ML in Law

Navigating Humanitarian Crises in Armed Conflict

Exploring International Legal Frameworks and Sovereignty Dynamics with the Israel-Palestine Conflict as a Precedent

June, 2024

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Abstract

Navigating humanitarian crisis in armed conflict: Exploring International Legal Frameworks and Sovereignty Dynamics with the Israel-Palestine Conflict as a Precedent

State sovereignty is a crucial concept that has influenced international relations and global government for many years. It is the foundation of customary international law and is essential to preserving world peace and security. It is a defense mechanism against foreign threats, and guarantees state equality, vital for maintaining international security. However, when wars occur, this concept gets questioned. Who possesses the authority to intervene when wars occur? Is there a legal framework that mandates states and international organizations to act in such situations, or is it simply political?

This thesis aims to tackle these questions by exploring the following research question from a legal standpoint: What resources international law offers for addressing human rights and humanitarian crises when armed conflict erupts, particularly concerning the sovereignty of states?

Given the ongoing and uncertain nature of the Israel-Palestine conflict, the author examines rules of warfare, state sovereignty, reconciliation, and third-party interventions and how they can possibly be applicable in the current situation - analyzing former precedents in similar scenarios, such as relevant cases by the competent international courts and United Nations authorizations.

The primary conclusion of this thesis is that an international legal framework exists for handling situations in times of conflict, from diplomatic solutions to military interventions. However, the system that pressures states' involvement in such matters is weak because of its political influence. Nonetheless, it is a critical system, and its existence is crucial, but there might be room for improvement.

Útdráttur

Mannúðarkrísa á stríðstímum: Skoðun á sambandi alþjóðalaga og fullveldis, með hliðsjón af átökunum í Ísrael og Palestínu.

Fullveldi ríkja hefur lengi verið lykilhugtak sem mótar alþjóðasamskipti og stjórnkerfi á heimsvísu. Einnig þýðingarmikill þáttur í því að verja ríki frá utanaðkomandi ógnum sem og í því að tryggja jafnrétti á milli ríkja heims, en það er grundvallarþáttur í því að viðhalda öryggi á alheimsvísu. Þegar stríð brestur á vakna hins vegar oft efasemdir um fullveldishugtakið. Hver hefur vald til að grípa inn í slíkum aðstæðum? Er til lagarammi sem skyldar ríki og alþjóðastofnanir til að bregðast við, eða er aðeins um pólitískt viðfangsefni að ræða?

Í þessari ritgerð er leitast við að svara framangreindum spurningum með því að skoða rannsóknarspurninguna: Hvaða úrræði eru fyrir hendi að alþjóðalögum til þess að takast á við mannréttinda- og mannúðarkreppu á stríðstímum, með hliðsjón af reglum um fullveldi ríkja?

Þær reglur sem gilda í stríði, fullveldi ríkja, sáttarferli og íhlutun þriðja aðila verða skoðaðar. Í þessu samhengi verður tekið sérstaklega til skoðunar hvernig framangreindar reglur eiga við í yfirstandandi vopnuðum átökum á milli Ísrael og Palestínu ásamt því að viðfangsefnið verður sett í samhengi við fyrri átök og greindar verða heimildir á borð við dóma alþjóðlegra dómstóla og heimildir sem stafa frá stofnunum Sameinuðu þjóðanna.

Helstu niðurstöður ritgerðarinnar eru þær, að alþjóðlegur lagarammi er fyrir hendi sem nær utan um mannúðarkrísur í vopnuðum átökum, allt frá diplómatískum úrlausnum og til hernaðaríhlutana. Þrátt fyrir það veitir lagaramminn litla hvatningu fyrir ríki til þess að taka þátt í slíkum aðgerðum, m.a. vegna pólitískra áhrifa. Sá lagarammi sem er fyrir hendi er þó mikilvægur og tilvist hans nauðsynleg til þess að tryggja mannúð og mannréttindi einstaklinga í vopnuðum átökum, þó mikið svigrúm sé til þess að styrkja hann enn frekar.

Preamble

“Dad, the fence is hurting me” are the words I said to my parents in the middle of the night while my father held me through the border into Albania illegally in 1999.

I dedicate this master’s thesis to my parents, who not only sacrificed their lives when they were forced out of our home and kept me alive in times of conflict but also sacrificed their lives back in Kosovo to bring us to Iceland for a better one. I want to thank my mother for showing me strength, supporting me, and being my rock. My siblings for their patience and support throughout my academic years. Without them, none of this would have been possible.

I will forever be grateful to my mentor, Ragnar Aðalsteinsson, for giving me a chance as his assistant and paralegal, constant guidance, and reminding me the importance of law, especially human rights. He once said to me, “You should write about what you’re most passionate about,” and these words are one of the purposes of this thesis. To Sigrún Ingibjörg Gísladóttir, I would like to say thank you for pushing me and believing in me even when I doubted myself.

I would also like to thank my supervisor, Dr. Davíð Þór Björgvinsson, for his patience this semester and his help throughout this thesis. His guidance and knowledge made a significant impact.

To my friends who have been there for me through every obstacle and joyful moment, I would like to say thank you. You know who you are.

Lastly, I would like to thank my late father for all his sacrifices and unconditional love, for constantly pushing me forward and believing in me. I am the woman I am today because of you, Babi.

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Table of Abbreviations

Complex humanitarian emergency	CHE
Economic Community of West African States	ECOWAS
ECOWAS Monitoring Group	ECOMOG
General Assembly	GA
International Commission on Intervention and State Sovereignty	ICISS
International Convention on the Elimination of All Forms of Racial Discrimination	ICERD
International Court of Justice	ICJ
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR
International Criminal Court	ICC
International Human Rights Law	IHRL
International Humanitarian Law	IHL
International Law Commission	ILC
Israel Defense Forces	IDF
Organization of American States	OAS
Palestinian Authority	PA
Palestinian Liberation Organization	PLO
Pre-Trial Chamber	PTC
Union of Soviet Socialist Republics	USSR
United Nations General Assembly	UNGA
United Nations Protection Force	UNPROFOR
United Nations Security Council / Security Council	UNSC/SC

United Nations	UN
Universal Declaration of Human Rights	UDHR
Vienna Convention on the Law of Treaties	VCLT
Western European and Others Group	WEOG

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Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 U.N.T.S. 277

Geneva Convention I, Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (adopted 12 August1949, entered into force 21 October 1950) 75 U.N.T.S. 31

Geneva Convention II Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (adopted 12 May 1949, entered into force 21 October 1950) 75 U.N.T.S. 85

Geneva Convention III Relative to the Treatment of Prisoners of War (adopted 12. August 1949, entered into force 21. October 1950) 75 U.N.T.S. 135

Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 U.N.T.S. 287

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, (adopted 14 May 1954, entered into force 7 August 1956) S. Treaty Doc. 106-1; 249 U.N.T.S. 216.

Hague Convention with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. (adopted 18 October 1907, entered into force 26 January 1907)

International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 1969) 660 U.N.T.S. 195

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 2976) 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967)

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19; 6 I.L.M. 360 (1967)

North Atlantic Treaty (adopted 4 April 1949 entered into force on 29 August 1949) 34 U.N.T.S. 243

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 U.N.T.S. 3

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (adopted 8 June 1977, entered into force 7 December 1978) 1125 U.N.T.S. 609

Rome Statute of the International Criminal Court (adopted on 17 July 1998, entered into force July 1, 2002) 2187 U.N.T.S 90

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1115 U.N.T.S 331

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UNSC Res 1973 (17. March 2011) UN Doc S/RES/1973

UNSC Res 2728 (25 March 2024) UN Doc S/RES/2728

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UNGA Res 67/19 (29 November 2012) UN Doc A/RES/67/19

UNGA Res 10/19 (22. December 2017) UN Doc A/RES/ES-10/19

UNGA Res 11/1 (18. March 2022) UN Doc A/RES/ES-11/1

UNGA Res 10/21 (27 October 2023) UN Doc A/RES/ES-10/21

UNGA Res10/22 (12 December 2023) UN Doc A/RES/ES-10/22

UNGA Res 78/170 (19 December 2023) UN Doc A/RES/78/170

Introduction

"Hostilities in Gaza and Israel have created appalling human suffering, physical destruction, and collective trauma across Israel and the Occupied Palestinian Territory. The international community has a responsibility to use all its influence to prevent further escalation and end this crisis... "[1]

UN Secretary-General António Guterres
6. December 2023

The outcomes of war are consistent regardless of why they happen or the parties involved. War leads to tragic civilian casualties, widespread displacement, and the infringement of human rights and international humanitarian laws.[2] The Just War Theory is a widely accepted theoretical framework governing warfare behavior. It aligns with and is considered a formulation of, the principles that underlie much of the international laws overseeing warfare, exemplified by the Geneva and Hague Conventions.[3] This theory articulates the moral justifications for engaging in war. Since its inception, Just War theorists have grappled with two fundamental questions: the rightness of initiating war (jus ad bellum) and the conduct of war itself (jus in bello).[4] However, the rationale for a war ends when human rights are violated; other clauses need to be investigated. Defining peacekeeping has never been universally agreed upon by the United Nations (UN) or any other organization. The nature of peacekeeping, both in current and historical contexts, has been adaptable, shaping itself based on the tasks and situations encountered. Scholars consider this flexibility to be a key strength of UN peacekeeping. It's important to note that the UN did not originate the concept of peacekeeping, which is not explicitly outlined in the UN Charter.[5] The author will look further into this matter in chapter 3, exploring the functions of international organizations and treaties. However, while many peacekeeping missions are conducted under the UN umbrella, non-UN peacekeeping missions also effectively pursue their objectives. In essence,

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[1] Israel-Gaza conflict, *United Nations* <https://www.un.org/en/situation-in-occupied-palestine-and-israel> accessed 27. January 2024
[2] Armed Conflict, *Amnesty International < https://www.amnesty.org/en/what-we-do/armed-conflict/> accessed 27. January 2024*
[3] Vivek Sehrawat, 'Autonomous Weapon System: Law of Armed Conflict (LOAC) and Other Legal Challenges' (2017) 33 Computer Law & Security Review 38, 38 <https://www.sciencedirect.com/science/article/pii/S0267364916302163> accessed 30 January 2024.
[4] Sehrawat (n 3).
[5] Yasir Khan, 'Peacekeeping' in Lester R Kurtz (ed), *Encyclopedia of Violence, Peace, & Conflict*, vol 3 (3rd ed, Academic Press 2022) 653 <https://www.sciencedirect.com/science/article/pii/B9780128201954002703> accessed 30 January 2024.

peacekeeping, generally associated with the UN, is occasionally undertaken by other international organizations, coalitions of member states, or individual states. In such instances, these entities may deploy lightly armed international troops to establish a cease-fire with the consent of all involved parties, aiming to bring peace and stability to a conflict-ridden region.[6]

When these measures are proven ineffective, and a situation descends into violent conflict, efforts termed "humanitarian operations" are often initiated to reduce the severity of the conflict. Many humanitarian organizations use the term "complex humanitarian emergency" (CHE) to characterize situations involving significant natural or human-made disasters combined with violent conflict.[7] Human rights and the significance of peacekeeping in a society ravaged by war are interconnected. In the context of the Israel-Palestine conflict, this thesis aims to explore how the current provisions of the international legal framework governing reconciliation during times of war interact, particularly amid persistent human rights violations. The research question guiding this study is: What resources does international law offer for addressing human rights and humanitarian crises when armed conflict erupts, particularly concerning the sovereignty of states?

The lingering question revolves around the legal foundation for such occurrences, especially when human rights violations reach a point where the justification for wars becomes questionable. Who possesses the authority to intervene? Is there a legal framework that mandates states and international organizations to act in such situations, or is it simply political? If the research reveals that there is indeed a legal framework for interventions and peacekeeping, challenging the notion that it is purely political and the absence of intervention is not due to a lack of legal basis, then what is the purpose and significance of law in this context? This exploration aims to shed light on the legal dynamics influencing the resolution of conflicts marked by persistent human rights violations and to highlight the role and effectiveness of international legal mechanisms in promoting reconciliation and peace.

To answer these questions, the author will primarily aim to examine, from a legal standpoint, the conditions under which wars are permissible, the rules governing warfare, instances where human rights are violated to the extent that third-party intervention becomes necessary, and examine past instances where international law has been applied to pressure states in crises

[6] Khan (n 5).
[7] ibid.

situations. Even though the answers to these questions can be purely political, the author, as mentioned, will focus on the legal perspective. While the primary focus is on the Israel-Palestine crisis, it is important to note that the thesis will not extensively delve into the historical background of the conflict. Instead, it will explore the legality of third-party involvement in matters related to reconciliation, peacekeeping, and ceasefires. The author will investigate state sovereignty, the role of international organizations, international courts, relevant treaties, protocols, and conventions that shape the legal landscape surrounding these issues. The research aims to identify legal obligations for peaceful reconciliation and, if absent, explore alternative options, for example, as mentioned above, lightly armed international troops. Thus, insights from case studies within this context are drawn, and historical instances are examined to seek potential solutions for the ongoing conflict while assessing the applicability of any precedents for future conflicts.

1. Rules of War

No prohibition against using force existed in international law before the twentieth century. Nevertheless, the legitimacy of armed conflict has been a concern since ancient times.[8] However, the just war theory, significantly shaped by the works of Saint Augustine and Saint Thomas Aquinas in the fifth century A.D., depicted armed conflicts regarding moral distinctions between right and wrong actions. Augustine's writing defined just wars as those aimed at avenging injustices, specifically when a nation or city fails to address wrongs committed by its citizens or to rectify unjust acquisitions.[9] In the realm of Just War theory, two crucial inquiries arise: Was the decision to initiate war morally justified (jus ad bellum)? Secondly, were the methods employed during war morally justified (jus in bello)? This division within the Just War theory is reflected in international criminal law, distinguishing between crimes against peace and war crimes.[10] The decision to commence warfare aggressively can be prosecuted as a crime against peace, while the utilization of inhumane tactics during conflict can be prosecuted as a war crime. In international law, it is sometimes expressed that crimes against peace constitute violations of jus ad bellum,

[8] Michael N Schmitt, 'International Law and the Use of Force: The Jus Ad Bellum The Jus Ad Bellum' (2003) 2 International Law and the Use of Force: The Jus Ad Bellum 89 <https://www.jstor.org/stable/26323011> accessed 13 February 2024.
[9] ibid.
[10] Larry May, *War Crimes and Just War* (1st ed, Cambridge University Press 2007) 4 <http://ebookcentral.proquest.com/lib/reykjavik/detail.action?docID=293381> accessed 19 February 2024.

whereas war crimes constitute violations of jus in bello.[11] The rules governing warfare serve as a framework of norms designed to regulate the conduct of sovereign states and their agents amidst armed conflicts without a centralized global authority.[12] Therefore, establishing consensus on the rules of engagement under such circumstances is beneficial within legal discourse.[13] One of the challenges we face in wartime is that many of the usual rules we live by in times of peace seem to go out the window. One significant rule that gets questioned is the one against intentionally causing harm or taking lives. However, it's not entirely true that all rules are abandoned during conflict. While soldiers may engage in combat under certain circumstances, there's still a strong prohibition against harming civilians.[14] There's a longstanding belief, especially among political leaders, that the rules of justice and law don't quite apply in times of war. However, this viewpoint has been facing increasing criticism, with international law leaning more toward human rights principles rather than the older, more lenient interpretations regarding the conduct of warfare.[15] After the Second World War, it became clear that enforcement was necessary to ban the use of force. As a result, the 1945 United Charter, among other international organizations, was, for example, created to fill this gap.[16] The author will not dwell in detail on the historical background of warfare; however, he finds it essential to set out the general rules and meanings on which the laws of war were conducted.

1.1 Jus ad bellum and jus in bello

As mentioned above, the tradition evolved with two main focuses: the ethical considerations of initiating war (known as jus ad bellum in Latin), which primarily involve the state, and the ethical considerations of how war is conducted (jus in bello), which primarily concern military commanders. Over the past two decades, some ethicists have proposed the addition of a third component to this framework: the ethics of establishing peace after the war (jus post bellum).[17] In

[11] May (n 10).
[12] ibid 8.
[13] ibid.
[14] Austin Sarat, Lawrence Douglas and Martha Merrill Umphrey, *Law and War* (1st ed, Stanford University Press 2014) 204 <http://ebookcentral.proquest.com/lib/reykjavi k/detail.action?docID=1524367> accessed 21 February 2024.
[15] ibid 205.
[16] Schmitt (n 8) 90.
[17] James G Murphy, *War's Ends: Human Rights, International Order, and the Ethics of Peace* (1st ed, Georgetown University Press 2014) 2 <http://ebookcentral.proquest.com/lib/reykjavik/detail.action?docID=1610056> accessed 21 February 2024.

recent years, the realm of war, which has always been inherently political, has been approached more frequently from a legal perspective. When war is examined through a legal lens, the analysis often aligns with the principles of the just war tradition. As international legal institutions begin to influence this domain, the insights derived from the just war tradition can readily be applied and reflected upon.[18] However, international law, the United Nations, and global courts currently need more authority to enforce their decisions to the same extent as sovereign states. The traditional framework of power politics in international relations remains significant and has yet to be replaced or rendered irrelevant. In the contemporary world, these two contexts, international order, and law, which are not identical, and that of sovereign states exist in a tense and uneasy coexistence.[19]

1.2 Jus post bellum

The just war theory does exist in warfare and the morality behind it as demonstrated above, that is, when and how wars are conducted. However, a new perspective, as mentioned, has come to light recently: peace after the war. Most authors agree that jus post bellum should be viewed as a form of transitional justice, guiding us from a state of non-war (a ceasefire) to establishing political environments, both nationally and internationally, conducive to a minimally flourishing human life.[20] Nonetheless, the thought of jus post bellum being relevant only after a war has occurred is a misconception. On the contrary, post-war justice should also be concerned before and during the conflict, as previous ongoing conflicts in Afghanistan, Iraq, and Libya have taught us. The connection between jus ad bellum and jus post bellum is often acknowledged. It's widely understood that before jus post bellum was formally recognized as a distinct component of just war theory, notions of post-war justice were implicitly embedded within the original ad bellum principles such as just cause, right intention, and reasonable chance of success.[21]

In the upcoming chapters, the author will focus on various legal frameworks, including the just war theory and jus post bellum, as well as international law, organizations, and court

[18] ibid 13.
[19] ibid.
[20] Patrick Mileham, *Jus Post Bellum: Restraint, Stabilisation and Peace* (BRILL 2020) 78 <http://ebookcentral.proquest.com/lib/reykjavik/detail.action?docID=6853676> accessed 21 February 2024.
[21] ibid.

engagements not only post-conflict but mostly during periods of war, using the Israel-Palestine conflict as a guiding example.

2. International law

International law encompasses both customary law and treaty law. Treaty law specifically includes explicit agreements established under international law and those formed within international organizations.[22] One prominent aspect of international law is that the majority of its regulations focus on governing the actions of States rather than individuals. States are the primary actors in the global arena, functioning as legal entities comprised of people governed by an authoritative apparatus.[23]

We are accustomed to individual accountability in the legal frameworks that govern our everyday lives within national borders. Antonio Cassese's book “International Law” simplifies it: those who commit wrongs or violate laws are expected to face the consequences.[24] This typically involves compensating for damages caused or facing criminal penalties in cases of serious offenses. However, there are instances where exceptions apply. One such exception is "vicarious responsibility," which arises when the law dictates that someone is accountable for actions carried out by another individual with whom they share special ties. In the realm of international law, these exceptions become more prevalent. For example, a state that has suffered from an international transgression may seek restitution in the form of monetary compensation or may resort to retaliatory measures.[25] Collective responsibility entails that the entire State community bears accountability for any international law violation perpetrated by any State official and that the entire State community may experience the repercussions of such wrongful actions.[26] As mentioned above, states are bound in international law by customary treaty law and can, therefore, be held accountable for breaking said law.

[22] Davíd Thór Björgvinsson, *The Intersection of International Law and Domestic Law - A Theoretical and Practical Analysis* (Edward Elgar Publishing, Inc 2015) 5.
[23] Antonio Cassese, *International Law* (Oxford University Press 2001) 3.
[24] ibid 6.
[25] ibid 7.
[26] ibid.

2.1 International law and treaties applicable in times of conflict

The central theme of this thesis, as highlighted in the introduction, revolves around armed conflicts and warfare. In this chapter, the author will examine the current state of international law and treaties concerning this subject. After thoroughly grasping the pertinent laws, the next phase examines how international organizations that support these laws influence armed conflicts and their potential authority to intervene, if applicable.

International humanitarian law (IHL) falls within the realm of public international law, governing the boundaries of acceptable behavior during armed conflict. Its foundational principles and beliefs are closely intertwined with human rights, emphasizing the individual rather than solely focusing on states, central entities in traditional international law, as discussed in chapter 3.1.[27] IHL can be categorized into two separate paths: the Hague Conventions and the Geneva Conventions of 1949. Each designation encompasses a series of treaties and declarations with unique focuses. The Hague Conventions delineate permissible strategies in warfare, rules of engagement, and protocols for occupation. Conversely, the Geneva Conventions aim to safeguard individuals, including civilians and wounded soldiers, during times of conflict.[28] The connection between the Geneva and Hague Conventions and the principles of war, known as jus in bello and jus ad bellum, is evident, as discussed in chapter 1. The International Criminal Tribunal for the former Yugoslavia (ICTY), in the case of *Prosecutor v. Dusko Tadic*, demonstrates the connection. The case involved Dusko Tadic, a Bosnian Serb accused of war crimes and crimes against humanity committed during the Bosnian War (1992-1995). The charges against Tadic included crimes such as murder, torture, and persecution of non-Serb civilians of Bosnia and Herzegovina. The trial examined both jus in bello and jus ad bellum principles in the Geneva and Hague Conventions context.[29] In conclusion, the case demonstrated how violations of both jus in bello and jus ad bellum principles can lead to criminal liability under international law. It underscores the importance of respecting the rules and norms established by the Geneva and Hague Conventions in regulating armed conflict.

Therefore, the essence of IHL lies within the Geneva Conventions, which underwent revisions in 1906 and 1929 after their initial text in 1864. Following the Second World War, a new

[27] Miia Halme-Tuomisaari, 'International Humanitarian Law' in Antonio De Lauri (ed), *Humanitarianism: Keywords* (Brill 2020) 120 <https://www.jstor.org/stable/10.1163/j.ctv2gjwwnw.61> accessed 26 February 2024.
[28] ibid.
[29] *Case of the International Criminal Tribunal of Former Yugoslavia Prosecutor v Tadić [1999] ICTY IT-94-1*.

version was adopted on 12 August 1949, consolidating into what is now recognized as the "Four Geneva Conventions.[30] " These conventions, having gained universal ratification, are pillars in international humanitarian law.[31] Additional Protocols to the Geneva Conventions were added on 12 August 1949 and came into force on 7 December 1978.[32] Protocol I concerns the Protection of Victims of International Armed Conflicts and Protocol II concerns the Protection of Victims of Non-International Armed Conflicts.[33] The Conventions have an informal term for a body of legislation that primarily addresses the protection of armed conflict victims under the authority of a party known as the "Law of Geneva."[34]

The principles of international humanitarian law aim to protect individuals, with a fundamental differentiation typically made between combatants and non-combatants, the latter being those not directly engaged in hostilities**.**[35] Article 2 of the Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field from 1949 lays out the application of the Convention. It states that the current Convention extends to any instances declared to war or other armed conflicts between two or more of the signatory parties, regardless of whether one officially recognizes the state of war.[36]

The Security Council, in its resolution 1472 adopted at its 4732nd meeting in March 2003, requested all parties concerned to "...strictly abide by their obligations under international law, in

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[30] Geneva Convention I, Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (adopted 12 August 1949), 6 UST. 3114; 75 UNTS. 31; Geneva Convention II Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (adopted 12 May 1949) 6 UST. 3217; 75 UNTS. 85; Geneva Convention III Relative to the Treatment of Prisoners of War (adopted 12. August 1949) 6 UST. 3316; 75 UNTS. 135; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 6 UST. 3516; 75 UNTS. 287.

[31] International Committee of The Red Cross, 'Treaties and Customary Law' <https://www.icrc.org/en/document/treaties-and-customary-law> accessed 26 February 2024.

[32] International Committee of The Red Cross, *Protocols Additional to the Geneva Conventions of 12 August 1949* (1993).

[33] 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) 1125 UNTS. 3. See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (adopted 8 June 1977) 1125 UNTS. 609; 26 I.L.M. 568 (1987); S. Treaty Doc. No. 100-2 (1987).

[34] International Committee of The Red Cross, 'Law of Geneva | How Does Law Protect in War? - Online Casebook <https://casebook.icrc.org/a_to_z/glossary/law-geneva> accessed 3 March 2024.

[35] Malcolm N Shaw, *International Law* (Sixth edition, Cambridge University Press 2008) 1170–1.

[36] Article 2 of the Geneva Convention I, Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (adopted 12 August 1949), 6 UST. 3114; 75 UNTS. 31.

particular the Geneva Conventions and the Hague Regulations, including those relating to the essential civilian needs of the people of Iraq, both inside and outside Iraq".[37]

This example shows that the guidelines outlined in these Conventions cannot be ignored or given up by those they are designed to protect. This ensures that the authority in charge cannot pressure individuals into accepting less protection than they deserve.[38] As previously mentioned, the Conventions are specifically designed to safeguard individuals such as the wounded and sick in land warfare, those affected by maritime conflicts, prisoners of war, and civilians. [39] These groups all share a common trait: they are either incapacitated or non-combatants who do not engage in hostilities. The incapacitated include the wounded, sick, and shipwrecked, as well as captured soldiers, sailors, and airmen. Non-combatants comprise medical personnel, chaplains within the armed forces, and civilians, particularly those not involved in active combat.[40]

As mentioned, the Hague Conventions refer to a collection of treaties and declarations formulated in The Hague, establishing regulations governing warfare. These encompass various international agreements and declarations from two global peace conferences held in 1899 and 1907, [41] along with the 1954 Hague Convention on the Protection of Cultural Property during armed conflict.[42] Opposed to the Law of Geneva, the body of law known colloquially as the "law of the Hague" deals primarily with regulations governing the conduct of hostilities and imposes restrictions or outright bans on weapons and tactics. The 1899 and 1907 Hague Conventions are the source of the term's name. Rules safeguarding individuals not under the authority of a conflicting party are included.[43] However, the significance of the distinction between the "Law of Geneva" and the "Law of Hague" has diminished significantly with the introduction of Additional

[37] 'UNSC Res 1472 (28 March 2003) UN Doc S/RES/1472(2003)'.
[38] Shaw (n 35) 1171.
[39] Richard R Baxter, 'The Geneva Conventions of 1949' (1956) 8 Naval War College Review 25, 1 <https://www.jstor.org/stable/45117320?seq=2> accessed 28 February 2024.
[40] ibid 2.
[41] 'Hague Conventions | How Does Law Protect in War? - Online Casebook' <https://casebook.icrc.org/a_to_z/glossary/hague-conventions> accessed 26 February 2024; Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, (adoptedd 14 May 1954) S. Treaty Doc. 106-1; 249 U.N.T.S. 216.
[42] Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, (adopted 14 May 1954) S. Treaty Doc. 106-1; 249 U.N.T.S. 216.
[43] International Committee of The Red Cross, 'Law of the Hague | How Does Law Protect in War? - Online Casebook <https://casebook.icrc.org/a_to_z/glossary/law-hague> accessed 3 March 2024.

Protocols to the 1949 Geneva Conventions, which address regulations concerning the conduct of hostilities.[44]

2.2 The United Nations Charter

The United Nations Charter (The Charter) is another important treaty in international law governing international disputes and security.[45] The Charter, established as the foundational text of the United Nations, was signed on June 26, 1945, in San Fransisco and officially took effect on October 24. Due to its distinctive global nature, UN Member States must adhere to its provisions, which are recognized as an international treaty. The Charter contains fundamental principles of international affairs, encompassing concepts such as the sovereign equality of states and the prohibition of the use of force in international dealings.[46] The concept of international peace and security within the Charter dates to the Atlantic Charter, executed on August 14, 1941, when Franklin D. Roosevelt, President of the United States of America, and Winston Churchill, Prime Minister of the United Kingdom, articulated *"certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world*."[47] Later, on 1 January 1942, a coalition of twenty-six nations engaged in conflict with the Axis Powers formally endorsed the shared objectives and principles outlined in the Atlantic Charter. This endorsement was documented in a declaration commonly referred to as the "Declaration by the United Nations."[48]

2.2.1 Whom does it apply to?

The Charter is divided into chapters. Chapter I defines the purposes and principles of the UN. Article 1, Paragraph 1 of Chapter I outlines the objectives of the United Nations, which are to uphold global peace and security, implement efficient collective actions to prevent and address threats to peace, counter acts of aggression or other disruptions to peace, and facilitate peaceful

[44] International Committee of The Red Cross, 'Law of Geneva | How Does Law Protect in War? - Online Casebook' (n 34).
[45] United Nations, Charter of the United Nations, 1 UNTS XVI, (24 October 1945).
[46] United Nations, 'United Nations Charter' (*United Nations*) <https://www.un.org/en/about-us/un-charter> accessed 3 March 2024.
[47] United Nations, 'Preparatory Years: UN Charter History' (*United Nations*) <https://www.un.org/en/about-us/history-of-the-un/preparatory-years> accessed 3 March 2024.
[48] ibid.

resolution of international disputes or potential conflict situations by principles of justice and international law.[49] Chapter II then outlines the membership of the Charter; Article 3 states that the founding Members of the United Nations are the states that attended the UN Conference on International Organization in San Francisco or had previously endorsed the Declaration by the United Nations on 1 January 1942 and subsequently signed and ratified the Charter by Article 10.[50]

However, the Charter does not only apply to fully incorporated member states. It also contacts member states with observer status at the UN, such as Palestine. With its resolution 43/177, titled "Participation of Palestine in the work of the United Nations," adopted by the UN General Assembly on December 15, 1988, observer status at the United Nations was granted to Palestine.[51] Observer status can be seen as a quasi-membership arrangement allowing non-member States to engage in the UN's activities in an observer capacity. In the UN context, the term "observer" entails restricted involvement in the organization's work.[52] Article 32 of the Charter stipulates that non-member states involved in disputes under Security Council consideration have the right to participate in discussions without voting rights. [53] This was demonstrated in the case of the UK's complaint against Albania, where Albania, not a UN member at the time, was invited to participate in discussions regarding the Corfu incidents, provided it accepted responsibilities akin to those of a UN member. With the resolution S/RES/19(1947) adopted by the Security Council, Albania agreed to the invitation and made statements before the Council on February 19, 1947.[54] Thus, the UN Charter applies not only to member states but also to states with observer status and non-member states.

2.2.2 Jus cogens and international treaties

A treaty represents an international accord reached between states and regulated by international law. International law mandates that parties to a treaty must fulfill the obligations they have undertaken within the agreement. Nevertheless, international law assesses the integrity of such

[49] Article 1 United Nations, Charter of the United Nations, 1 UNTS XVI, (24 October 1945).
[50] Article 3 of the ibid.
[51] UNGA Resolution on Participation of Palestine in the work of the United Nations 'UNGA Res A/RES/43/177 (15 December 1988)'.
[52] Seung Hwan Choi, 'The Status, Rights, and Duties of Observers for Non-Member States of the United Nations' (1991) 19 Korean Journal of Comparative Law 135, 136 <https://heinonline.org/HOL/P?h=hein.journals/ktilc19&i=140> accessed 26 March 2024.
[53] ibid 153.
[54] 'UNSC Res 19 (27 February 1947) UN Doc S/RES/19(1947)'.

agreements based on universally recognized principles, one of which is the concept of international *jus cogens*.[55] Article 53 of the 1969 Vienna Convention on the Law of Treaties (VCLT) is essentially the only official explanation for the idea of jus cogens in treaties.[56]Article 53 states that a treaty becomes invalid if, at the time of its formation, it conflicts with a fundamental principle acknowledged by the international community as a rule that cannot be violated and can only be changed by another similar principle established later on.[57]

However, this definition has been quite influential, especially in The International Law Commission (ILC) work. As a result, with the Vienna Convention on the Law of Treaties adopted in 1986, article 53 applies not only to treaties between states but also to those states and international organizations and even among international organizations.[58] The question remains: what falls under the "peremptory" norm, as stated in article 53? During its 3582nd session, the Commission reviewed the report submitted by the Drafting Committee. It approved the draft conclusions regarding identifying and legal implications of peremptory norms of general international law (jus cogens), including the annex containing a non-exhaustive list of such norms.[59] Conclusion 2 states that the essential ideals of the international community are reflected and safeguarded by the fundamental standards of general international law, or *jus cogens*. They are superior to other international legal norms regarding hierarchy and universal applicability. [60]

Conclusion 23, along with its annex, provides a more comprehensive understanding of the fundamental values recognized by the international community, as perceived by the Commission in the mentioned Conclusion. The annex, which offers a non-exhaustive list of peremptory norms,

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[55] Mysore G Narasimhaswamy, 'Jus Cogens and International Law' (1972) 14 Journal of the Indian Law Institute 340, 340 <https://www.jstor.org/stable/43950142> accessed 27 March 2024.
[56] Ulf Linderfalk, *Understanding Jus Cogens in International Law and International Legal Discourse* (Edward Elgar Publishing 2020) 7 <https://www.elgaronline.com/display/9781786439505/04_chapter1.xhtml> accessed 2 April 2024.
[57] Art. 53: A treaty is void if it conflicts with a peremptory norm of general international law at the time of its conclusion. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character of the Vienna Convention on the Law of Treaties UN doc. A/CONF.80/WP.2. adopted 1977.
[58] United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations UN doc. A/CONF.129/15. adopted 1986.
[59] 'Peremptory Norms of General International Law (Jus Cogens) Texts of the Drafting Committee on Second Reading. (2022) UN Doc. A/CN.4/L.967.'
[60] art. 43 'Report of the International Law Commission. Seventy-Third Session. Supplement No. 10 (A/77/10) Adopted 2022'.

is valuable in describing these foundational principles. These include the prohibition of aggression, genocide, and crimes against humanity, the basic rules of international humanitarian law, the prohibition of racial discrimination and apartheid, slavery, torture, and the right to self-determination.[61] The case of *Prosecutor v. Anto Furundžija*[62] is an example of how the international courts have interpreted the importance of these fundamental values, such as the prohibition against torture. The Trial Chamber determined that the prohibition of torture has reached the level of jus cogens, constituting an imperative norm of international law that cannot be violated or overridden. Therefore, observing that, it is evident that the jus cogens character of the prohibition against torture underscores its position as one of the most fundamental benchmarks of the international community. This point of view was then approved by the European Court of Human Rights (ECtHR) in the case of *Al-Adsani v. the United Kingdom,* where the court stated that

> …because of the importance of the values it protects, this principle has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ordinary customary rules.[63]

While the significance of following these values and recognizing their hierarchy may be important, it's crucial to acknowledge that their relevance becomes insignificant if they are not being adhered to. The draft Conclusion 19 states the consequences of serious breaches of peremptory norms of general international law (jus cogens).[64] Paragraphs 1-4 define the importance of States cooperating to *"bring an end through lawful means any serious breach by a State of an obligation arising under a peremptory norm of general international law."*[65] In its commentary with Conclusion 19, the Commission bases its definition on article 41 of the articles on the responsibility of States for internationally wrongful acts, a text adopted by the Commission at its

[61] art. 43 ibid conclusion 23.
[62] *Prosecutor v Anto Furundžija (Case No IT-95-17/1-T), Judgment of 10 December 1998, Trial Chamber, International Criminal Tribunal for the Former Yugoslavia*.
[63] *Case of Al-Adsani v The United Kingdom, Application no 35763/97* para 61.
[64] Conclusion 19 'Report of the International Law Commission. Seventy-Third Session. Supplement No. 10 (A/77/10) Adopted 2022' (n 60).
[65] Conclusion 19 'Peremptory Norms of General International Law (Jus Cogens) Texts of the Drafting Committee on Second Reading. (2022) UN Doc. A/CN.4/L.967.' (n 59) para 1.

fifty-third session in 2001.[66]The ICJ, in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[67]emphasized the importance of cooperation to address violations of rights, including the right to self-determination and obligations under international humanitarian law. The Court highlighted that all states are responsible for working together while upholding the principles of the UN Charter and international law to remove any barriers resulting from these violations. [68]Likewise, in its advisory opinion regarding the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the Court emphasized that all States must collaborate with the UN to rectify breaches of obligations stemming from the right to self-determination.[69] Even though the Court, in these opinions, does not specifically mention obligations of a peremptory nature, it does, however, link them to cooperation to address serious breaches that are inherently peremptory in nature. The wording outlined in paragraph 1 of Draft Conclusion 19 is positive. However, paragraph 2 outlines two distinct obligations for States. Firstly, states must refrain from recognizing any situation stemming from a serious breach of such norms as lawful. Secondly, they are obligated not to provide aid or assistance in perpetuating such situations. These obligations might seem separate, but the duty of non-assistance logically follows from the duty of non-recognition. Similarly, the ICJ in *Prosecutor v. Bosco Ntaganda* reiterated that a general legal obligation exists not to acknowledge situations resulting from specific violations.[70] The General Assembly has also shown its concern regarding the obligation of non-recognition, for example, in its resolution A/RES/ES-11/1 regarding the situation in Ukraine in 2022 by stating: *"The General Assembly deplores the involvement of Belarus in this unlawful use of force against Ukraine, and calls upon it to abide its international obligations."*[71] Likewise, it affirmed its resolution from 2017 regarding the Status of Jerusalem that any decisions or actions aimed at changing the character, status, or demographic composition of Jerusalem are legally null and void and must be revoked by relevant Security Council

[66] 'UNGA Res 56/83 (12. December 2001) UN Doc A/56/49(Vol.I)/Corr.4.'
[67] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I C J Reports 2004, p 136*.
[68] ibid para. 155-157.
[69] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, ICJ Reports 2019, p 95*.
[70] *The Prosecutor v Bosco Ntaganda* [2019] International Criminal Court, Trial Chamber VI ICC-01/04-02/06.
[71] 'UNGA Res A/RES/ES-11/1 (18. March 2022)' para. 10.

resolutions; therefore, refrain from recognizing any actions or measures that contradict those resolutions.[72]

Understanding jus cogens in international law is crucial, particularly when discussing international treaties, organizations, and state responsibility. As previously noted, jus cogens protect some of the fundamental values of the international community; the Commission underscores the universal applicability and hierarchical superiority of these norms, as well as their vital role in upholding international legal standards. In essence, the international community is urged to refrain from actions that contravene peremptory norms and to uphold the principles of international law and cooperation in addressing breaches, thereby ensuring the preservation of fundamental values and legal standards. Therefore, treaties such as the UN Charter hold a jus cogens status and must be upheld.

2.2.3 Reconciliation during times of conflict under the UN Charter

Modern global society has focused on peacebuilding and conflict resolution to improve international relations and internal state cohesiveness. Despite great advancements in the field of peaceful conflict resolution by politicians and academics, there are still a lot of violent conflicts in the world as we know it due to fierce struggle among states for resources and power.[73] As previously said, state reconciliations can have political ramifications. However, Chapter VI of the Charter, Pacific Settlement of Disputes, does include peaceful conflict resolution between states. According to Article 2(3) of the UN Charter, Member States of the UN have pledged to settle their disputes peacefully to maintain international peace and security. The UN system has established the option to petition the Security Council (SC) to facilitate and support this undertaking. In this kind of referral, the procedure might be started by a third party, one of the disputing parties, or both. [74]According to Article 48 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, conflicts between a responsible state and a third party can arise

[72] 'UNGA Res A/RES/ES-10/19 (22. December 2017)' para. 1.
[73] Nino Petriashvili and Darejan Tsutskiridze, 'Commonly Misused Terms: War, Armed Conflict, Civil War and Military Coup D'Etat' (2021) 2 Cybersecurity and Law 108, 102 <http://www.cybersecurityandlaw.com/Commonly-Misused-Terms-War-Armed-Conflict-Civil-War-and-Military-Coup-D-Etat,133852,0,2.html> accessed 10 April 2024.
[74] Mohammad Alipour, 'The Competence of the Security Council over Situations or Disputes Arising from Human Rights Violations by a State under Chapter VI of the United Nations Charter' (2023) 64 Hungarian Journal of Legal Studies 162, 137 <https://akjournals.com/view/journals/2052/64/2/article-p135.xml> accessed 9 April 2024.

from circumstances like human rights violations, such as wars.[75] Reciprocity-based traditional international legal norms do not immediately apply to human rights abuses. Because of the significance of the impacted rights, third parties have a legal interest in guaranteeing compliance, even in cases where the victim state is the only party directly harmed.[76] According to the International Law Commission (ILC), every state has the authority to hold others responsible for violating collective agreements.[77] This gives outsiders the authority to hold transgressing states responsible for breaking their commitments to the international community. Given the significance of the rights at stake, the ICJ supported the ILC's position in its historic decision in the Barcelona Traction case.[78] The ICJ stated that all states have a legal interest in honoring their obligations to the international community at large. If a third state can demonstrate that the rights in question are connected to *erga omnes* obligations, it will be legally permitted to lodge a complaint against another state in this situation. As a result, the state that intervenes may file a valid international lawsuit against the state that violated human rights laws under the terms of its *erga omnes* commitments. Third parties may, therefore, file complaints by *erga omnes* duties. Political disagreements may occur, but the SC may step in under Chapter VI of the Charter.[79] This can also be seen in the European Convention on Human Rights, especially Article 33, where a party to the Convention may notify the European Court of Human Rights of any alleged breaches by a participating party of the provisions outlined in the Convention and its related protocols.[80] This, of course, is limited to member states of the agreement. Nevertheless, it shows how it can have an *erga omnes* effect and that the concept is widely recognized.

In conclusion, the UN Charter strongly emphasizes resolving disputes peacefully, as stated in Article 2(3). Disputes resulting from human rights violations can be invoked by third parties, as was seen in the ICJ's decision in the Barcelona Traction case. Mechanisms within the UN system

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[75] 'Responsibility of States for Internationally Wrongful Acts (2001). Text Reproduced as It Appears in the Annex to General Assembly Resolution 56/83 of 12. December 2001, Corrected by Document A/56/49(Vol. I)/Corr.4.'
[76] Alipour (n 74) 139.
[77] 'Responsibility of States for Internationally Wrongful Acts (2001). Text Reproduced as It Appears in the Annex to General Assembly Resolution 56/83 of 12. December 2001, Corrected by Document A/56/49(Vol. I)/Corr.4.' (n 75) 127.
[78] *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain), Judgment, ICJ Reports 1970* paras. 33-34.
[79] Alipour (n 74) 139.
[80] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art. 33.

exist to address conflicts and defend international legal principles, ensuring peace and security despite possible political obstacles. The author will dwell deeper on this in the following chapters.

2.2.4 Intervention in times of conflict under the UN Charter

Nonetheless, the question remains: does the Charter serve as an effective international instrument after reconciliation methods, according to Chapter VI, have failed once conflicts, including armed hostilities and war, have already erupted? Chapter VII of the Charter outlines the actions concerning Threats to Peace, Breaches of the Peace, and Acts of Aggression. Specifically, Article 39 gives the Security Council authority to determine when a threat to, or breach of, the peace has occurred and decide what measures shall be taken by Articles 41 and 42 to maintain or restore international peace and security. Article 44 then specifies what measures shall be taken if the Security Council decides to use force.[81] Even though the Charter does not explicitly mention reconciliation, article 41 covers the measures that the UN Security Council (UNSC) may decide not to involve using armed forces. Article 41further states that:[82]

> The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and rail, sea, air, postal, telegraphic, radio, and other means of communication and the severance of diplomatic relations.

The UNSC imposition of UN sanctions is one instrument for maintaining international peace and security. Member States are obligated to carry out UNSC resolutions, including sanctions-related ones, by Article 25 of the UN Charter, which gives the UNSC unmatched powers that no other body has.[83] Perceived dangers to international peace and security are the focus of the Security Council's actions. The term "may" often indicates that the council's jurisdiction is discretionary and covers various non-military measures. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal of Rwanda (ICTR) were, for example,

[81] United Nations, Charter of the United Nations, 1 UNTS XVI, (24 October 1945). art. 39-44.
[82] Article 41 of the ibid.
[83] Michael Brzoska, 'International Sanctions before and beyond UN Sanctions' (2015) 91 International Affairs (Royal Institute of International Affairs 1944-) 1349, 1339 <https://www.jstor.org/stable/24539062> accessed 8 April 2024.

established under Article 41, and the council has historically used this instrument to carry out creative applications, such as setting up a transitional government in Kosovo.[84]

As previously mentioned, the non-military means covered by Article 41 can be implemented collectively by international bodies like the UN or unilaterally by one state against another. These policies range from trade bans on specific items like lumber or weapons to more general sanctions.[85] For example, the United States and the United Kingdom chose to impose unilateral sanctions on Sberbank and VTB Bank, two of Russia's biggest banks, in 2022 as a reaction to the violence in Ukraine. Likewise, Germany signaled that it would abandon the Nord Stream 2 Baltic Sea gas pipeline project, which sought to double the amount of Russian gas that Germany received directly from Russia. Furthermore, Poland, the Czech Republic, Bulgaria, and Estonia implemented airspace closures for Russian airlines.[86] The European Union has also imposed extensive sanctions on Russia, targeting both individuals and entities involved in undermining Ukraine's sovereignty. Travel restrictions and asset freezes are two examples of these penalties. In addition, the EU has imposed economic sanctions, prohibiting from February 2022 onward billions of euros' worth of exports and imports with Russia. The intention is to limit Russia's capacity to behave aggressively going forward and to severely punish for its conduct. To protect territorial integrity and sovereignty, these steps are a reaction to what Russia has been doing in Ukraine.[87] A similar approach can also be seen in the *Bosphorus v. Ireland* case issued by the European Court of Human Rights, where the Turkish company Bosphorus Airlines had leased an aircraft from the former Yugoslavia's national carrier. However, due to a dispute between Yugoslavia and its successor states, Ireland impounded the aircraft on the grounds of a court order obtained by the Bosnian government. Bosphorus Airlines argued that Ireland had violated its right to peaceful enjoyment of possession under Article 1 of Protocol No. 1 of the European Convention on Human Rights. The Court found that Ireland's impoundment of the aircraft was lawful and pursued a

[84] Kristen E Boon, 'The Legal Framework of Security Council Sanctions' (International Peace Institute 2014) 2 <https://www.jstor.org/stable/resrep09626.5> accessed 8 April 2024.
[85] Christopher Michaelsen, 'What Are Sanctions, Do They Ever Work – and Could They Stop Russia's Invasion of Ukraine?' (*The Conversation*, 27 February 2022) <http://theconversation.com/what-are-sanctions-do-they-ever-work-and-could-they-stop-russias-invasion-of-ukraine-177926> accessed 8 April 2024.
[86] ibid.
[87] Council of the European Union, 'EU Sanctions against Russia Explained' <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/> accessed 8 April 2024.

legitimate aim, namely, enforcing a judicial decision, and therefore, Ireland did not breach the European Convention on Human Rights.[88]

To conclude, Article 41 of the Charter serves as a mechanism, through the mentioned sanctions, when situations involving threats to peace, breaches of peace, or acts of aggression arise. While sanctions may take unilateral or collective forms and involve actions between states or international organizations, the Security Council wields specific authority through Article 41. Member States are obliged under Article 25 of the Charter to implement such sanctions as directed by the Security Council.

When the peaceful measures and reconciliation attempts outlined in Article 41 have failed, Article 42 of the Charter provides a new approach. It reserves the right to deploy air, sea, or land forces necessary to uphold or reinstate international peace and security.[89] As stated by international law and the UN Charter, a state or coalition of states may only use military force in three situations, With express authorization from the SC as mentioned in Article 42 here above, in self-defense as stated in Article 51, or according to Article 53, when acting through a regional organization.[90] Resolution 678, adopted by the Security Council at its 2963 meeting on November 29, 1990, is a well-known demonstration of the UN's utilization of Article 42.[91] The resolution was a consequence of Iraq's invasion of Kuwait in August 1990 and prompted an immediate response from the international community. The SC, in its resolution, authorized Member States to use "all necessary means" to implement Security Council resolution 660 of 1990, which demanded Iraq to withdraw immediately and unconditionally all its forces from Kuwait.[92] According to UN Charter Article 42, before acting under said Article, the SC must conclude that the steps listed in Article 41 would be insufficient, as was stated above. Some Council members contended that because the Council never formally deemed the economic measures mentioned in Article 41 insufficient, Resolution 678 was invalid from a legal standpoint.[93] Debates inside the Council, however,

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[88] *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Şirketi v Ireland App no 45036/98 (ECtHR, 30 June 2005)*.
[89] United Nations, Charter of the United Nations, 1 UNTS XVI, (24 October 1945). art. 42.
[90] Nigel D White, 'From Korea to Kuwait: The Legal Basis of United Nations' Military Action' (1998) 20 The International History Review 617, 597 <https://www.jstor.org/stable/40101318> accessed 12 April 2024.
[91] 'UNSC Res 678 (29. November 1990) UN Doc S/RES/678(1990).'
[92] 'UNSC Res 660 (2. August 1990) UN Doc S/RES/660(1990).'
[93] Omar Bakhashab, 'The Implication of Iraqi Invasion of Kuwait, A Legal Study within the Framework of the UN Charter' (1999) 12 Journal of King Abdulaziz University-Economics and Administration 45, 28 <http://prod.kau.edu.sa/centers/spc/jkau/Data/Review_Artical.aspx?No=1405> accessed 16 April 2024.

indicated that many members thought the sanctions would be sufficient to force Iraq to withdraw from Kuwait. Nevertheless, the choice to approve the use of force suggested that it was possible that sanctions would not work. The case for military intervention was, however, strengthened by the Iraqi regime's persistent disobedience even after six months of sanctions. The effectiveness of extending the sanctions was debatable, but the Council certainly possessed the legal right to determine whether military action was required.[94] Despite ongoing criticism, the resolution is known for its legality regarding the SC and the use of force, as declared in Article 42 of the Charter. Another example of the UN's involvement in international disputes is the Korean War of 1950. The case of Korea demonstrates how, in certain situations, the terms of the Charter and the systems it creates can be modified and applied to stop aggression and prevent it from occurring in the first place.[95] In this case, however, one member state, the United States, was willing to shoulder a great deal of responsibility, and its swift engagement was crucial to the success of the UN's efforts. Without it, collective action might have been delayed and ineffective in achieving substantial results.[96] Consequently, it would be more correct to characterize what is sometimes called a UN proposal as a military action directed by the US and backed by counsel and support from certain UN members.[97]

In this chapter, a reference has been made to the principles and procedures for resolving international conflicts and maintaining international security outlined in the UN Charter. In conclusion, the Charter describes nonviolent ways to stop aggression and threats to the peace while respecting international law. While Chapter VI of the Charter strongly emphasizes peaceful conflict resolution, Chapter VII gives the Security Council the power to act when necessary to uphold peace. Non-military actions, like sanctions, are permitted by Article 41, and member states must carry out said Security Council decisions. As demonstrated by Resolution 678's reaction to Iraq's invasion of Kuwait in 1990. Article 42 then allows military action if these diplomatic measures are insufficient. The UN Charter essentially creates a framework for non-military measures and, if necessary, military action authorized by the SC to be used in conjunction with diplomacy to resolve disputes. It directs the global community in preserving core principles and

[94] Bakhashab (n 93).
[95] Leland M Goodrich, 'The United Nations and the Korean War: A Case Study' (1953) 25 Proceedings of the Academy of Political Science 104, 102 <https://www.jstor.org/stable/1173269> accessed 16 April 2024.
[96] ibid 104.
[97] ibid.

legal norms in the pursuit of global justice and peace. As the primary goal of the Charter is to uphold peace by deterring aggression and adverting armed conflicts, the author contends that this aligns with the fundamental norms recognized by the international community; the Charter, therefore, qualifies as jus cogens. Member States must uphold these ideals and abstain from acting in a way that is inconsistent with them.

2.3 Rome Statute of the International Criminal Court

On 17th July 1998, 160 countries came together to create the first official international criminal court governed by a treaty. This agreement is also known as the Rome Statute of the International Criminal Court.[98], describes several topics, such as the types of crimes that fall under the ICC's purview, the rules governing procedures, and the structures that allow governments to cooperate with the court.[99] The most heinous crimes the world community is concerned about include genocide, war crimes, crimes against humanity, and crimes of aggression. The International Criminal Court investigates these crimes and, when needed, brings criminal charges against the alleged perpetrators.[100] States Parties are recognized as having approved these regulations and are represented in the Assembly of States Parties.

The formal agreement between the ICC and the UN defining their institutional connection was signed on October 4, 2004.[101] Article 34 of the Vienna Convention on the Law of Treaties 1969[102] states that an international agreement cannot impose duties on a nation without that nation's express "consent." This principle is known as *pacta tertiis nec nocent nec prosunt.* As a result, only countries that have ratified the Statute or expressed their express "consent" are eligible to use the authority granted to the ICC to hear cases under it.[103] As a treaty, the statute's Article 12(1) and

[98] Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted on 17 July 1998, entered into force July 1, 2002).
[99] International Criminal Court, *Understanding the International Criminal Court* (2020) 10 <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>.
[100] International Criminal Court, 'About the Court' (*International Criminal Court*) <https://www.icc-cpi.int/about/the-court> accessed 21 April 2024.
[101] International Criminal Court, *Understanding the International Criminal Court* (n 99) 10.
[102] Article 34 of the Vienna Convention on the Law of Treaties UN doc. A/CONF.80/WP.2. adopted 1977.
[103] Bugivia Putri and Sefriani Sefriani, 'The International Criminal Court Jurisdiction Towards The Deportation Issues In Myanmar' (2021) 10 Yustisia Jurnal Hukum 320, 306.

(2)[104] declare that all of its member states and their populations and territories must abide by it. It further stipulates that states recognize the jurisdiction of the Court by becoming parties to the statute if one of the two jurisdictional requirements is met: either a crime listed in Article 5[105] takes place on their territory or is committed by one of their people.[106]

As a result, the Statute covers the serious crimes listed in Article 5, including aggression, war crimes, crimes against humanity, and genocide. The statute's applicability to member states has been established, but the question remains whether it also applies to non-member states. Moreover, what channels are open to non-member states that are being attacked and need support? States that are not parties may fall under the territorial jurisdiction. There are two ways to claim the jurisdiction of the ICC in cases when a citizen of one non-party state gravely violates human rights on the territory of another non-party state.[107] First, as stated in Article 13(b) [108] of the Statute, the matter may be brought to the ICC by a resolution adopted by the UNSC. Second, as stated in Article 12, paragraph 3[109], jurisdiction is a statement by a state, not a party to the Statute. The UNSC has the authority to send the matter to the ICC under Article 13(b) of the Statute, derived from Chapter VII of the UN Charter. Two examples of crimes allegedly perpetrated on the territory and by citizens of two non-member states, Sudan and Libya, can be found in UNSC resolutions

[104] Article 12(a)(b): A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5. 2. In the case of article 13, paragraph [a] or [c], the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3: [a] The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; [b] The State of which the person accused of the crime is a national. Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted on 17 July 1998, entered into force July 1, 2002).

[105] ibid Article 5: The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression.

[106] Talita de Souza Dias, 'The Nature of the Rome Statute and the Place of International Law before the International Criminal Court' (2019) 17 Journal of International Criminal Justice 536, 508 <https://heinonline.org/HOL/P?h=hein.journals/jicj17&i=510> accessed 18 April 2024.

[107] Putri and Sefriani (n 103) 309.

[108] Article 13(b) 'A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;' of the Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted on 17 July 1998, entered into force July 1, 2002).

[109] Article 12(3) ' If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court concerning the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.' ibid.

1593[110] and 1970[111]. Security Council recommendations are exempt from completing any of the requirements listed in Article 12 according to Article 13(b), as mentioned above. This raised questions among academics about whether the Rome Statute's requirements extended to these governments and the people under their control, especially in retroactive situations, that is, to events before the referral date. Still, the Court continued to apply the Statute's substantive provisions to the parties automatically, like instances based on the consent of accepting states and member states.[112] The Pre-Trial Chamber 1 (PTC1) in the case *The Prosecutor v. Omar Hassan Ahmad Al Bashir* following mentioned Resolution 1593, known as the Darfur situation, noted that it is "... exercising jurisdiction following a referral by the UNSC made under Chapter VII of the UN Charter, by article 13(b) of the Statute."[113] However, it's worth mentioning that in this case, even though Sudan is not part of the Rome statute, it is part of the UN Charter, and according to Article 25 of the Charter, a member state of the UN is obliged to implement the contents of the Resolution**.** As mentioned earlier, non-member states have, on the other hand, the option to use Article 12(3) of the Statute to bring cases against people who commit serious international crimes on their soil. Countries such as Egypt, Palestine, Ukraine, and Côte d'Ivoire[114] have turned in declarations under the Article acceding to the ICC's jurisdiction.[115]

In the author's opinion, the Rome Statute, which defines fundamental international crimes such as war crimes, crimes against humanity, genocide, and aggression, is of a *jus cogens* nature. These crimes are acknowledged as breaches of fundamental human rights and are deemed serious enough to fall within the jurisdiction of all nations without exception or restrictions. As a result, the Rome Statute supports the *jus cogens* concepts previously articulated in this thesis by imposing rules against these serious offenses. As established earlier, *jus cogens* norms are preemptive principles

[110] 'UNSC Res 1593 (31. March 2005) UN Doc S/RES/1593'.
[111] 'UNSC Res 1970 (26. February 2011) UN Doc S/RES/1970'.
[112] de Souza Dias (n 106) 509.
[113] *The Prosecutor v Omar Hassan Ahmad Al Bashir ICC-02/05-01/09 (13 December 2011)* (International Criminal Court) para. 36.
[114] ICC, 'Declaration by Ukraine Lodged under Article 12(3) of the Rome Statute, 8 September 2015' <https://www.legal-tools.org/doc/b53005/> accessed 19 April 2024; ICC, 'Declaration de Reconnaissance de La Compétence de La Cour Pénal Internationale' <https://www.legal-tools.org/doc/036bd2/pdf> accessed 19 April 2024; ICC, 'Declaration of Palestine Recognizing the Jurisdiction of the International Criminal Court' <https://www.legal-tools.org/doc/d9b1c6/> accessed 19 April 2024; ICC, 'The Determination of the Office of the Prosecutor on the Communication Received in Relation to Egypt' <https://www.legal-tools.org/doc/2945cd/> accessed 19 April 2024.
[115] Ling Yan, 'Quality Control in Preliminary Examination' (2018) 2 Torkel Opsahl Academic EPublisher 441, 444.

of international law and are regarded as essential and unbreakable, from which no state can legitimately deviate. One possible strategy to prevent these fundamental rights from being violated, despite possible political obstacles, would be to extend the jurisdiction of the ICC to non-member states, allowing them to file cases with the Court despite prior restrictions. The ICC serves to bring criminals before the Court to pursue justice for their heinous crimes. The Court is distinct from the ICJ in that the latter handles disputes between states and lacks authority over cases involving individual criminal wrongdoings.[116]

2.3.1 Challenges and the Success of the Court under the Rome Statute

As was already noted, it is evident that there was and still is a call for a judicial system that holds offenders accountable for major crimes. When the ICC was first established, it was considered a breakthrough in the field of international criminal law, confirming the idea that those who perpetrate horrible crimes must be held personally accountable.[117] However, several issues can jeopardize the court's credibility and objectives. Professor of International Law and Security of the University of New South Wales Canberra, Douglas Guilfoyle, provided an overview of the ICC's activities since its founding. He addresses the legitimate worries about the current state of the ICC in his blog post for the European Journal of International Law.[118] In his summary, he found that there have been eight convictions since the Court's founding. Four were for offenses against the administration of justice, which carry penalties ranging from six months to three years and are connected to the Central African Republic inquiry.[119] The remaining four convictions are the cases of Bemba, who was originally given an 18-year sentence but had it overturned on appeal case of Katanga, who was given a 12-year sentence but was later returned to the Democratic Republic of Congo (DRC) with his "sentence served" meaning he finished serving his sentence after eight years instead of twelve; the Lubanga case; who received a 14-year sentence and Al-Mahdi; who

[116] United Nations Department of Public Informations, 'International Criminal Court - Some Questions and Answers' (*United Nations*, 1998) <https://legal.un.org/icc/statute/iccq&a.htm> accessed 21 April 2024.
[117] Milena Sterio, 'The International Criminal Court: Current Challenges and Prospect of Future Success' (2020) 52 Case Western Reserve Journal of International Law 478, 468.
[118] Douglas Guilfoyle, 'Part I- This Is Not Fine: The International Criminal Court in Trouble' (*EJIL: Talk!*, 21 March 2019) <https://www.ejiltalk.org/part-i-this-is-not-fine-the-international-criminal-court-in-trouble/> accessed 21 April 2024.
[119] ibid.

entered a guilty plea and was given a 9-year sentence.[120] It would be naive to criticize the court only for being unable to get convictions against every defendant. Since all courts must protect defense rights and preserve the presumption of innocence for all defendants, it is unusual for any court to have a conviction percentage of 100 percent. Nonetheless, the court's prosecutor might rightfully be criticized for only launching a small number of cases and for putting forward weak cases.[121] Also worth mentioning is the ICC's difficulties in fostering positive relationships with key international powers such as China, Russia, and the US. Resolutions proposed by the Security Council to send the Syrian crisis to the ICC have been regularly blocked by China and Russia. During the Bush administration, the US signed bilateral agreements to preclude extraditing US citizens and implemented laws prohibiting cooperation with the ICC.[122] Furthermore, Sudanese President Al-Bashir went freely to several nations, including ICC member states, without fear of arrest or extradition, even though he had arrest warrants issued by the ICC for him in 2009 and 2010. This is an example of the ICC's ability to hold people accountable for crimes against humanity, war crimes, and genocide is compromised by this unwillingness to collaborate.[123] The author also noted that a significant amount of time passes between the start of an investigation, the issuance of arrest warrants, and the resolution of a case. For example, an arrest warrant was issued in 2008 in the Bemba case, one of the examples already mentioned, but the verdict was not rendered until 2016[124]. Similarly, in the Lubanga case, an arrest order was filed in 2006, and a verdict was rendered in 2012.[125] In the Katanga case, an arrest warrant was issued in 2007, and a verdict was rendered in 2014.[126] Lastly, the Al-Mahdi case is not similar to these cases, and it had

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[120] *The Prosecutor v Jean-Pierre Bemba Gombo, ICC-01/05-01/08 (21 March 2016)* (International Criminal Court-Trial Chamber III); *The Prosecutor v Germain Katanga ICC-01/04-01/07 (7 March 2014)* (International Criminal Court- Trial Chamber II); *The Prosecutor v Thomas Lubanga Dyilo ICC-01/04-01/06 (14 March 2012)* (International Criminal Court-Trial Chamber II); See *The Prosecutor v Ahmad Al Faqi Al Mahdi ICC-01/12-01/15 (27 September 2016)* (International Criminal Court-Trial Chamber II).

[121] Sterio (n 117) 469.

[122] ibid 474.

[123] Tom White, 'States "Failing to Seize Sudan's Dictator despite Genocide Charge"' *The Observer* (21 October 2018) <https://www.theguardian.com/global-development/2018/oct/21/omar-bashir-travels-world-despite-war-crime-arrest-warrant> accessed 21 April 2024.

[124] International Criminal Court, 'Case Information Sheet - The Prosecutor v. Jean-Pierre Bemba Gombo' <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/BembaEng.pdf>.

[125] International Criminal Court, 'Case Information Sheet-The Prosecutor v. Thomas Lubanga Dyilo' <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/LubangaEng.pdf>.

[126] International Criminal Court, 'Case Information Sheet - The Prosecutor v. Germain Katanga' <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/KatangaEng.pdf>.

a shorter trial because it involved a guilty plea.[127] Understandably, as was previously noted, since courts must protect the defense's rights, it is common knowledge that the judicial process entails a considerable amount of time. The ICC's function and procedural framework are essential in international criminal justice. Its effectiveness is critical to the development of this field, and any setback might be disastrous. The necessity of a judicial institution such as the ICC becomes evident, particularly when holding individuals accountable for serious crimes. However, in the light of the aforementioned few cases that the court has taken upon itself, the veto power the major states hold, the length of the cases before reaching a verdict, and the inability to cooperate, such as in the case of Al-Bashir one questions these challenges and the legitimacy of the Court.

Despite its shortcomings, the ICC remains a pillar where the rule of law prevails over force, highlighting its critical role in the future.

3. International organizations relevant in times of conflict

3.1 United Nations Security Council

This thesis has already explained that maintaining global peace and security is the primary responsibility of the United Nations Security Council, one of the main UN bodies. We have also discussed how the UN Charter's Article 25 requires member states to carry out the decisions and resolutions passed by the SC. This differs from other organs of the UN since they only make recommendations to member states.[128] In a sense, the UNSC has the most important role in carrying out legislation and fighting wars.

When there is a threat to peace, the UNSC's first step is to seek peaceful resolutions. This may entail formulating guiding concepts, research, or designating mediators. The Council seeks to quickly put an end to hostilities if they escalate. It gives, for example, instructions for a truce, sends out monitors of peacekeeping forces to defuse the situation, and sets the stage for talks. If needed, it may use enforcement tools such as financial penalties, embargoes, sanctions, or military action. The deployment of United Nations Peacekeeping Forces is one form of military intervention, albeit

[127] International Criminal Court, 'Case Information Sheet - The Prosecutor v. Ahmad Al Faqi Al Mahdi' <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/Al-MahdiEng.pdf>.
[128] United Nations, 'What Is the Security Council? | United Nations Security Council (*United Nations Security Council*) <https://www.un.org/securitycouncil/content/what-security-council> accessed 22 April 2024.

one that isn't specifically mentioned in the UN Charter. The use of these multinational military groups was seen in 1948, monitoring ceasefires in Kashmir and Palestine.[129] Nonetheless, while limiting damage to populations and economies, SC attempts are made to apprehend individuals accountable for horrific acts.[130]

When the Security Council was first established in 1946, it had eleven members. The United States, France, the Soviet Union, the United Kingdom, and the Republic of China (Taiwan) were the five permanent members.[131] With the 1965 amendment to the UN Charter, the nonpermanent members are now 10 in addition to the five permanent members, with Russia's Federation and the People's Republic of China succeeding the seat of the Soviet Union and the Republic of China.[132]

It has been established that the UNSC is the primary body tasked with upholding international peace and security. Its resolutions function as a comprehensive legal framework directing the international community's steps to resolve conflicts. These resolutions affect the entire world community and have worldwide legal weight.[133] Actions taken by the SC in wartime scenarios can be found, for example, in resolution 678, as mentioned before in this thesis regarding Iraq's invasion of Kuwait, an example of the SC acting through Chapter VII of the UN Charter.[134] Another example can be found in Resolution 827[135] in response to the crisis in the Balkans in 1990-1991; this demonstrated the Council's resolve to hold people responsible for crimes committed during the Bosnian war. Similarly, Resolution 1509[136] from 2003 approved sending a UN peacekeeping force to stabilize Liberia during the Second Liberian Civil War. Furthermore,

[129] The Editors of Encyclopaedia Britannica, 'United Nations Peacekeeping Forces | Peacekeeping Missions, Conflict Resolution & Diplomacy | Britannica' (15 March 2024) <https://www.britannica.com/topic/United-Nations-Peacekeeping-Forces> accessed 22 April 2024.
[130] United Nations, 'What Is the Security Council? | United Nations Security Council' (n 128).
[131] The Editors of Encyclopaedia Britannica, 'United Nations Security Council | History & Members | Britannica' (*Britanicca*, 19 April 2024) <https://www.britannica.com/topic/United-Nations-Security-Council> accessed 22 April 2024.
[132] ibid.
[133] Narender Kumar Bishnoi, 'Unveiling the Weight of Veto Power: Exploring the Legal Domain of the UNSC amidst War' (2023) 8 NUJS Journal of Regulatory Studies 60, 65 <https://heinonline.org/HOL/P?h=hein.journals/nujsjlry8&i=291> accessed 22 April 2024.
[134] 'UNSC Res 678 (29. November 1990) UN Doc S/RES/678(1990).' (n 91).
[135] 'UNSC Res 827 (25. May 1993) UN Doc S/RES/827(1993)'.
[136] 'UNSC Res 1509 (19. September 2003) UN Doc S/RES/1509(2003).'

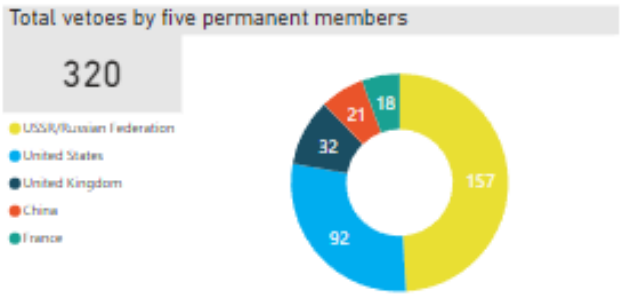
Resolution 1973[137] in 2011 permitted member states to act to protect civilians in Libya and sparked a military intervention by NATO.[138]

These cases underscore the Security Council's involvement in addressing armed conflicts by sanctioning the use of military forces. One asks himself, if the Council has all this power to stop wars and intervene, why do wars keep happening, and are all Resolutions effective?

3.1.1 Veto power and the legitimacy of the Security Council

Veto power is the primary distinction between permanent and non-permanent members of the UN. According to Article 27(3) of the UN Charter, every permanent member must agree on any major decisions the UNSC makes. The power is often discussed in various discussions about the Council's operations, especially in Resolutions regarding armed conflicts.[139] The exercise of the veto power by permanent members of the UNSC in times of war substantially affects the Council's potential to act quickly and effectively in case of military conflicts.[140] The legitimacy and credibility of the Council can be undermined if it is seen as ineffective in carrying out its primary responsibility of maintaining global peace and security. This is particularly important in situations when interventions or humanitarian aid are needed. Consequently, without the prompt international action that the UNSC is known for, those in need of assistance in places of violence and where human rights are being violated endure ongoing brutality.[141] According to The Vetoes Dashboard created by the Security Council Affairs Division, there were 320 vetoes from 1946 to 2024. Russia used its veto power 157 times (the Soviet Union for the longest time), followed by the United States with 92, the United Kingdom with 32, China with 21, and France with 18 votes.[142] This can be visualized with the following chart: [143]

[137] 'UNSC Res 1973 (17. March 2011) UN Doc S/RES/1973(2011)'.
[138] Bishnoi (n 133) 65.
[139] Security Council Report, 'The Veto : UN Security Council Working Methods' (*Security Council Report*) <https://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php> accessed 22 April 2024.
[140] Bishnoi (n 133) 67.
[141] ibid 69–70.
[142] United Nations, 'Security Council Data-Vetoes Since 1946' (*Peace & Security Data Hub*) <https://psdata.un.org/dataset/DPPA-SCVETOES> accessed 22 April 2024.
[143] Total vetoes by five permanent members chart see the following link: ibid.



Total vetoes by five permanent members dated 24 April 2024
Data from the Peace Security Data Hub of the United Nations[144]

When focusing on the vetoes employed by the US and Russia, a trend that indicates regular use in similar circumstances becomes apparent. Russia/ The Soviet Union, which has exercised its veto power the most, usually does so to protect its allies, which include Syria, Cyprus, Georgia, Zimbabwe, and the Balkans.[145] The use of the Russian Federation's veto power in 2022 regarding the situation in Ukraine is also noteworthy to mention since it resulted in the Security Council rejecting a resolution that sought to stop Russia's military invasion against Ukraine.[146] Lastly, on 22. March of this year, when Russia vetoed the resolution that would have determined the imperative of an immediate and sustained ceasefire in Gaza.[147] It was obvious that Russia would veto the ceasefire in Gaza when keeping in mind its (?) own agenda in Ukraine; accepting the Resolution would mean condemning its actions. On the other hand, the US has used its power mostly in the interest of Israel in the Israeli/Palestine crisis.[148] As of December 18, 2023, the US had used its veto power 89 times since 1945. Of these vetoes, Israel was mentioned in 45 cases. This suggests that resolutions directed against Israel have been the target of somewhat more than half of its veto moves. Thirty-three of these vetoed resolutions dealt with matters like the condition

[144] Total vetoes by five permanent members chart see the following link: ibid.
[145] Nneka Blessing, 'A Critique of Veto Power System in the United Nations Security Council' (2017) 5 <https://core.ac.uk/download/pdf/132284073.pdf>.
[146] United Nations, 'Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto' (*United Nations Press*) <https://press.un.org/en/2022/sc14808.doc.htm> accessed 22 April 2024.
[147] United Nations, 'Security Council Fails to Adopt Resolution on Imperative of Immediate, Sustained Ceasefire in Gaza, Owing to Vetoes Cast by China, Russian Federation' (22 March 2024) <https://press.un.org/en/2024/sc15637.doc.htm> accessed 22 April 2024.
[148] Blessing (n 144).

of the Palestinian population or the Israeli occupation of Palestinian territories.[149] Over the years, there has been widespread recognition of the long-standing relationship between the US and Israel. Since the end of World War II, Israel has been the country that the US has sent the most aid abroad. President Obama, for example, linked a security pact with Israel in 2016 that provided 38 billion USD in military assistance for over ten years. Israel is already considered a wealthy country and does not need extra aid since it has a thriving high-tech sector. However, as is frequently the case with foreign policy issues, the US's approach to Israel and the Palestinian territories has been greatly influenced by public opinion, economic factors, and the power of money in politics.[150]

Yet a group of up-and-coming progressives in the House of Representatives, such as Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, and Rashida Tlaib (who is the first elected Palestinian American woman in US history), has made a name for themselves as vocal supporters of Palestinian rights. In contrast to their elders, these younger lawmakers are motivated more by concerns over Israel's treatment of Palestinians in Gaza, the West Bank, and inside Israel itself and rely less on traditional US political financing channels.[151] The younger generation might have the ability to break the pattern of the US's constant support for Israel. For example, the US proposed a resolution in March of this year that demanded an immediate and permanent ceasefire in Gaza. China and Russia, however, vetoed the resolution.[152] These observations regarding the US situation delve into deeper considerations, especially in light of the considerable impact that Jews have in important fields, including politics, administration, law enforcement, and beyond.

As was related above, factors like politics have a great impact during the conflict, which might result in unfavorable consequences. The veto power limits the effectiveness of a clear legislative framework that gives the SC exclusive authority with legally binding implications in certain situations. As demonstrated by Russia's veto of resolutions relating to a cease-fire in Ukraine and the US's prioritization of its agenda and economic interests above those of other

[149] O'Dell Hope, 'How the US Has Used Its Power in the UN to Support Israel for Decades' (*Blue Marble*, 22 February 2024) <https://globalaffairs.org/bluemarble/how-us-has-used-its-power-un-support-israel-decades> accessed 23 April 2024.
[150] William Roberts, 'Why Is the US Unequivocal in Its Support for Israel?' (*Al Jazeera*, 18 May 2021) <https://www.aljazeera.com/news/2021/5/18/short-answer-why-is-the-united-states-so-pro-israel> accessed 23 April 2024.
[151] ibid.
[152] United Nations, 'Security Council Fails to Adopt Resolution on Imperative of Immediate, Sustained Ceasefire in Gaza, Owing to Vetoes Cast by China, Russian Federation' (n 146).

permanent members, these members use their position to advance their agenda. Vulnerable populations continue to be exposed to danger and risk without protection despite the constant optimism that things will change, especially for younger generations. Preserving peace and security is the UN's main duty, especially the SC, yet the excessive influence of the veto power subverts this goal and shows a disregard for international law. Nonetheless, the excessive influence of the veto power violates this goal, showing a disregard for jus cogens rules and the international values of the global community. Despite its complexity and imperfections, this system was established for a specific purpose following World War II, indicating a continued necessity for its existence.

3.1.2 The effectiveness of the Security Council

Looking back at the work of the UN and the SC, particularly regarding their efforts to intervene during times of conflict, there is no clear intention to try to fulfill their obligations as stated in the UN Charter. Their efforts' effectiveness in those instances they have tried is also an issue. As previously noted, the UN has struggled to carry out its Chapter VII obligations except for the Korean War. However, even the Korean War is not entirely known as a UN operation but rather as a US military operation with the guidance of the UN, as mentioned in chapter 2.2.4 of this thesis. Other instances of their efforts can be seen, for example, in Iraq's invasion of Kuwait in 1990, where the SC demanded Iraq's forces to withdraw from Kuwait and used its power through Chapter VII, advising member states to use all necessary means to stop the invasion.[153] While there was some success in the reaction to Iraq's invasion, efforts to control arms led to disastrous effects on the civilian population of Iraq, deeming the effort not successful. The Council's efforts in the Balkan crises, especially those in Kosovo and Bosnia and Herzegovina, were weak, which resulted in ethnic cleansing and acts of violence.[154] In the Kosovo crisis of 1997-1998, when Serbia practiced ethnic cleansing, the SC was not sure how to react, which led to NATO solving the problem under US leadership. Other issues, such as the situation in North Korea and the civil wars in Sudan and Central Africa, are known as inadequate, leading to large-scale loss of life and humanitarian crises. Especially their inability to intervene in the Rwandan civil war in 1994,

[153] 'UNSC Res 660 (2. August 1990) UN Doc S/RES/660(1990).' (n 92).
[154] Joachim Krause and Natalino Ronzitti, *The EU, the Un and Collective Security: Making Multilateralism Effective* (1st ed, Taylor & Francis Group 2012) 11 <http://ebookcentral.proquest.com/lib/reykjavik/detail.action?docID=988011> accessed 23 April 2024.

despite clear signs that genocide was pending and a major humanitarian crisis was afoot. This failure led to the massacre of 800.000 Tutsis in 1995. Overall, various academics think that the collective security system has often failed to address major global challenges effectively due to a lack of cooperation among its members or their efforts in authorizing the use of force when needed.[155]

Despite having the exclusive power to intervene lawfully in situations regarding armed conflicts, the UNSC's actions can be seen as limited and ineffective. Instances such as the Korean War and the Kosovo crisis were primarily carried out by others, like the US military or NATO, rather than directly by the Council. Their unwillingness to act quickly when urgent situations arise, like in the Rwandan civil war crisis, has led to humanitarian crises and ethnic cleansing. To conclude, the UNSC has not fully utilized its powers as outlined in the UN Charter and can be seen as ineffective.

3.2 The North Atlantic Treaty Organization - NATO

The North Atlantic Treaty Organization, known as NATO, is one of the strongest military alliances in history and has been an essential element of international affairs since the late 1940s. NATO was founded after the Cold War out of the rivalry between the US and the Soviet Union, and its main mission was to equalize the Soviet Union's impact in Europe.[156] The organization's foundation was officially laid down on April 4th, 1949, when twelve original members signed the North Atlantic Treaty, known as the Washington Treaty. Today, NATO consists of 32 members.[157] The Treaty is short, containing only 14 Articles, and derives its legal basis from Article 51 of the United Nations Charter, highlighting independent states' fundamental right to individual or collective defense.[158] Article 5 of the Treaty directly states that collective defense is its core principle, meaning an armed attack against any of the member states will be considered an attack

[155] ibid 12.
[156] Phil Williams, *North Atlantic Treaty Organization: NATO*, vol 8 (Transaction Publishers 1994) 1.
[157] North Atlantic Treaty Organization, 'What Is NATO?' (*What is NATO?*) <https://www.nato.int/nato-welcome/index.html> accessed 24 April 2024.
[158] NATO, 'Founding Treaty' (*NATO*) <https://www.nato.int/cps/en/natohq/topics_67656.htm> accessed 24 April 2024.

against all. This prompts collective action to restore security as recognized by Article 51 of the UN Charter in the North Atlantic region.[159]

An example of NATO using its authority through Article 5 occurred after the 9/11 terrorist attacks against the US. In response to these attacks, NATO took active measures in the global fight against terrorism, initiated its first operation outside the Euro-Atlantic area, and initiated a thorough reorganization of its abilities. Consequently, NATO exercised Article 5 of the Treaty for the very first time in its history.[160]

As previously explained, the Security Council is undoubtedly the only body with the legal right to use force per Chapter VII of the Charter. However, the delegation of such tasks is covered in Chapter VIII, which authorizes regional organizations to try to resolve disputes.[161]

3.2.1 NATO operations authorized by the Security Council

The situation in Bosnia from 1992 to 1993 exemplifies how NATO conducted several military operations by Chapter VII of the UN Charter. These operations included weapons blockades, sanctions, "no-fly" zones, air support for the UN Protection Force (UNPROFOR), and humanitarian relief deliveries. This action showed that even though NATO's main purpose as a defense force did not directly coincide with its treaty, the SC was nevertheless prepared to use the alliance for enforcement activities. It also made clear that, provided its member states were ready to participate, a regional organization could implement Chapter VIII of the UN Charter without regard to its technical standing.[162]

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[159] Art. 5: 'The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area' of the North Atlantic Treaty signed 4 April 1949 entered into force on 29 August 1949.
[160] NATO, 'Collective Defence and Article 5' (*NATO*) <https://www.nato.int/cps/en/natohq/topics_110496.htm> accessed 24 April 2024.
[161] Ved P Nanda, 'NATO's Armed Intervention in Kosovo and International Law' (1999) 10 United States Air Force Academy Journal of Legal Studies 1, 1 <https://heinonline.org/HOL/P?h=hein.journals/usafa10&i=11> accessed 24 April 2024.
[162] James E Hickey, 'Challenges to Security Council Monopoly Power over the Use of Force in Enforcement Actions: The Case of Regional Organizations' 75, 108.

3.2.2 NATO operations not authorized by the Security Council

The Security Council addressed the Kosovo crisis in 1999 under Resolution 1160 within Chapter VII of the Charter.[163] NATO launched an air operation to drive Serbian forces out of Kosovo without the specified approval of the SC.[164] Later on, the SC approved NATO's significant future involvement in international security operations in Kosovo with Resolution 1244 without mentioning NATO's previous bombing campaign and Serb displacement.[165] This action has sparked significant debate among international legal experts regarding NATO's actions and the potential development of the theory of humanitarian intervention. While some scholars have labeled this action a "perfect failure," others see it as a "success."[166] The escalating conflict, its humanitarian impact, and its potential to spread to neighboring countries have raised significant concerns within the international community. The unwillingness of the Yugoslav President at the time, Slobodan Milosevic, to cooperate hindered diplomatic efforts to peacefully resolve the crisis. While tens of thousands of people were forced away from their homes, innocent people killed, tortured, and raped as a consequence of the systematic failure to protect them, NATO launched an air campaign in an attempt to resolve the conflict resulting in success.[167] Former UN Security General Kofi Annan addressed the situation in his annual report 2000 and stated the importance of humanitarian intervention when needed.[168] He stated:

> Humanitarian intervention is a sensitive issue, fraught with political difficulty and not susceptible to easy answers. But surely no legal principle—not even sovereignty—can ever shield crimes against humanity where such crimes occur and peaceful attempts to halt them have been exhausted. The Security Council has a moral duty to act on behalf of the international community. The fact that we cannot protect people everywhere is no reason to do nothing when we can. Armed intervention must always remain the option of last resort, but in the face of mass murder, it is an option that cannot be relinquished.[169]

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[163] 'UNSC Res 1160 (31. March 1998) UN Doc S/RES/1160(1998).'
[164] Hickey (n 161) 36.
[165] 'UNSC Res 1244 (10. June 1999) UN Doc S/RES/1244(1999).'
[166] Nanda (n 160) 1.
[167] North Atlantic Treaty Organization, 'NATO - Topic: Kosovo Air Campaign (March-June 1999)' <https://www.nato.int/cps/en/natohq/topics_49602.htm> accessed 26 April 2024.
[168] United Nations, 'SECRETARY-GENERAL PRESENTS HIS ANNUAL REPORT TO GENERAL ASSEMBLY | Meetings Coverage and Press Releases' <https://press.un.org/en/1999/19990920.sgsm7136.html> accessed 26 April 2024.
[169] ''We the Peoples' : The Role of the United Nations, 21st Century / Kofi A. Annan, Secretary-General of the United Nations UN Doc [ST/]DPI/2103' <https://digitallibrary.un.org/record/413745?ln=en&v=pdf>.

In reflecting on NATO's operation in Kosovo, Kofi Annan discussed the issue at hand: although the activities, which the UN did not sanction, were considered illegal, they were justified since they effectively stopped grave violations of human rights. As a result, even without UN approval, NATO became recognized as a legitimate military organization carrying out humanitarian operations.[170]

Chapters VII and VIII of the UN Charter demonstrate the North Atlantic Treaty's reliance on Security Council approval, providing the treaty with legal force. Despite having its roots in the US-Soviet rivalry, NATO's use of Article 5 after 9/11 expanded its reach across the Euro-Atlantic area. NATO's textbook intervention, which was carried out by SC authorization, is best illustrated in the Bosnia case. However, in the case of Kosovo, it is arguable because of the lack of SC authorization and inaction. With its Resolution 1244, the SC authorized NATO's engagement in Kosovo in the future without mentioning or declaring their operations in the country illegal. Therefore, NATO's disobedience can be seen as accepted and necessary. That being said, the author of this thesis sees this as a possible precedent for other similar circumstances. Thus, while disputed, NATO's power to intervene in situations of conflict and mass atrocities exceeds beyond the Euro-Atlantic area and the SC's authorization.

3.3 "Coalition of the Willing"

The UN was originally intended to have a permanent military force composed of member states. This idea, though, was never carried out. Rather, the SC has chosen to rely on voluntary troops from member states to provide ad hoc support when deemed necessary in particular circumstances.[171] It has been said that regional organizations have the "implied power" to start enforcement action when the SC does nothing or refuses to allow others to act. Regional organizations have conducted several actions in the decades since implementing the UN Charter framework on using force. Challenging, therefore, the primary authority of the SC. These situations occur when the international community undertakes the responsibility to protect (R2P) itself because of the UN's unwillingness or inability to act in such matters—in other words, known

[170] Andrea Carati, 'Responsibility to Protect, NATO and the Problem of Who Should Intervene: Reassessing the Intervention in Libya*' (2017) 29 Global Change, Peace & Security 293, 296–297 <https://doi.org/10.1080/14781158.2017.1384719> accessed 26 April 2024.
[171] Hickey (n 161) 111.

as the "coalition of the willing" in international politics, whether or not the UN has granted permission.[172] Except for NATO's actions in Bosnia and Kosovo, such circumstances have arisen in various situations.[173] Iraq's invasion of Kuwait is an example of the "coalition of the willing," where a US-led and UN-approved mission was launched, marking it as the first documented case of this so-called coalition. Another example occurred in 1999 when the UN approved the intervention in East Timor by a global coalition of the willing led by Australia.[174] The case of the Cuban missile crisis, however, is an example of SC authorization not being given. The Organization of American States (OAS) decided to advise a quarantine on Soviet shipments of offensive military equipment to Cuba. Because of the situation at the time, the Cold War, and the guarantee of a US veto, the SC was prevented from objecting.[175] Similarly, when the Arab League sent the Symbolic Arab League Force to Lebanon in 1976 to help with internal security, it was done so without SC authorization. As expected, the SC never criticized unlawful enforcement actions.[176] In 1992, the situation in Liberia demonstrated the SC's adaptability towards various types of organizations. The Economic Community of West African States (ECOWAS), largely focused on economic development, intervened in Liberia to secure a cease-fire between government and rebel forces. Since the operation fell within the realm of peacekeeping, SC approval was not required. However, when the ECOWAS Monitoring Group (ECOMOG) took it further and started enforcing actions against the rebels, the operation changed from peacekeeping to enforcement, which required the SC's authorization. The authorization was not given. The SC, as a result of the situation, passed a resolution acknowledging ECOWAS's efforts and retrospectively endorsed their actions. This situation emphasizes the difficulty of having prior, express consent when peacekeeping becomes enforcement. Although ECOWAS was not authorized to use force in civil conflicts, the SC displayed flexibility in recognizing their involvement. Therefore, looking back at this case, one can see the evolving dynamics between the SC and regional organizations in enforcement efforts.[177] The most recent appeals for a coalition of

[172] Toni Erskine, 'Coalitions of the Willing and Responsibilities to Protect: Informal Associations, Enhanced Capacities, and Shared Moral Burdens' (2014) 28 Ethics & International Affairs 115, 121 <https://www.cambridge.org/core/journals/ethics-and-international-affairs/article/coalitions-of-the-willing-and-responsibilities-to-protect-informal-associations-enhanced-capacities-and-shared-moral-burdens/08951EF3FCA11E5312B304BBB69DE0A8> accessed 27 April 2024.
[173] Hickey (n 161) 95.
[174] Erskine (n 171) 121.
[175] Hickey (n 161) 102.
[176] ibid 103.
[177] ibid 106–107.

the willing have been to push the agenda for climate change and, in the absence of SC authorization, to put a stop to the violence in Syria.[178]

When the UN and the SC fail to intervene or cannot do so, forces known as the Coalition of the Willing step in. The main question has always been, when the only body with the power to intervene and stop conflicts doesn't act, what can be done next? Going through the cases just mentioned gives hope that there is something that can be done to put an end to mass atrocities and prevent human rights violations, although only if the countries are willing. It also shows the liability and the weakness of the Security Council in such matters. During the Cuban missile crisis, the SC neither sanctioned nor opposed the US operation despite its lack of authorization. We anticipated we would veto any objection raised due to its strategic interests. This illustrates the dynamics of global politics, where the SC, tasked with preserving peace and security, may fail to fulfill its legal duties due to the influence of powerful states. As a result, people impacted by conflicts and catastrophes are left in uncertain situations. The situation in Liberia shows, on the other hand, how flexible the SC can be in circumstances where peacekeeping operations shift to enforcing ones. With this precedent, is it safe to say that countries and organizations can act as they please and change their courses without any consequences since the SC might change its mind post facto?

As explained in this thesis, universal duties obligate the international community, including those outlined in the erga omnes principle. However, the SC's flexibility in its approach to various actions is highly influenced by political considerations rather than strictly by the legal frameworks. This situation often leaves vulnerable populations feeling abandoned and helpless.

4. The intersection between state sovereignty, intervention, and human rights

4.1 Sovereignty

State sovereignty has been an essential concept that has influenced international relations and global governance for decades. It plays a vital role in preserving international peace and security and is the cornerstone of customary international law. It additionally appears in the UN Charter.

[178] Erskine (n 171) 121.

Territorial sovereignty is a crucial aspect of statehood and serves as a foundation of the international system, promoting stability in interstate relations.[179] Aggressions are deemed unlawful because they disrupt the world order and are against the sovereignty of states that have rejected using force to settle differences.[180] The UN Charter emphasizes the importance of domestic jurisdiction by expressly forbidding the organization from meddling in the internal affairs of its member states. This is further expressed in Article 2(7) of the Charter.[181] Essentially, sovereignty is a crucial defense against foreign threats and guarantees state equality, vital for maintaining international security.[182] A good example of the importance of sovereignty is the case of *Nicaragua v. United States,*[183] where Nicaragua claimed before the International Court of Justice that the United States, contrary to its duties and obligations under general and customary law, had transgressed Nicaragua's sovereignty through armed assaults conducted by air, land, and sea.[184] The Court emphasized that the Republic of Nicaragua's sovereignty and political independence must be upheld without compromise. It is strictly forbidden for military and paramilitary groups to engage in activities that violate international law, particularly when they involve using force or threatening to harm a state's political independence or territorial integrity or interfering in its internal affairs. Both the Organization of American States and the UN charters uphold these ideas.[185]

The Court determined, therefore, that the United States of America, through its direction or approval of flights over Nicaraguan territory and its actions against the Republic of Nicaragua, breached its duty under customary international law to respect the sovereignty of another state.

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[179] International Commission on Intervention and State Sovereignty and International Development Research Centre (Canada) International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty' (2001) 6–8 <https://www.globalr2p.org/resources/the-responsibility-to-protect-report-of-the-international-commission-on-intervention-and-state-sovereignty-2001/>.

[180] ibid.

[181] Article 2 (7) states that the United Nations has no authority to intervene in matters which are within the domestic jurisdiction of any State, while this principle shall not prejudice the application of enforcement measures under Chapter VII of the Charter. United Nations, Charter of the United Nations, 1 UNTS XVI, (24 October 1945).

[182] See Article 51 affirming a sate's right to self-defense in the event of armed attack of the ibid.

[183] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) Merits, Judgment ICJ Reports 1986* (International Court of Justice).

[184] ibid para 250.

[185] ibid para 288.

State sovereignty is essential; in a way, it's a defense mechanism for threats from foreign countries. Does this mean that states are free to act as they please in their territory without anyone having the power to interfere legally?

4.1.1 Restrictions on sovereignty

For the past two decades, there has been an ongoing dispute between two groups of scholars: those who argue that sovereignty is inherently unlimited and those who assert that individuals possess certain fundamental liberties that the state is not allowed to violate. An example of the former perspective is the monarchy in England and its supporters, while advocates for the people tend to support the latter.[186]

Sovereignty's psychological appeal and role in organizing global and regional governance structures are compelling.[187] The Canadian government established the International Commission on Intervention and State Sovereignty (ICISS) and several notable foundations in the year 2000 about this discussion. It was assigned to deal with a wide range of legal, ethical, practical, and political concerns. Their task included conducting wide-ranging international discussions, obtaining various viewpoints, and producing a report designed to assist in reaching an agreement between the Secretary-General and other relevant parties.[188] The report answers the earlier question about the state's power to do as it pleases in its territory. It states that even those who strongly support a nation's right to govern itself don't believe that governments should have unlimited power over their people. The ICISS found throughout their global consultations that it has been widely recognized that sovereignty carries a twofold obligation: externally, to honor the sovereignty of other nations, and internally, to uphold the dignity and fundamental rights of all individuals within the state. This has been known over the past years as a form of responsibility and is enshrined in international human rights agreements, UN protocols, and state practices.[189]

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[186] A Lawrence Lowell, 'Limits of Sovereignty' (1888) 2 Harvard Law Review 70, 70 <https://heinonline.org/HOL/P?h=hein.journals/hlr2&i=88> accessed 30 April 2024.
[187] Gareth Evans, 'The Limits of Sovereignty The Case of Mass Atrocity Crimes 1' (2015) 5 Prism : a Journal of the Center for Complex Operations 11, 4 <https://www.proquest.com/docview/1710986908/abstract/EDCFE866202C48B1PQ/1> accessed 30 April 2024.
[188] Sovereignty and International Commission on Intervention and State Sovereignty (n 178).
[189] ibid 8.

The core principles of the responsibility to protect, which highlight fundamental concepts related to state sovereignty, are outlined in the ICISS report as stated here:

1) Basic Principles
    A. State sovereignty implies responsibility, and the primary responsibility for protecting its people lies with the state itself.
    B. Where a population suffering serious harm due to internal war, insurgency, repression, or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.[190]

However, despite emphasizing national sovereignty, the UN Charter introduces provisions that can override it. As discussed in this thesis, Chapter VII permits UN collective action even in defiance of sovereignty claims. While this chapter primarily addresses inter-state conflicts jeopardizing international peace, specifically Article 39, its provisions allow for measures that override sovereignty concerns. However, such actions necessitate Security Council authorization, as described in the above chapters. These actions fall under the concept of intervention in times of conflict, but only as a last resort after having exhausted non-military possibilities.[191] Military action is required when there is a threat to human security. Murders, executions, genocide, and war-related deaths are examples of actions that directly violate the basic human right to life; access to food and other necessities are also considered violations of fundamental human rights. Similarly, removing individuals by force from their homes and designating them as "displaced persons" or refugees counts as a violation of human security. In cases where human rights violations are systematic, widespread, and involve significant violence and weapon use, these violations amount to serious breaches of human security, often escalating into crimes against humanity. To save civilians and defend their human rights, military operations approved by the SC under Chapter VII may override national sovereignty and domestic jurisdiction.[192]

Examples of interventions because of threats to international security, peace, and protection of human rights can be found in the resolutions authorized by the SC above. Remember that all sorts of interventions go against the general rules of state sovereignty. Therefore, resolutions

[190] Sovereignty and International Commission on Intervention and State Sovereignty (n 178).
[191] MV Naidu, 'Security, Sovereignty, and Intervention: Concepts and Case Studies' (2002) 34 Peace Research 21, 6 <https://www.proquest.com/docview/213483547/abstract/A345066FB3694389PQ/1> accessed 30 April 2024.
[192] ibid 12–13.

authorized by the SC allow interventions to automatically override state sovereignty and limit its power. Countries should be able to have control over their own territories according to customary international law and respect the sovereignty of other states. However, according to Chapter VII of the UN Charter, when grave human rights violations, threats to peace concerns, and escalating situations occur, the appropriate international bodies have a legal right to intervene to restore peace and protect human rights. Resolution 688, for example, which was authorized in response to the repression of Kurdish populations in Iraq by Saddam Hussein's regime, shows the UNSC's willingness to address human rights violations even if it meant overriding state sovereignty, in this case, Iraq's. [193]

4.1.2 Human Rights and Intervention

Treaties, customary law, and soft law all uphold the fundamental rights of every person, regardless of their country or position.[194] These rights are known as human rights; in international law, they are enshrined in international treaties and the Universal Declaration of Human Rights (UDHR).[195] Some of these rights, such as the prohibition against genocide, torture, aggression, and crimes against humanity, hold special status as peremptory norms, as has been discussed and fall under the jus cogens principle.[196] International law protects all persons, especially during armed conflicts. It is divided into two categories: international human rights law on the one hand and international humanitarian law on the other.[197]

i) International humanitarian law & International Human Rights law

International humanitarian law seeks to minimize the effects of armed conflicts by enforcing rules that protect civilians and restrict military strategies. As discussed in the preceding chapter on the rules of warfare, it is a crucial part of "jus in Bello." It is governed by the International Committee of the Red Cross, which is accountable for ensuring that it is consistently applied throughout

[193] 'UNSC Res 688 (5. April 1991) UN Doc S/RES/688(1991)'.
[194] United Nations (ed), *International Legal Protection of Human Rights in Armed Conflict* (United Nations 2011) 9–10.
[195] Universal Declaration of Human Rights (adopted 10 December 1948 through UNGA Res 217 A(III) (UDHR).
[196] United Nations, *International Legal Protection of Human Rights in Armed Conflict* (n 193) 10.
[197] ibid 5.

situations of armed conflicts. It is derived from treaties and customary international law, such as the Geneva Conventions and the Hague Regulations.[198]

However, international human rights law (IHRL) differs from IHL and is applied in times of peace rather than conflicts. The foundation of IHRL is various treaties, including the International Covenant on Economic, Social, and Cultural Rights and its Optional Protocol, the International Covenant on Civil and Political Rights and its two Optional Protocols, the International Convention on the Elimination of all Forms of Racial Discrimination, and, of course, the UDHR.[199] Additionally, there's an expanding collection of treaties and protocols that focus on safeguarding human rights and fundamental freedoms.[200]

Traditionally, it was believed that IHL applied to circumstances involving armed conflict, and IHRL applied to peaceful situations. Modern international law, however, recognizes that this distinction is incorrect. It is now commonly acknowledged that all people have inherent rights that can be affected by conflict and in times of peace. As a result, it is believed that these two legal systems both serve as alternative sources of accountability during armed conflicts.[201] The International Court of Justice, in its case concerning armed activities on the territory of the Congo (Democratic Republic of Congo v. Uganda), concluded that both branches of international law, IHRL and IHL, must be considered and applicable in such situations. It stated that human rights continue to apply during armed conflict, and states must respect both sets of obligations regardless of the context of conflict.[202] This issue was also addressed in *the Al-Skeini and others v. The United Kingdom* case by the European Court of Human Rights. While the Court did not explicitly discuss the difference between IHL and IHRL, it did recognize their separate yet interconnected essence by referencing the ICJ case of Congo v. Uganda, especially in human rights violations during armed conflicts.[203]

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[198] ibid 14.
[199] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965) through UNGA Res 2106 (XX) (ICERD); International Covenant on Civil and Political Rights (adopted 16 December 1966) through UNGA Res 2200A (XXI) (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) through UNGA Res 2200A (XXI) (ICESCR).
[200] United Nations, *International Legal Protection of Human Rights in Armed Conflict* (n 193) 9.
[201] ibid 6.
[202] *Democratic Republic of Congo v Uganda, Judgment ICJ Reports 2005*.
[203] *Al-Skeini and others v The United Kingdom App no 55721/07 (ECtHR, 7 July 2011)*.

Examining NATO's intervention in Kosovo in this regard, which has drawn heavy criticism from around the world, leads us to the question: Is it ever acceptable to protect human rights even if they result in large numbers of casualties when doing so? NATO's humanitarian intervention lasted for seventy-seven days, and the operation failed to see the outcome of its intervention. However, despite widespread condemnation of the damage caused by NATO's bombing in Kosovo, many scholars and legal experts have defended the action. It has been argued that without help and intervention, the loss of life could have been far greater, underscoring the difficult moral choices that must be made when deciding whether to step in or not in such situations.[204]

The most fundamental human rights are held as a just cogens norm, and states can not close their eyes when violated. These violations are the only exceptions to state sovereignty regarding armed conflicts and intervention by the international community. To safeguard these fundamental rights, the SC and the global community, in general, are obligated to act when such circumstances arise, with sovereignty itself not an obstacle. In cases where interventions have been allowed, the pattern has been clear. Interventions have been justified in times of catastrophe, armed conflicts, and humanitarian crises to safeguard civilians and their rights as human beings. The main moral dilemma in these situations is usually whether involvement is worth the costs, including the potential for casualties, or whether countries should stay silent and let hostilities play out. While the author of this thesis does not necessarily support armed conflict, they raise the question: if nations passively observe escalating situations, hoping they resolve on their own when diplomatic agreements and discussions have been deemed unsuccessful, what purpose does the law serve?

5. Israel and Palestine

A brief introduction of the Israel-Palestine conflict is necessary as it is a guiding example of the research. However, as mentioned in the introduction, the author will not focus on the historical background of the conflict as much as merely trying to explain the legality of the situation in recent times. Since it was established earlier in this thesis, states are the primary actors in the international field and serve as legal entities in international law. This chapter examines whether the Israel-Palestine conflict falls within the purview of international relations explained throughout this thesis to determine the applicability of relevant international legal frameworks.

[204] Nanda (n 160) 18.

5.1 Does International law apply to Palestine?

The status of the state of Palestine has been a subject of ongoing dispute since the fall of the Roman Empire.[205] The United Nations General Assembly (UNGA) adopted Resolution 181 on November 29, 1947[206], advocating for establishing two independent states within the territory of Palestine. The resolution was viewed as a legal foundation of the establishment of Israel but was rejected quickly by the Arab community and gave way to violence.[207] Israel and Palestine emerged as separate entities, but conflict ensued after Israel's expansion into Arab territories, including the West Bank, Gaza Strip, and East Jerusalem, following the wars of 1948 and 1967.[208] Despite numerous attempts at truces and peace agreements, ongoing hostility between the two populations persisted. For instance, during the 2014 Israel-Gaza conflict, both sides faced accusations of war crimes from organizations like Human Rights Watch. The lack of widespread international recognition has left Palestinians vulnerable and without adequate protection.[209] Over time, Palestine has garnered international recognition. For example, on November 22, 1974, the Palestinian Liberation Organization (PLO), recognized as the legitimate representative of the Palestinian people, was granted observer status at UNGA through Resolution 3237.[210] Subsequently, the Palestinian Authority (PA), which has been functioning as an interim governing body since 1993 with jurisdiction over Palestinian territories, has undertaken numerous initiatives to secure recognition of statehood within the United Nations (UN) and globally.[211] These efforts culminated in the UNGA granting it "non-member state" status through Resolution 67/19 in 2012.[212] In the same resolution, the General Assembly (GA) reaffirmed its resolution 58/292 dated May 6, 2004, which confirms, among other things, that the status of the Palestinian territory under

[205] Tanvi Bhargava and Rebecca Cardoso, 'An Examination of Palestine's Statehood Status through the Lens of the ICC Pre-Trial Chamber's Decision and Beyond – NYU JILP' (*New York University-Journal of international law and politics*, 20 October 2021) <https://www.nyujilp.org/an-examination-of-palestines-statehood-status-through-the-lens-of-the-icc-pre-trial-chambers-decision-and-beyond/> accessed 29 February 2024.
[206] 'UNGA RES A/RES/181 (II) (29 November 1947)'.
[207] The Editors of Encyclopaedia Britanicca, 'United Nations Security Council | History & Members | Britannica' (n 131).
[208] Bhargava and Cardoso (n 204).
[209] Human Rights Watch, 'Gaza: Apparent War Crimes During May Fighting | Human Rights Watch' (*Human Rights Watch*, 27 July 2021) <https://www.hrw.org/news/2021/07/27/gaza-apparent-war-crimes-during-may-fighting> accessed 29 February 2024.
[210] 'UNGA Res A/RES/3237(XXIX) (22 November 1974)'.
[211] Bhargava and Cardoso (n 204).
[212] 'UNGA Res A/RES/67/19 (29 November 2012)'.

occupation since 1967, including East Jerusalem, continues to be one of military occupation.[213] According to international law, Israel has only the duties and obligations of an occupying Power under the Geneva Convention relative to the Protection of Civilian Persons and the Hague Convention. Said Resolution acknowledges the Palestinian people's entitlement to self-determination and sovereignty over their territory. However, Palestine's fight in the international realm did not stop at gaining non-member status. In 2015, by consenting to the jurisdiction of the International Criminal Court (ICC), Palestine ratified the Rome Statute. It submitted a declaration under Article 12(3) accusing Israel of committing war crimes in Palestinian territories under occupation since 2014. As a result, on February 5, 2021, the Pre-Trial Chamber (PTC) confirmed its authority to prosecute the alleged war crimes and officially commenced an investigation.[214]

Palestine's status has been a difficult topic of discussion. Many attempts have been made throughout the years to secure the territory and the rights of the Palestinian people, such as the resolutions explained above by the General Assembly and, finally, the decision of the ICC to start an investigation into the committed crimes. Despite Palestine's efforts for international recognition, including observer status in 1974 and "non-member state status" in 2012, the territories remain under Israeli military occupation.

5.2 Does international law apply to Israel?

The State of Israel and its independence was formally announced on May 14, 1948, the day that the British Mandate over Palestine ended. The US became the first nation to acknowledge Israel when President Harry Truman extended de facto recognition eleven minutes following the declaration. This action by the US and the alliance it showed can be seen as an important first step in Israel's history and its way into the international arena. Soon after, the Union of Soviet Socialist Republics (USSR) gave Israel de-jure recognition on May 17, 1948, and Israel then joined the UN as its 59th member state on May 11, 1949, only a year after it was founded.[215] Israel was already recognized and participating in the international realm in only one year. It could be argued that this

[213] 'UNGA Res A/RES/58/292 (6 May 2004)'.
[214] *Situation in the State of Palestine ICC-01/18 (5 February 2021)* (International Criminal Court- Pre-Trial Chamber I).
[215] Jewish Virtual Library, 'International Recognition of Israel' <https://www.jewishvirtuallibrary.org/international-recognition-of-israel> accessed 2 May 2024.

gave Israel a head start and possibly the idea that it could act as it pleases. Meanwhile, Palestine was stuck behind. As a member state of the UN, Israel has, therefore, ratified the UN Charter and is bound by its obligations. The core principles of the Charter are upholding peace and security, as has been discussed, and prohibiting the use of force. However, part of the Charter is also the right to self-defense, which Israel has used throughout the years to justify its actions in the neighboring states. For example, it was used during Israel's armed invasion of Lebanon in 1982. Israeli forces used aircraft bombardment to target PLO setups in Beirut, killing at least 100 people and wounding about 550 more. Israel's Permanent Representative to the UN, Ambassador Yehuda Blum, justified the assault before the UNSC by invoking the international legal right of self-defense in Article 51 of the Charter.[216]

The relationship between Israel and the UN through the years has been rather complex. Some have seen some of the decisions from various UN bodies against Israel as hostile.[217] Israel suffered as soon as the international community, and particularly the UN bodies, dug deeper into the debate over Palestine, authorizing resolutions and seeking solutions to the dilemma. This may be the reason why some have referred to the relationship between the UN and Israel as complex and hostile, as proven by the fact that the GA adopts critical resolutions against Israel every year. For instance, it backed 21 resolutions against Israel in 2018 and 18 resolutions in 2019, compared to just seven against other states.[218] Another biased approach has influenced actions against Israel, and that is the approach of the UN Human Rights Council. The Council is tasked with promoting and protecting human rights worldwide. Throughout the years, it has been criticized for its biased treatment of Israel since it has consistently singled out Israel for condemnation, particularly regarding the situation in Palestine.[219] Former UN Secretary-General Kofi Annan raised concerns about this bias in the conference at Palais Des Nations in Geneva in 2006, highlighting the need for impartiality between cases in the Council's dealings. He stated:

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[216] Norman Menachem Feder, 'Reading the U.N. Charter Connotatively: Toward a New Definition of Armed Attack Notes' (1986) 19 New York University Journal of International Law and Politics 395, 396 <https://heinonline.org/HOL/P?h=hein.journals/nyuilp19&i=406> accessed 2 May 2024.
[217] Zisser Eyal, 'Israel and the Arab World: Breaking the Glass Ceiling' (2020) 23 Strategic Assesment: A Multidisciplinary Journal on National Security 38 <https://www.inss.org.il/wp-content/uploads/2022/12/Adkan23.3Eng_5.pdf#page=39>.
[218] ibid 44.
[219] ibid 45.

> …they have tended to focus on the Palestinian issue, and of course, when you focus on the Palestinian-Israeli issue, without even discussing Darfur and other issues, some wonder what is this Council doing? Do they not have a sense of fair play? Why should they ignore other situations and focus on one area?[220]

Despite ongoing conflict and the controversial anti-Israeli decisions made regarding the Palestine conflict, Kofi Annan's speech reminds us that Israel, too, has its rights, and it is only fair to deal with every situation equally. However, when Israel became a member of the Western European and Others Group (WEOG), developing countries voting patterns shifted and started to favor Israel. Danny Danon was appointed Vice President of the UNGA in 2017, suggesting a growing positive direction toward Israel.[221] Despite the Palestinian crisis, Israel's contribution in using its technological expertise with the relevant UN bodies, such as resource management, solar energy, drip irrigation, and water conservation, to advance the humanitarian development of Third World countries has also contributed to improving Israel's reputation.[222]

In conclusion, the relationship between the UN and Israel has been rather complex, going back and forth and involving biased decisions from various UN bodies. However, Israel's image started shifting due to its technological contribution, working alongside the UN through the years.

5.2.1 Obligations in the Geneva Convention and Hague Regulations

As mentioned at the beginning of this chapter, Israel is no newcomer to the international community. For the purpose of this thesis, the list of international treaties mentioned is not exhaustive since various international treaties bind Israel in multiple situations. That being said, the author focuses on the treaties and obligations concerning war and conflicts.

[220] United Nations,Department of Public Information • News and Media Division • New York, 'Transcript of Press Conference by Secretary-General Kofi Annan at Palais Des Nations, Geneva, 21 November 2006 | Meetings Coverage and Press Releases' <https://press.un.org/en/2006/sgsm10752.doc.htm> accessed 3 May 2024.
[221] Zisser Eyal (n 216) 38.
[222] ibid 47.

In addition to the UN Charter, Israel is governed by humanitarian law, which includes the Geneva Conventions. [223] Israel ratified the Geneva Conventions in 1951 but has not ratified the first two protocols of the Geneva Conventions—the first deals with international armed conflicts and the second with non-international ones such as civil wars.[224] According to IHL, Israel holds the status of "Occupying Power" in the territories of the West Bank and the Gaza Strip, which were seized during the 1967 war. Its occupying authority, therefore, is regulated by instruments concerning the treatment of civilians during conflicts and occupied regions: The Hague Regulations of 1907, respecting the Laws and Customs of War on Land and the 1949 Fourth Geneva Convention relative to the Protection of Civilian Persons in times of War.[225] This is one example of how the IHL applies to Israel. Even though Israel has not ratified the 1907 Hague Regulations, they still apply in cases related to them.[226] The Israeli High Court, in its case Suleiman Tawfiq Ayyub et al. v. Minister of Defense et al., determined that these regulations form part of customary international law, which means that all states, even those that are not signatories, have to abide by them.[227]

5.2.2 Israel and the Rome Statute

Israel initially signed the Rome Statute to support the ICC's goals but later withdrew its signature in 2002 and is not a party to the Statute. One of the reasons affecting this decision is possible indictments over the contentious topic of settlements in Palestinian territory, which many think violates the Fourth Geneva Convention.[228] Given the current situation and the transgressions that have occurred, may another factor affecting Israel's unwillingness to ratify the Statute shortly be the fear that doing so might expose them to prosecution for the crimes they have allegedly committed?

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[223] Scheffer, David J, 'What International Law Has to Say About the Israel-Hamas War | Council on Foreign Relations' (19 October 2023) <https://www.cfr.org/article/what-international-law-has-say-about-israel-hamas-war> accessed 3 May 2024.
[224] International Comittee of The Red Cross, 'Protocols I and II Additional to the Geneva Conventions - ICRC' (*International Comittee of the Red Cross*, 17:44:54.0) <https://www.icrc.org/en/doc/resources/documents/misc/additional-protocols-1977.htm> accessed 3 May 2024.
[225] Human Rights Watch, 'The Obligations of Israel and the Palestinian Authority under International Law' (2001) <https://www.hrw.org/reports/2001/israel/hebron6-04.htm> accessed 3 May 2024.
[226] ibid.
[227] *Suleiman Tawfiq Ayyub et al v Minister of Defense et al, Judgment 606/78, at 6* (Israeli High Court).
[228] Daniel Benoliel and Ronen Perry, 'Israel, Palestine and the ICC' (*International Criminal Court*) <https://asp.icc-cpi.int/sites/asp/files/NR/rdonlyres/D3C77FA6-9DEE-45B1-ACC0-B41706BB41E5/281910/BPIsraelPalestineandtheICCMay2011.pdf>.

However, even though states are not a party to the Statute, it doesn't mean that it does not apply to them; the author points out the discussion in chapter 2.3 of this thesis about the jurisdiction of the court and the relevant articles. As has previously been explained, on February 5, 2021, the Pre-Trial Chamber (PTC) confirmed its authority after Palestine requested intervention by the ICC to prosecute the alleged war crimes and officially commenced an investigation on Israel. Recently, Ukraine has signed but not ratified the statute, although similarly to Palestine, it requested intervention by the ICC, citing Article 12(3) both for the crimes in Crimea in 2014 and for the arrest of the President of Russia, Vladimir Putin, in 2023.[229]

By rejecting the ratification of the Rome Statute, Israel does not exclude itself from the court's jurisdiction, as there have been instances where non-member states used Article 12(3) to issue declarations and request interventions by the Court.

6. The ongoing Israel-Palestine conflict today

In previous chapters, the author has investigated the relevant international organizations, treaties, and case law that can be applied during war and conflict. As mentioned in the beginning, this thesis aims to analyze and research how and if the relevant findings can be transferred in the current Israel-Palestine conflict. This part of the thesis will focus on how the international legal framework applies to this specific conflict, assessing the feasibility and effectiveness of utilizing international legal remedies to address human rights and humanitarian crises, why the conflict is still ongoing, and have the relevant international bodies exhausted all the potential legal framework there is for this conflict. Finally, the author will explore possible future steps based on the findings of this research.

6.1 The conflict of 7th October 2023

The ongoing conflict to this day, known as the Israel-Hamas War, started on October 7, 2023, when Hamas launched an air, sea, and land attack on Israel from the Gaza Strip. This attack resulted in the deaths of over 1,200 people, mostly Israeli nationals, and the hostage of about 240 people,

[229] Shen, Kyle, 'Patterns of Noncompliance in Article 12(3) Cases at the ICC' (*Opinio Juris*, 2 February 2024) <https://opiniojuris.org/2024/02/02/patterns-of-noncompliance-in-article-123-cases-at-the-icc/> accessed 19 April 2024.

making it the deadliest day for Israel since the country's independence. Israel then declared a state of war the next day when the Israel Defense Forces (IDF) launched airstrikes on the Gaza Strip.[230] Hamas is an Islamic Resistance Movement that emerged in the Islamic political movements in the West Bank and Gaza Strip as a consequence of Israeli rule and occupation of the territory.[231] The occupying territory is part of Palestine, thus making the war today a conflict between Israel and Palestine.

6.2 Israelis' right to self-defense

Whether in international or criminal law, self-defense refers to the righteous use of force to repel an attack or immediate threat to oneself, others, or a legally protected interest.[232] The two frameworks that define self-defense in international law are the jus in bello on the one hand, as has been explained in chapter 1 of this thesis, which regulates behavior during wartime, and jus ad bellum on the other, which governs the lawful use of force. It also has been mentioned that according to Article 2(4) of the UN Charter, nations are explicitly forbidden from using force that compromises the territorial integrity or political sovereignty of any state unless in situations of individual or collective self-defense, as specified in Article 51 of the Charter. As stated earlier, Israel has often used Article 51 as an argument for its behavior, stating that their actions were carried out in self-defense. This has been a controversial argument in the case of Israel and Palestine over the years, and it was particularly discussed and examined in the advisory opinion by the ICJ regarding the legal consequences of the construction of a wall in the Occupied Palestinian Territory.[233] The ICJ took the case when the General Assembly, with its resolution ES-10/14, submitted questions about the construction of a wall in the Palestinian territories by Israel. Questioning:

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[230] The Editors of Encyclopaedia Britanicca, 'Israel-Hamas War | Explanation, Summary, Casualties, & Map | Britannica' (3 May 2024) <https://www.britannica.com/event/Israel-Hamas-War> accessed 3 May 2024.
[231] Ziad Abu-Amr, 'Hamas: A Historical and Political Background' (1993) 22 Journal of Palestine Studies 5, 5 <https://www.jstor.org/stable/2538077> accessed 4 May 2024.
[232] Gupta Sarthak, 'Israel's Right to Self-Defense Under International Law' (22 December 2023) <https://www.jurist.org/commentary/2023/12/7-10-the-question-of-israels-right-to-self-defense-under-international-law/> accessed 4 May 2024.
[233] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136* (n 67).

What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?[234]

Israel claimed that the wall's only objective was the prevention of terrorist attacks launched from the West Bank.[235] Israel's Permanent Representative to the UN asserted in the General Assembly on 20 October 2003 that *"the fence is a measure wholly consistent with the right of States to self-defense enshrined in Article 51 of the Charter."*[236]

The Court explained that when one state confronts military aggression from another state, Article 51 recognizes the existence of an inherent right to self-defense. Israel did not, however, claim that the attacks against it came from a foreign state but from a group within the territory. This led the Court to further emphasize that Israel continued to have sovereignty over the Occupied Palestinian Territory and that, as Israel has admitted, the threat that Israel uses to justify building the wall originates from inside, not outside, of that territory.[237] Therefore, the Court concluded that Article 51 of the Charter was irrelevant to the case.

This case was analyzed and mentioned because today's war originated from attacks launched by Hamas and Israel, which declared war on itself using Article 51 of the Charter. Is the case in the advisory opinion relevant to the situation today? Did Israel have the right to conduct warfare in self-defense? Many scholars and lawyers have been discussing this issue since then.

Terry Gill, an Emeritus Professor of Military Law at the University of Amsterdam, analyzed the ICJ Wall Advisory Opinion and Israel's right to self-defense about the current armed conflict in Gaza. He argues that Article 42 of the Hague Regulations of 1907 defines occupied territory as land under the authority of a hostile military force.[238] The complex situation in Gaza is criticized

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[234] General Assembly resolution on the item 'Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory'. 'UNGA Res A/RES/ES-10/14 (8 December 2003)'.

[235] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136* (n 67) para 116.

[236] 'UNGA General Assembly Emergency Special Session A/ES-10/PV.21 (20 October 2003)'.

[237] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136* (n 67) para 139.

[238] Art. 42: 'Territory is considered occupied when it is actually placed under the authority of the hostile army' of the Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. (adopted 29 July 1899) The Hague.

by many. However, Israel's lack of effective control of the territory despite its military dominance and ability to enforce blockades and conduct airstrikes indicates that Gaza is not under the effective control of Israel.[239] It has been established that a state may use self-defense in response to an armed attack outside its borders or outside an area it controls. Applying a prior example, such as the Advisory Opinion, where Israel possessed control over the land from which the threat originated, to a new situation such as Gaza, it can be considered as a lack of persuasive authority. The circumstances of the Court's ruling are not similar to the strike launched by Hamas on Israel on October 7, 2023. Professor Terry Will argues that given that Gaza was not under Israeli control and that Hamas's strike had exceeded an international boundary, Israel was, therefore, entitled to exercise its right to self-defense.[240]

Even though the decisions taken by Israel in light of the attack on 7 October in 2023 can be justified from the perspective mentioned just now, and Israel did have the right to apply self-defense, it does, however, not exclude it from its obligations to international humanitarian law and general rules of conduct in warfare.

6.3 Has the ongoing conflict resulted in any violations of the obligations outlined in IHL?

The ongoing catastrophe falls under the jus in bello and jus ad bellum doctrines of the Just War theory, as previously explained in chapter 1.1 of this thesis. The jus in bellum covers the ethical considerations of initiating a war; was the decision to initiate war morally justified? It has been established that the war started as a self-defense action on the Israelis' part. The second doctrine, jus in bello, covers the methods employed during times of conflict and if they can be morally justified.

From October 2023 to April 16th of this year, the casualties resulting from the Hama attack amount to approximately 1.200 deceased Israelis and 5,431 injured, according to the data by Statista from the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA).[241]

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[239] Terry Gill, 'Armed Groups and International Law - The ICJ Wall Advisory Opinion and Israel's Right of Self-Defence in Relation to the Current Armed Conflict in Gaza' (*Armed Groups and International Law*, 13 November 2023) <https://www.armedgroups-internationallaw.org/2023/11/13/the-icj-wall-advisory-opinion-and-israels-right-of-self-defence-in-relation-to-the-current-armed-conflict-in-gaza/> accessed 4 May 2024.

[240] ibid.

[241] Statista Research Department, 'Israel & Palestinian Territories: Number of Fatalities & Injuries Caused by the Israel & Hamas War 2023' (*Statista*, 16 April 2024) <https://www.statista.com/statistics/1422308/palestinian-territories-israel-number-fatalities-and-injuries-caused-by-the-israel-and-hamas-war/> accessed 4 May 2024.

However, through retaliation attacks by the Israeli armed forces as of 28 April of this year, the situation in Gaza, according to the UN Relief and Works Agency for Palestine (UNRWA), is the following:

1. Approximately 1.7 million people, estimating more than 75 percent of the total population, have been displaced throughout the Gaza Strip.
2. Up to 300.000 people live now in the districts of Gaza City and Northern Gaza.
3. The Education Cluster evaluates the damage to Gaza's schools; around 86 percent are damaged, and the remaining schools are used for military purposes.
4. There are currently only six functioning hospitals in Gaza.[242]

As of April 26th, the Ministry of Health in Gaza has reported that a minimum of 34,356 Palestinians have lost their lives in the Gaza Strip since the conflict began in October 2023. Approximately 70 percent of the deceased are said to be women and children. Additionally, another 77.368 Palestinians have reportedly sustained injuries.[243]

Looking at the latest numbers from UNRWA, the situation falls under international humanitarian law. Since both Israel and Palestine's commitment to the international realm has been established in the chapters above, they are also bound by customary international law.

6.3.1 Violations and breaches of IHL in the Gaza Strip since October 2023

When Hamas launched strikes against Israeli civilians, resulting in casualties, injuries, and kidnapping, it breached Article 3 of the Geneva Conventions, which specifically forbids hostage-taking in non-international armed conflicts.[244] Both Israel and Palestine are in breach of the Fourth Geneva Convention, which covers the protection of civilian persons in times of war, and especially Article 4 of the Convention, which emphasizes those who, at any point and in any way, find

[242] United Nations Relief and Works Agency, 'UNRWA Situation Report #105 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem' (*UNRWA*, 28 April 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-105-situation-gaza-strip-and-west-bank-including-east-Jerusalem> accessed 4 May 2024.
[243] ibid.
[244] Fathima Mehak Adham, 'Analysing Breaches of International Humanitarian Law: The Israel-Palestine Conflict' (*Centre for Public Policy Research (CPPR)*, 25 April 2024) <https://www.cppr.in/articles/analysing-breaches-of-international-humanitarian-law-the-israel-palestine-conflict> accessed 4 May 2024.

themselves in the hands of a party to the conflict or Occupying authority of which they are not nationals are protected by the Convention at that particular time.[245]

The situation was made worse when armed groups started shooting rockets into civilian areas without cause or purpose. Putting civilian infrastructure and innocent lives in jeopardy. Such acts may also be considered war crimes under the Rome Statute and violate the fundamental principles of IHL.[246] Since the conflict commenced, around 155 healthcare facilities in Gaza have been harmed, according to the UN, as of the 14th of March of this year.[247] The Geneva Conventions and the Hague protect civilian institutions such as hospitals. Articles 18, 19, and 20 of the Fourth Geneva Convention include the protection of civilian hospitals, personnel, medical units, and transports.[248] The First Hague Convention, through Article 23, provides the immunity of hospitals and places where the sick and wounded are collected. Similarly, the Second Hague Convention respecting the laws and customs of war and land and its annex Regulations concerning the laws and customs of war land, specifically Article 27, states that all efforts must be made to minimize damage to buildings dedicated to religion, art, science, and charitable purposes, as well as hospitals and locations where the sick and wounded are gathered, provided these sites are not concurrently employed for military activities.[249]

UNRWA reported in March of this year that before the attack in October, more than 625.000 students and 22.000 teachers were attending school in Gaza, meaning the estimated number of school buildings in the area was 563. More than 200 schools have been hit since the beginning of the conflict.[250] This is a breach of Article 22 of the Fourth Geneva Convention, which covers the protection of civilian educational institutions along with Article 52 of the Additional Protocol I of the Geneva Conventions in protecting civilian objects, including building dedicated education.

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[245] Art 4 of the Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 6 UST. 3516; 75 UNTS. 287.

[246] Adham (n 243).

[247] Al Jazeera, 'Israeli Forces Storm Gaza's al-Shifa Hospital' (*Al Jazeera*, 18 March 2024) <https://www.aljazeera.com/news/2024/3/18/israeli-army-opens-fire-inside-gazas-al-shifa-hospital-officials-say> accessed 4 May 2024.

[248] See Articles 18,19 and 20 of the Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 6 UST. 3516; 75 UNTS. 287.

[249] Art 27: In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes of Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. (adopted 29 July 1899) The Hague.

[250] 'Gaza War: "Direct Hits" on More than 200 Schools since Israeli Bombing Began | UN News' (*UN News- Global perspective Human stories*, 27 March 2024) <https://news.un.org/en/story/2024/03/1148031> accessed 4 May 2024.

Article 27 mentioned above of the Second Hague Convention states that all necessary steps must be taken to spare buildings dedicated to education.[251]

Israel has also broken international humanitarian laws while isolating the Gaza Strip and cutting off the supply of electricity, fuel, and drinking water at the beginning of the conflict even though as of November 6, 2023, the water supply to certain parts has been reinstated the breach is there nonetheless, leaving civilians in hunger and torture.[252] Articles 55 and 59[253] of the Fourth Geneva Convention prohibit occupying powers from depriving the population of objects indispensable to survival, including food and medical supplies. Requires food insurance, and occupying powers must allow humanitarian organizations such as the International Committee of the Red Cross to relieve the civilian population. Articles 54[254] and 69[255] of the Additional Protocol I of the Geneva Conventions also prohibit starvation as a method of warfare and require the allowance of free passage for humanitarian relief supplies, which may include food, clothing, bedding, and other essential supplies.[256] The above examples can be considered crimes against humanity and violate Article 7(1) of the Roman Statute.[257] Additionally, there is a great deal of concern that what is happening in Gaza could directly violate the Genocide Convention.[258] Three months into the conflict, South Africa filed a petition with the ICJ, alleging that Israel was committing genocide

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[251] Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 6 UST. 3516; 75 UNTS. 287; 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) 1125 UNTS. 3.; Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. (adopted 29 July 1899) The Hague.

[252] Statista Research Department (n 240).

[253] Article 59, Relief I. Collective relief 'Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.' <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-59> accessed 5 May 2024.

[254] Article 54, Protection of objects indispensable to the survival of the civilian population ICRC Database, 'Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.' <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-54> accessed 5 May 2024.

[255] Article 69, Basic needs in occupied territories ibid.

[256] See also para 2 of Article 69: Relief actions for the benefit of the civilian population of occupied territories are governed by Articles 59 , 60 , 61 , 62 , 108 , 109 , 110 and 111 of the Fourth Convention, and by Article 71 of this Protocol, and shall be implemented without delay. ibid.

[257] See Article 7(1) "For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law…"Rome Statute of the International Criminal Court, 2187 UNTS 90 (adopted on 17 July 1998, entered into force July 1, 2002).

[258] Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948) 78 UNTS. 277;S. Exec. Doc. O, 81-1 (1949).

against the Palestinian Population in Gaza.[259] Although the Court did not impose a ceasefire, it did urge Israel to take precautions against acts that might be considered violations of the Convention.[260] This can be seen as a new legal guideline for Israel's actions in Gaza. Since the Court was not asked to rule on the legality of the war itself, the author will not address the matter any further. However, this example highlights the issue's seriousness and the global community's concerns.

While the list does not cover all potential violations occurring in the ongoing conflict, it should be noted that many have seen the actual range of breaches as extensive. The necessity of food, clothing, medical care, the importance of education, and humanitarian aid are all protected by IHL for a reason. States must adhere to the rules of warfare covered by the Just War theory, jus ad bellum and jus in bello. In conclusion, the data presented in this chapter, collected up to the most recent dates, highlights a concerning escalation of the situation since the conflict started and might be considered a serious breach of IHL.

6.4 United Nations and their Obligations. Have they been successful?

The previously reviewed chapters on reconciliation and intervention demonstrate that while Chapter VI of the Charter provides a framework for mediation and other peaceful conflict resolutions, it must be fully explored before proceeding to more difficult decisions, such as those outlined in Chapter VII, which include interventions.

Since the conflict started, there have been attempts by the UN General Assembly to try and find a solution to the situation, for example, demanding the protection of civilians and reminding parties to uphold legal and humanitarian obligations with the adoption of Resolutions A/RES/ES-10/21 in October of 2023 and A/RES/ES-10/22 in December of last year.[261] It also adopted Resolution A/RES/78/170 in December of 2023, demanding a permanent sovereignty of the Palestinian people

[259] Burke Bill, 'Explaining the International Court of Justice's Ruling on Israel and Gaza | Penn Global' (*Perry World House*, 8 February 2024) <https://global.upenn.edu/perryworldhouse/news/explaining-international-court-justices-ruling-israel-and-gaza> accessed 5 May 2024.

[260] International Court of Justice, 'Order on the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) (26 January 2024)' <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

[261] 'UNGA Res A/RES/ES-10/21 (27 October 2023)'; 'UNGA Res A/RES/ES-10/22 (12 December 2023)'.

in the Occupied Palestinian Territory in light of the ongoing crisis.[262] However, as explained in the chapters covering the UN Charter, UNGA resolutions are not binding for the member states, including Israel.

The UNSC, however, holds the most power in the UN's framework, as has been examined, and its resolutions are legally binding. Until March of this year, the UNSC presented five draft resolutions demanding the immediate release of hostages, humanitarian aid, and ceasefires. All of them were rejected and vetoed by the permanent states, mostly the US and Russia.[263] Finally, the members agreed to Resolution 2728, demanding an immediate ceasefire on March 25th during the month of Ramadan.[264]

The observer for the State of Palestine noted in the 9586th meeting of the SC after the adoption of the resolution:

> It has taken six months, over 100,000 Palestinians killed and maimed, 2 million displaced, and famine for this Council to finally demand an immediate ceasefire." Today's adoption is "a vote for humanity and life to prevail.[265]

This action can be seen as a turning point in the mediating procedures of Chapter VI of the Charter. However, Israel has not taken the resolution seriously. Even though resolutions authorized by the UNSC are legally binding, they continue to strike and cause damage, defying their obligations to the UN. To stop and address persistent breaches of IHL, the UNSC must undergo extensive reforms such as improving enforcement procedures, reducing the impact of veto power, and ensuring accountability by referring cases to the ICC.[266]

As was mentioned at the beginning of this thesis, even though the author is examining the situation from a legal perspective, it is hard not to notice the political influence in the workings of the UN, such as veto power. The veto power of the permanent member states has been explained and examined in the previous chapters, especially the influence of the US defending Israel. The

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[262] Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources : resolution / adopted by the General Assembly 'UNGA Res A/RES/78/170 (19 December 2023)'.
[263] Adham (n 243).
[264] Security Council resolution 2728 (2024) [on ceasefire in the Gaza Strip during Ramadan] 'UNSC Res 2728 (25 March 2024) UN Doc S/RES/2728'.
[265] Meetings Coverage, 'Security Council Demands Immediate Ceasefire in Gaza for Month of Ramadan, Adopting Resolution 2728 (2024) with 14 Members Voting in Favour, United States Abstaining | Meetings Coverage and Press Releases' (*UN Meetings Coverage and Press Releases*) <https://press.un.org/en/2024/sc15641.doc.htm> accessed 5 May 2024.
[266] Adham (n 243).

attempts by the UN after seven months of delegation, conversations, and draft resolutions to get Israel to comply have failed. Finally, a resolution for a ceasefire was adopted and can be seen as a turning point and hope that this nightmare might end. However, Israel's disobedience to said resolution, despite it being legally binding, is a concern and may be a sign that there is no willingness or intention to stop the aggression on their part, deeming the UN's attempts to stop the war ineffective. Thus, one may wonder: Have the UN's obligations, according to Chapter VI, been fully exhausted? Is it appropriate to apply Chapter VII and consider intervention by force?

6.5 What's next?

The author emphasizes the importance of acknowledging the ongoing nature of the conflict and the current uncertainty surrounding its future. This section of the thesis merely aims to explore possible next steps by analyzing previously mentioned treaties, laws, and cases relevant to such situations. Although there might be other alternatives, relevant key aspects of conflict situations have been examined, including possible actions that can be taken. Thus, this thesis' findings are limited to the study in response to the research topic.

For the sake of the argument, let us say that the obligations of Chapter VI have been fully exhausted; the next step might be intervention by force, as outlined in Chapter VII. In the previous chapters, where the works of the UNSC were analyzed, it was concluded that under Chapter VII, the Council can invoke Article 42 of the Charter, which states that if the non-military measures outlined in Article 41 have failed, the SC can resort to the use of force to restore international peace and security.[267]

Actions taken by the SC in wartime scenarios can be found, for example, in resolution 678, as has been mentioned before in this thesis regarding Iraq's invasion of Kuwait; this case also made it clear that military intervention was strengthened by the Iraqi regime's persistent disobedience even after six months of negotiations.[268] This could be a precedent for the case in hand; if Israel continues to disobey ceasefire resolutions, then military intervention is more likely to happen.

[267] See Article 42, "Should the Security Council consider that measures provided for in Article 41would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations." United Nations, Charter of the United Nations, 1 UNTS XVI, (24 October 1945).

[268] 'UNSC Res 678 (29. November 1990) UN Doc S/RES/678(1990).' (n 91).

Another example can be found in Resolution 827[269] in response to the crisis in the Balkans in 1990-1991. Similarly, Resolution 1509[270] from 2003 approved sending a UN peacekeeping force to stabilize Liberia during the Second Liberian Civil War. Furthermore, Resolution 1973[271] in 2011 permitted member states to act in the protection of civilians in Libya and sparked a military intervention by NATO.[272]

However, it is easier said than done because even though the SC holds this power, various academics and lawyers agree that the permanent states and their veto power override the prior. Russia and the US influence has been seen as an obstacle for the SC to fulfill their duty. It is considered a weakness in the structure of the UN framework, especially in grave situations in times of conflict, such as humanitarian crises, human rights violations, torture, and crimes against humanity in general. Therefore, there might be a concern that in case Article 42 gets invoked by the UNSC and military intervention represented, the US might veto it because it supports Israel and then Russia because of its ongoing conflict in Ukraine, as has been mentioned in chapter 3.1.2 of this thesis.

Humanitarian intervention by international organizations such as NATO might also be possible if actions through Article 42 fail. Chapters VII and VIII of the UN Charter demonstrate the North Atlantic Treaty's reliance on Security Council approval, providing the treaty with legal force. Despite having its roots in the US-Soviet rivalry, many might consider that NATO's use of Article 5 of the treaty in the 9/11 situation expands its reach across the Euro-Atlantic area and might think of it as a precedent for intervention in the Israel-Palestine war. Through Chapter VIII of the Charter, the SC can authorize NATO to intervene as it did in the Bosnia conflict, which has already been discussed in chapter 3.2.1 of this thesis. If, for some reason, the situation escalates and the SC is not sure about the proceedings on how to handle the situation as it did when ethnic cleansing was happening in Kosovo in 1999, then NATO might be able to intervene on its own with the justification it did back then, a great need of humanitarian intervention. As has been mentioned, the action of NATO in the Kosovo War has been highly criticized, but many think it showed results: the war ended. Later on, the SC approved NATO's significant future involvement in international

[269] 'UNSC Res 827 (25. May 1993) UN Doc S/RES/827(1993)' (n 135).
[270] 'UNSC Res 1509 (19. September 2003) UN Doc S/RES/1509(2003).' (n 136).
[271] 'UNSC Res 1973 (17. March 2011) UN Doc S/RES/1973(2011)' (n 137).
[272] Bishnoi (n 133) 65.

security operations in Kosovo with Resolution 1244 without mentioning NATO's previous bombing campaign and Serb displacement. The fact that the SC did not mention or even condemn the operation as unlawful might be seen as a precedent for future endeavors, for example, in the case of Israel and Palestine. Considering NATO's potential assistance in this scenario, it's worth noting its close ties with the USA. Over the years, there have been discussions about the nature of the relationship between the USA and Israel, including the instances mentioned where the US has supported Israel through vetoes. Given these factors, it is uncertain whether NATO would intervene.

That leaves the "coalition of the willing" member states or international organizations bound by the responsibility to protect in grave conflict situations as the current ongoing crisis at hand. It has been done before, as previously mentioned, for example, in the cases of the Cuban missile crisis, when the Organization of American States (OAS) decided to advise a quarantine on Soviet shipments of offensive military equipment to Cuba and when the Arab League sent the Symbolic Arab League Force to Lebanon in 1976 to help with internal security. This alternative might be taken into consideration considering these previous examples.

The "what's next?" scenarios presented above are hypothetical, assuming the situation worsens when military action becomes necessary. In any case, if that were to occur, the international legal system relating to armed conflicts and wars offers the options outlined regardless of its weakness or failures.

7. Conclusion

In conclusion, the author of this thesis has offered a potential analysis of the legal dynamics concerning the relationship between international legal frameworks and persistent breaches of human rights through the lens of the current situation in the Israel-Palestine conflict. Examining what resources international law offers for addressing human rights and humanitarian crises when armed conflict occurs. The author made relevant revelations upon examination of significant discoveries and relevant cases. Firstly, key inquiries within the Just War theory include moral justifications for initiating war (jus ad bellum) and the conduct of war itself (jus in bello). While wartime presents challenges to conventional rules, prohibitions against crimes of humanity and harming civilians remain strong. The author also examined the role of international organizations

in shaping and enforcing international law, particularly in the context of armed conflict, and examined the principles of international humanitarian law, highlighting the Geneva Conventions and Hague Conventions as key instruments governing conduct during warfare. The United Nations and its charter hold significant power in maintaining international peace and security, the charter being of jus cogens nature, and states therefore not allowed to derogate from the fundamental values. Even though Chapter VI of the Charter focuses on peaceful solutions during armed conflicts, its relevance seems to differ between cases. The case of Iraq's invasion of Kuwait showed that despite several attempts to resolve the conflict peacefully, Iraq disobeyed and continued its aggression; the same goes for the situation in Palestine today. On such occasions, Chapter VII of the Charter addresses threats to peace, breaches of peace, and acts of aggression. Article 39 grants the SC authority to determine such situations and take measures under Articles 41 and 42 to restore peace. Article 41 enables non-military measures like sanctions, with member states obliged to comply, as SC resolutions are legally binding. Article 42 then allows military action if diplomatic measures are insufficient, as demonstrated by Resolution 678 during the Iraqi invasion of Kuwait, thus establishing that the SC holds the power for such actions in the international realm. However, through the analysis, the author discovered that the powers of the UNSC are weak because of the permanent members and their veto powers. It truly is a sad revelation since the Council's key aspect is to uphold national peace, and the statistics of the most used vetoes are alarming. How can countries under occupation and constant aggression cope when the only body authorized to keep them safe seems unable to act because of the higher power permanent members hold?

The global community is, however, bound by erga omnes obligations and the responsibility to protect. The *Barcelona Traction* case established that third states have a legal interest in upholding international obligations, thus allowing intervention against violators. The ICISS report also emphasizes intervention in cases of serious harm to populations when states fail to act. Even though states have tried to hide behind their highly protected sovereignty, in times of grave concern, it intercepts human rights, and the need for intervention overrides the right of sovereignty. It is essential to remember that violent crimes need to be prosecuted, with competent courts like the ICC and the ICJ possessing authority to address such matters. Nonetheless, legal proceedings often entail significant time limits. In times of conflict, where agreements are elusive, there is little room to await court decisions.

If the situation escalates and the UNSC cannot uphold its obligations due to hesitation or veto power, then the intervention in Kosovo in 1999 led by NATO might be considered as a precedent in the current situation. However, as mentioned initially, the solution gets complicated because these situations tend to be political. In the current situation, NATO might try to use the jurisdiction justification, but the action of 9/11 showed that its jurisdiction moved further than that of the North Atlantic area. Regardless of the possibility of intervention, the problem here remains that the US leads the NATO military. Looking back at the relationship it has with Israel, the scenario where the US might prevail and not take any action is possible.

Nevertheless, the responsibility to protect and the erga omnes principle still applies, leading us to the "coalition of the willing." While the author examined past instances where international law has been applied to pressure states in crises, it can be concluded that it might be possible for third parties to come together and intervene in the face of the gravity of the situation and the media surrounding the debate. The author stresses that if the conflict escalates and military involvement becomes necessary, regardless of Israel's actions to date, the conflict needs to end because of the humanitarian catastrophe involving Palestinian civilians as well as the loss of Israeli lives.

The world is watching, and the aggression keeps happening. Thus, in response to the research question, there may very well be a legal framework for handling situations in times of conflict, from diplomatic solutions to military interventions. Even though the system that pressures states' involvement in such matters is weak; it is an important system nonetheless, and its existence is crucial, but there might be room for improvement.

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