanese (Special Rapporteur), *Gaza Genocide: a Collective Crime* (A/80/492, 20 October 2025).

⁴⁵ UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Legal Analysis of the Conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide* (A/HRC/60/CRP.3, 16 September 2025); Francesca Albanese (Special Rapporteur), *Gaza Genocide: a Collective Crime* (A/80/492, 20 October 2025).

⁴⁶ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art 1.

⁴⁷ Francesca Albanese (Special Rapporteur), *Gaza Genocide: A Collective Crime* (A/80/492, 20 October 2025).

application—grounded in the effective control test—falters against geopolitical alliances.

Complementarity between IHRL and IHL has revealed failures when IHL claims of military necessity override IHRL scrutiny. Assertions of proportionality or distinction under IHL have been invoked to justify widespread civilian harm, sidelining IHRL's positive obligations to fulfil rights, for example, health, water in occupied settings.⁴⁸ This selective prioritization erodes holistic protection, particularly in sieges where IHL gaps leave IHRL to fill voids that remain unaddressed.

Broader implications threaten IHRL's universality, manifesting in double standards that undermine global legitimacy. Selective outrage—swift condemnation in some conflicts contrasted with hesitation in Gaza—exposes perceived hierarchies of victimhood, eroding trust in IHRL among the Global South and fueling accusations of Western bias.⁴⁹ Reports highlight how this selectivity normalizes violations, risks IHRL fragmentation, and weakens atrocity prevention norms.⁵⁰

Ultimately, Gaza's lessons compel reforms: bolstering independent monitoring, overcoming UNSC veto paralysis through mechanisms like Uniting for Peace, enforcing third-state due diligence rigorously, and addressing root causes of occupation to prevent normalization of erosive practices. Without consistent, impartial enforcement, IHRL risks becoming a selective instrument rather than a universal shield for civilian dignity.

⁴⁸ A Dirk Moses, 'Introduction: Gaza and the Problems of Genocide Studies' (2025) *Journal of Genocide Research*.

⁴⁹ Asmar, 'Gaza: Between Global Silence and the Double Standards of Justice' (2025) PMC on various critiques in *Journal of Genocide Research* (2025 Issues).

⁵⁰ *Ibid*; Kalpana Kannabiran, 'The Gaza Genocide' (2026) *Social Change*.

6. RECOMMENDATIONS AND PATHWAYS FORWARD

The Gaza tragedy—marked by authoritative determinations of genocide and widespread violations of civilian protections under international human rights law (IHRL)—demands concrete, multi-layered recommendations to strengthen civilian safeguards in situations of armed conflict and occupation. These pathways forward draw from the imperatives of accountability, prevention, and structural reform, as articulated by UN bodies, expert reports, and scholarly analyses, to restore IHRL's efficacy and prevent recurrence.

Strengthening the application of IHRL in conflict and occupation contexts requires enhanced UN mechanisms and robust litigation avenues. Special procedures, such as the mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, should be bolstered with increased resources, unimpeded access, and follow-up authority to monitor compliance and escalate findings to the General Assembly or Security Council. Commissions of inquiry, like the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, have proven vital in documenting violations and attributing responsibility; their mandates should be extended with stronger investigative powers and mandatory state cooperation.⁵¹ Domestic and international litigation offer additional levers: universal jurisdiction prosecutions in national courts can target individuals responsible for grave breaches, while states should support ICJ advisory proceedings or contentious cases to clarify obligations in occupation and genocide prevention. The ICJ's provisional measures in

⁵¹ UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide* (A/HRC/60/CRP.3, 16 September 2025).

South Africa v Israel exemplify how such litigation can impose binding duties, even if enforcement remains challenging.⁵²

Third-state responsibilities are central to halting complicity and enforcing IHRL. Under article I of the Genocide Convention, states must prevent and punish genocide; where knowledge of risk exists, this entails immediate measures such as comprehensive arms embargoes on transfers that could facilitate genocidal acts, targeted sanctions on officials and entities involved, and suspension of diplomatic, economic, and military ties until compliance is assured. The UN Commission of Inquiry's September 2025 report explicitly urged Member States to cease arms transfers and equipment usable for genocidal acts, prevent corporate involvement in aiding genocide, and pursue accountability through investigations and proceedings against complicit individuals or corporations.⁵³ Special Rapporteur Francesca Albanese has similarly emphasized that third states—particularly major suppliers—sustain violations through military, diplomatic, economic, and "humanitarian" aid channels, calling for full suspension of such support as part of reversing complicity in a "collective crime."⁵⁴ These steps align with customary obligations not to aid or assist internationally wrongful acts.

Preventive measures must prioritize early warning, humanitarian access, and civilian safety. Robust early-warning systems, integrated across UN bodies, should trigger rapid diplomatic and operational responses to escalating risks of atrocity crimes. Establishing and protecting humanitarian corridors, ensuring unhindered aid delivery,

⁵² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures Orders, ICJ, 26 January 2024; 28 March 2024; 24 May 2024).

⁵³ *Ibid.*

⁵⁴ Francesca Albanese (Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967), *Gaza Genocide: A Collective Crime* (A/80/492, 20 October 2025).

and facilitating medical evacuations are essential to fulfil positive obligations under the ICESCR (arts 11–12) and ICCPR (art 6). UN experts have repeatedly called for immediate restoration of aid access, lifting sieges, and protecting humanitarian personnel to avert famine and life-threatening conditions.⁵⁵

Reforming global accountability mechanisms is imperative to overcome institutional paralysis. The UN Security Council's repeated veto-induced inaction—particularly by permanent members shielding allies—has undermined IHRL enforcement in Gaza and elsewhere; reforms could include expanding the "veto initiative" (whereby vetoes trigger automatic General Assembly debate) or exploring supermajority overrides for atrocity-related resolutions. Addressing corporate complicity requires mandatory due diligence frameworks, divestment from entities profiting from occupation or violations, and accountability through national courts or international tribunals. The Commission of Inquiry and Special Rapporteur reports highlight the need for states to investigate and prosecute corporate actors aiding genocide or grave breaches.⁵⁶

Long-term pathways must confront root causes, including the prolonged occupation of Palestinian territory and allegations of apartheid raised in UN reports and ICJ advisory opinions. Ending occupation in line with international law, dismantling discriminatory systems, and pursuing inclusive political processes grounded in self-

⁵⁵ OHCHR press release, 'Gaza: UN experts urge General Assembly to respond to famine and genocide' (5 September 2025).

⁵⁶ UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Legal Analysis of the Conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide* (A/HRC/60/CRP.3, 16 September 2025); Francesca Albanese (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), *Gaza Genocide: A Collective Crime* (A/80/492, 20 October 2025).

determination and equality are prerequisites for sustainable peace. Transitional justice mechanisms—encompassing truth-seeking, reparations, non-repetition guarantees, and accountability without amnesties for international crimes—should anchor any resolution.⁵⁷

These recommendations, if pursued with urgency and impartiality, can transform Gaza's lessons from a record of failure into a foundation for resilient civilian protections under IHRL. Consistent enforcement, third-state diligence, and structural reforms are essential to reaffirm the universality of human rights and avert future atrocities.

7. CONCLUSION

The events in Gaza have starkly illuminated both the enduring promise and the profound fragility of international human rights law (IHRL) in safeguarding civilians amid an alleged genocide. As argued throughout this article, IHRL—encompassing core non-derogable rights such as the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), prohibitions on torture and cruel, inhuman or degrading treatment under Article 7 of the ICCPR and the Convention against Torture, and positive obligations to realize economic, social and cultural rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR)—continues to apply in situations of armed conflict, occupation and even existential threats to protected groups. Yet, the Gaza case demonstrates how these protections can be rendered illusory when enforcement mechanisms falter, extraterritorial obligations are evaded, and geopolitical interests override legal imperatives.

⁵⁷ Bernard Duhaime, (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence), statement on Gaza peace demands (15 October 2025).

The scale of civilian devastation in Gaza—marked by mass killings, deliberate infliction of life-threatening conditions through siege and aid obstruction, systematic destruction of healthcare and educational infrastructure, and patterns suggestive of genocidal intent—has prompted authoritative findings that Israel bears responsibility for genocide under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The UN Independent International Commission of Inquiry concluded in September 2025 that Israeli authorities and security forces have committed and continue to commit four of the five prohibited acts, with genocidal intent inferable from official statements and conduct.⁵⁸ This aligns with earlier assessments by UN experts, including Special Rapporteur Francesca Albanese, who framed the situation as a "collective crime" sustained by third-state complicity.⁵⁹ The International Court of Justice (ICJ), in its provisional measures orders in *South Africa v Israel*, has repeatedly directed Israel to prevent genocidal acts and facilitate humanitarian aid, though compliance remains contested and the merits phase—delayed by extensions, with Israel's counter-memorial now due in March 2026—remains pending.⁶⁰

These developments expose IHRL's promise as a framework of universal, indivisible rights that transcend IHL's context-specific rules, offering enduring protections against arbitrary deprivation of life,

⁵⁸ UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Legal Analysis of the Conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide* (A/HRC/60/CRP.3, 16 September 2025).

⁵⁹ Francesca Albanese (Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967), *Gaza Genocide: A Collective Crime* (A/80/492, 20 October 2025).

⁶⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures Orders of 26 January 2024, 28 March 2024, and subsequent modifications; ICJ, ongoing as of March 2026).

collective punishment, and conditions calculated to destroy groups in whole or in part. Yet they also reveal its fragility: monitoring bodies lack coercive power, accountability is stymied by UN Security Council paralysis, and extraterritorial application—affirmed in the ICJ's *Wall* advisory opinion—struggles against claims of military necessity or security imperatives.⁶¹ The Gaza experience underscores how prolonged occupation enables normalized erosion of rights, while third-state arms transfers and diplomatic cover perpetuate violations.

There is an urgent need for consistent, impartial enforcement to preserve IHRL's integrity. States must fulfil their obligations under the Genocide Convention to prevent and punish genocide, including through arms embargoes, sanctions, and support for accountability mechanisms such as universal jurisdiction prosecutions or strengthened ICC investigations. International institutions, including the UN Human Rights Council and OHCHR, should intensify fact-finding and special procedures to counter impunity.

The lessons from Gaza must catalyze meaningful reforms to prevent future atrocities. These include bolstering early-warning systems, ensuring robust humanitarian access in besieged areas, addressing root causes of occupation and systemic discrimination, and reforming global governance to overcome veto-induced paralysis. Only through such concerted action can IHRL reclaim its protective force, transforming the tragedy in Gaza from a symbol of failure into a catalyst for a more resilient international legal order.

⁶¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.