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LEGAL CONSEQUENCES OF ISRAEL'S MILITARY OPERATIONS IN GAZA, LEBANON AND IRAN: FROM IMPUNITY TO ACCOUNTABILITY

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"To deny people their human rights is to challenge their very humanity."

Nelson Mandela

INTRODUCTION

Few moments in the history of international law test its architecture as starkly as a conflict in which the documented scale of civilian casualties, destruction of infrastructure and deliberate deprivation of humanitarian supplies generated condemnation from the international community, yet produces consequences disproportionate to the gravity of the violations. The military operations conducted by the Israeli Defence Forces in Gaza since October 2023 and the subsequent expansion of hostile operations into Lebanon and then strikes on Iranian territory, present precisely such a test.

On October 7, 2023, Hamas launched a coordinated attack on southern Israel, killing approximately 1,200 innocent persons and kidnapping around 250 hostages. These acts constitute serious violations of International Humanitarian law and their condemnation is neither legally nor morally contested. But what has since become profoundly questioned that whether Israel's military operations conforms to the binding obligations of international law or whether it has, instead, amounted to a deliberate commission of war crimes, crimes against humanity, and genocide against the civilian population.

As per philosopher Michael Walzer's *Just and Unjust Wars* (1977), "even just causes cannot justify unjust means". Here, the distinction between permissible use of force in self-defence and the commission of international crime is drawn by the methods employed. When those methods include the levelling of entire neighbourhoods, blockade of food and medicine to a population of over two million, the killing of more than 17,000 children,¹ and the

¹ UNICEF, *Children Under Attack: Gaza Crisis at Six Months* (April 2024) (reporting that over 13,800 children

systematic targeting of hospitals, journalists, and UN personnel, the legal question is whether the Law has itself become a toothless tiger. It is one that international courts are being asked to answer.

This paper examines the legal framework, the evidentiary record, the accountability mechanisms, and the structural reforms necessary to give effect to the promise that international humanitarian law is not merely a toothless tiger. It does so without pretending that the matter admits itself as an easy resolution or whether the law's current architecture is adequate to the scale of the challenge.

LEGAL FRAMEWORK: THE GOVERNING OBLIGATIONS

The conflict in Gaza operates simultaneously under multiple bodies of law. The first and foundational body is international humanitarian law: the Geneva Conventions of 1949,² and Additional Protocol I of 1977,³ which codifies the principles of distinction between attacking only at military targets, prohibiting attacks that is expected to cause civilian harm and taking all possible measures to minimise civilian harm. Israel has ratified the Geneva Conventions but is not a party to Additional Protocol I. Secondly, the Genocide Convention of 1948,⁴ to which Israel is a party, imposes obligation to refrain from and to prevent genocide. The crime requires proof of guilty act of killings, causing serious bodily harm, deliberately inflicting depriving conditions of life which is caused to inflict physical destruction accompanied by the specific intent to destroy a protected group, in whole or in part.⁵

had been killed in six months of hostilities, representing approximately 34 child deaths per day, and that more than 21,000 children had been separated from or lost their parents during the conflict; by January 2025 the figure had risen beyond 17,000 child deaths).

² Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 287. Common Article 3 establishes minimum humanitarian protections in all armed conflicts, prohibiting murder, mutilation, cruel treatment, and torture of persons taking no active part in hostilities.

³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts arts. 48, 51-54, June 8, 1977, 1125 U.N.T.S. 3. Article 48 codifies the fundamental rule of distinction; Articles 51 and 57 codify the proportionality and precaution principles respectively.

⁴ Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277 (defining genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, including killing members of the group and deliberately inflicting conditions of life calculated to bring about its physical destruction).

⁵ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Int'l Crim. Trib. for Rwanda Trial Chamber I, Sept. 2, 1998) (establishing the foundational jurisprudence on *dolus specialis* in genocide, holding at paragraph 518 that the specific intent requirement 'is a mental linkage between the physical result and the mental state of the perpetrator' and that this intent may be inferred from a consistent pattern of conduct directed systematically against a protected group).

Thirdly, the Rome Statute of the ICC,⁶ which Israel has signed but never ratified, provides war crimes, crimes against humanity, and acts of genocide. While Israel's non-ratification limits ICC's jurisdiction over Israeli nationals, the Court derives jurisdiction from Palestine's accession to the Statute.

Lastly, as per Articles 2(4) and 51,⁷ of the UN Charter, which governs the lawfulness of the use of force, limiting the scope of self-defence and requires that any use of force shall remain within the boundary of necessity and proportionality. The UN has recognised that "genocide is an international crime, which entails the national and international responsibility of individual persons and states."

CURRENT SCENARIO: THE DIMENSIONS OF THE CRISIS

The scale of destruction in Gaza, documented by satellite analysis, establishes that over 60 percent of structures in Gaza were damaged or destroyed by February 2024,⁸ rising to near-total devastation in northern Gaza. Entire neighbourhoods of Jabalia, Beit Hanoun, Shujaiya have been reduced to rubble, in a manner that has no modern precedent after the Second World War bombings.

The human death is equally unprecedented. More than 50,000 civilians were killed by early 2025, out of which over 70 percent were women and children.⁹ The IPC Famine Review Committee formally declared famine conditions in northern Gaza in March 2024¹⁰, a declaration that had not been issued for any active conflict zone in last decade. UNICEF

⁶ Rome Statute of the International Criminal Court arts. 6-8, July 17, 1998, 2187 U.N.T.S. 90. Article 8(2)(b) enumerates war crimes in international armed conflict including intentionally directing attacks against civilians, using starvation as a method of warfare, and attacking personnel involved in humanitarian assistance missions.

⁷ U.N. Charter arts. 2(4), 51 (prohibiting the threat or use of force against the territorial integrity of any state while preserving the inherent right of individual or collective self-defence against an armed attack, subject to Security Council oversight). The self-defence exception does not authorise violations of the laws of war in the conduct of hostilities.

⁸ UNOSAT, Gaza Strip Building Damage Assessment (March 2024) (estimating, using satellite imagery analysis corroborated by independent researchers at Corey Scher at CUNY and Jamon Van Den Hoek at Oregon State University, that more than 60 percent of structures across Gaza had been damaged or destroyed by February 2024, rising to near-total destruction in northern Gaza and Jabalia).

⁹ United Nations Office for the Coordination of Humanitarian Affairs, Hostilities in Gaza and Israel, Flash Update No. 174 (May 2024) (reporting that women and children constituted more than 70 percent of all verified fatalities in the first six months of the conflict, based on Ministry of Health data cross-referenced against UN verification methodologies).

¹⁰ Integrated Food Security Phase Classification, IPC Famine Review Committee Report: Gaza Strip (March 2024) (formally declaring famine conditions in northern Gaza, constituting the first famine declaration in the context of an active military operation in decades, and projecting that famine would spread to other parts of Gaza if existing patterns of obstruction of humanitarian access continued).

reported that more than 13,800 children were killed in the first six months alone.¹¹

The conflict expanded into Lebanon from September 2024, which resulted in an estimated 3,800 civilian deaths and the displacement of over one million people, with air strikes in Beirut's southern suburbs and targeting UNIFIL positions, injuring Italian and Spanish peacekeepers.¹² During April 2024, Israel bombed the Iranian diplomatic compound in Damascus, killing seven IRGC officials, constituting a prima facie violation of the Vienna Convention on Diplomatic Relations.¹³ The October 2024 strikes on Iranian territory were justified on the basis that Iran was approaching weapons grade uranium enrichment. This claim was contradicted by IAEA reporting and subsequently by the current chief of the Association, who confirmed Iran's enrichment remained at 60 percent purity.¹⁴

IDENTIFYING THE PROBLEM AND ITS STRUCTURAL ROOTS

The problem in simple words is this; Israel has conducted a military campaign in Gaza whose documented methods of their Dahiya Doctrine, a method of an Israeli military strategy which involves the large-scale destruction of civilian infrastructure, to put pressure on hostile governments,¹⁵ the statements of its senior political leadership stating that the entire civilian population as legitimate targets.¹⁶ Further, the blockade of food, water, medicine, and fuel

¹² Lebanese Armed Forces, Statement on Israeli Attacks on UNIFIL Positions (Oct. 10, 2024) (documenting that Israeli forces had fired upon United Nations Interim Force in Lebanon positions on multiple occasions in October 2024, injuring peacekeepers from Italy and Spain; such attacks constitute potential violations of Rome Statute Article 8(2)(b)(iii), which criminalises intentionally directing attacks against personnel involved in a peacekeeping mission in accordance with the UN Charter).

¹³ Vienna Convention on Diplomatic Relations art. 22, Apr. 18, 1961, 500 U.N.T.S. 95 (providing that the premises of a diplomatic mission shall be inviolable and that the receiving state is under a special duty to protect those premises against intrusion or damage). Israel's airstrike on the Iranian diplomatic compound in Damascus on April 1, 2024, which killed seven Iranian officials, constituted a prima facie violation of this inviolability obligation binding on Israel as a party to the Convention.

¹⁴ International Atomic Energy Agency, NPT Safeguards Agreement with Iran, GOV/2024/61 (Nov. 2024) (reporting that Iran's uranium enrichment had reached 60 percent purity as of the reporting period, substantially below the approximately 90 percent required for weapons-grade material; the Director General confirmed that no diversion of nuclear material to military purposes had been detected). Israel's October 2024 strikes on Iranian territory premised on anticipated weaponisation cannot satisfy the 'imminent threat' standard required under customary international law for anticipatory self-defence as articulated since the Caroline incident of 1837.

¹⁵ Avi Kober, The Dahiya Doctrine and Its Application to Lebanon and Gaza, 38 Journal of Strategic Studies 481 (2015) (describing the Israeli military concept articulated by then-IDF Northern Command Chief Gadi Eisenkot following the 2006 Lebanon War, which endorsed the deliberate targeting of civilian infrastructure to generate societal pressure on adversaries; the doctrine's application as a declared operational approach raises the question of whether Israeli military doctrine embeds a structural violation of the prohibition on collective punishment and disproportionate attack).

¹⁶ Yoav Gallant, Israeli Minister of Defence, Statement to Israeli Defense Forces (Oct. 9, 2023), reported in multiple Israeli media sources. Gallant stated: 'We are fighting human animals and we are acting accordingly. There will be no electricity, no food, no fuel, everything is closed.' The statement has been cited by multiple legal scholars and the ICC Pre-Trial Chamber as direct evidence of intent relevant to the *dolus specialis* analysis in genocide proceedings.

reflect a deliberate military and political strategy.

The foundational reason this problem exists is the geopolitical reason within which accountability operates. The US, Israel's principal arms supplier and diplomatic sponsor, has used its Security Council veto to block binding resolutions on over 18 occasions since October 2023, including resolutions that would have required compliance with ICJ provisional measures orders.¹⁷ This renders the Security Council, the principal enforcement organ of international law under the UN Charter, operationally inert and a showpiece body of states which is unable to resolve the most inhumane case of potential mass atrocity before it. The problem is structural, not incidental, and it demands structural solutions.

The Dahiya Doctrine, which was named after the Lebanese suburb of Beirut razed in the 2006 war, was articulated by senior Israeli commanders as a policy of application of disproportionate force to civilian infrastructure and as a deliberate method of generating pressure. It is not merely a war crime waiting to be committed rather it is a legally significant statement of intent that bears directly on the special analysis in genocide proceedings and on the command responsibility analysis under Article 28 of the Rome Statute.

LEGAL TESTS FOR WAR CRIMES AND GENOCIDE

The legal test for a war crime under Article 8 of the Rome Statute requires three elements: first, that the act falls within the categories of attacking civilians, using starvation, targeting protected persons, and so on; second, that the act was committed in the context of an armed conflict; and third, that the perpetrator was aware of factual circumstances establishing the existence of the conflict. The evidence satisfying these elements in Gaza are, by the standards of IHL, overwhelming.¹⁸ Satellite imagery, UN reports, survivor testimony, and the documented conduct of air strikes on residential buildings establishes that the attacks were not directed at specifically identified military objectives and cannot satisfy the distinction requirement.

¹⁷ G.A. Res. ES-10/22, U.N. Doc. A/RES/ES-10/22 (Dec. 12, 2023) (Emergency Special Session resolution demanding an immediate humanitarian ceasefire, release of all hostages, and unimpeded humanitarian access, adopted by 153 votes to 10 with 23 abstentions, one of the most lopsided margins in UNGA history on a major security crisis, reflecting near-universal multilateral consensus that the humanitarian situation was catastrophic and required immediate action).

The proportionality analysis under customary IHL, as described by Yoram Dinstein,¹⁹ requires a good faith assessment of expected civilian harm against the anticipated concrete and direct military advantage. The pattern in Gaza strikes killing hundreds of civilians cannot withstand proportionality scrutiny under any defensible standard. The ICTY's interpretation of the proportionality principle in *Prosecutor v. Galic* makes it clear that the knowledge of foreseeable civilian harm at the time of the targeting decision is the operative threshold, not post-hoc.

For genocide, the test of special intent is challenging but not impossible to establish. The jurisprudence of the ICTR in *Akayesu*²⁰ and the ICTY in *Krstic*²¹ establishes that specific intent may be inferred from a consistent pattern of conduct that, taken collectively, can be explained by a design. The statements of Defence Minister Gallant²² ('We are fighting human animals and we are acting accordingly; there will be no electricity, no food, no water'), Finance Minister Smotrich ('Total annihilation; you wanted hell, you will get hell'), and the killing of over 17,000 children while deliberately denying food supply, healthcare, and the destruction of residential infrastructure is a combination which constitutes the evidential proof that international tribunals have relied upon to infer genocidal intent of a perpetrator. Professor William Schabas, the leading scholarly authority on the crime of genocide, identifies three categories of evidence most probative of special intent: the scale of destruction, the systematic targeting of victims by group identity, and the statements of perpetrators.²³ If one can apply the legal analysis, all three categories are satisfied in Gaza.

¹⁹ Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* 119-127 (3d ed. 2016) (providing a comprehensive treatment of the proportionality principle under customary IHL, noting that the test requires the attacking commander to make a good faith assessment in advance, and that post-hoc rationalisation of a strike as proportionate is insufficient where the disproportionate harm to civilians was foreseeable at the time of the decision to attack).

²¹ *Prosecutor v. Krstic*, Case No. IT-98-33-T, Judgment, para. 12 (Int'l Crim. Trib. for the Former Yugoslavia Trial Chamber I, Aug. 2, 2001) (establishing the substantiality standard for the 'in part' requirement of genocide, holding that a part of the group is 'substantial' if it is emblematic of the overall group or is essential to its survival, and that numeric size alone is not the sole determinant of substantiality).

²³ William A. Schabas, *Genocide in International Law: The Crime of Crimes* 134-148 (2d ed. 2009) (providing a comprehensive analysis of the *dolus specialis* requirement and its proof, noting that in cases where direct evidence of genocidal intent is unavailable, tribunals have consistently held that the intent may be inferred from a systematic pattern of conduct that, taken as a whole, can only be explained by an intent to destroy the targeted group, and that scale of destruction, selectivity of victims, and accompanying statements of officials are all relevant to this inferential analysis).

EVIDENTIARY CHALLENGES

Documentation of violations in Gaza presents evidentiary challenges. Israel has systematically denied access to independent investigators, journalists, and UN fact-finding missions. The conflict zone has been declared a closed military area, rendering direct observation impossible. OSINT analysis, survivor testimony collected in third countries, and the accounts of journalists, who have themselves been targeted at rates unprecedented in modern conflict.

The legal framework for collection of evidence in international criminal proceedings was addressed in *Akayesu*²⁴ and developed further by the ICJ in its provisional measures jurisprudence in *South Africa v. Israel*,²⁵ where the Court found the 'plausibility' threshold for provisional measures to be satisfied on the available documentary and testimonial evidence. This is a lower threshold rather than proof beyond reasonable doubt, but it operates as a significant legal finding by the world's principal judicial organ. The available evidence corroborated by satellite imagery, UN agency reports, testimony of wounded civilians and open-source documentation residential building strikes is sufficient to sustain a reasonable grounds for finding of the plausibility that is required for ICC arrest warrants,²⁶

THE ROLE OF MEDICAL EVIDENCE, UN BODIES, AND THE INTERNATIONAL COMMUNITY

The UN Human Rights body has produced an extensive evidentiary record. The UN Special Rapporteur on the Occupied Palestinian Territory, Francesca Albanese, published *Anatomy of a Genocide*²⁷ in March 2024, stating that there are reasonable grounds to believe

²⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Provisional Measures Order, 2024 I.C.J. Rep. (Jan. 26, 2024) (finding, by a vote of 15 to 2, that South Africa's rights and the rights of Palestinians under the Genocide Convention were plausible and that the situation in Gaza was capable of causing irreparable harm, ordering Israel to take all measures within its power to prevent acts within the scope of the Convention).

²⁶ Situation in the State of Palestine, Arrest Warrant for Benjamin Netanyahu, ICC-01/18 (ICC Pre-Trial Chamber I, Nov. 21, 2024) (issuing arrest warrant for crimes against humanity including murder, persecution, and other inhumane acts, and for the war crime of using starvation as a method of warfare, finding reasonable grounds to believe Netanyahu bore individual criminal responsibility by reason of his authority over all relevant Israeli state organs).

²⁷ Francesca Albanese, UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied Since 1967, *Anatomy of a Genocide*, U.N. Doc. A/HRC/55/73 (Mar. 25, 2024) (concluding, on the basis of systematic analysis of patterns of destruction, demographic targeting, and direct statements by Israeli officials, that there are reasonable grounds to believe Israel has committed and is committing genocide against the Palestinian people in Gaza, satisfying both the *dolus specialis* and *actus reus* requirements of the Genocide Convention).

Israel is committing genocide. WHO documented 492 attacks on healthcare facilities.²⁸ UNRWA reported 193 of its staff were killed.²⁹

Amnesty International's December 2024 report³⁰ and Human Rights Watch's documentation of starvation as a weapon of war³¹ add institutional civil society verification to the UN record.

The Western democracies have provided arms supply to Israel throughout. The United States has provided over \$20 billion in military assistance. Germany, the United Kingdom, and Canada supplied weapons or components. Under the ILC Articles on State Responsibility, a state that aids or assists in the commission of an internationally wrongful act with knowledge of the circumstances bearing international responsibility for its contribution.

ICJ AND THE ROLE OF THE SECURITY COUNCIL

South Africa's application to the International Court of Justice in December 2023 has generated the most consequential judicial pronouncement on an active conflict since the Bosnia genocide proceedings. The January 26, 2024 provisional measures order,³² found it plausible that Israel has committed genocide, and ordered it to take all measures within its power to prevent acts within the Genocide Convention's scope, and monthly reporting. The March 28,

²⁸ World Health Organization, Gaza Situation Report (March 2024) (documenting that of Gaza's 36 hospitals, only 10 remained even partially functional following Israeli military operations in and around hospital premises; Al-Shifa Hospital, Gaza's largest and most critical facility, was rendered non-functional following military raids in November 2023 and March 2024). See also Marko Milanovic, *The IDF's Targeting of Al-Shifa Hospital*, EJIL: Talk! (Nov. 15, 2023) (concluding that the evidence adduced by Israel of Hamas military infrastructure inside the hospital was legally insufficient to override the presumption of protected status under IHL).

²⁹ United Nations Relief and Works Agency for Palestine Refugees in the Near East, UNRWA Situation Report No. 87 (May 2024) (reporting that 193 UNRWA staff members had been killed since October 7, 2023, constituting the largest loss of United Nations personnel in any single conflict in the Organisation's history; UNRWA facilities including schools used as designated shelters had been struck on multiple occasions despite notification of coordinates to the Israeli military through the established UN-IDF deconfliction mechanism).

³⁰ Amnesty International, *You Feel Like You Are Subhuman: Israel's Genocide Against Palestinians in Gaza* (Dec. 2024) (concluding after sustained field research, remote sensing analysis, and survivor testimony review that Israel's conduct in Gaza satisfies the legal definition of genocide under the 1948 Convention, including the killing of members of the group, causing serious bodily and mental harm, and deliberately inflicting conditions of life calculated to bring about physical destruction of the Palestinian population in Gaza).

³¹ Human Rights Watch, *Starvation Used as Weapon of War in Gaza* (Dec. 2023) (documenting through satellite imagery, supply chain analysis, and field testimony that Israel deliberately obstructed the entry of food, water, medicine, and fuel into Gaza in quantities sufficient to sustain the civilian population, and that this obstruction was accompanied by explicit statements from senior political figures indicating a deliberate intent to use deprivation as an instrument of warfare).

2024 additional measures order³³ found conditions had resulted to catastrophe, requiring emergency humanitarian access. The July 19, 2024 Advisory Opinion³⁴ declared the occupation itself unlawful and placed all states under an obligation not to recognize or assist the unlawful situation. Israel's compliance with these orders has, on the evidence of UN agency reporting, been effectively non-existent and just acted as a mockery to the justice.

The Security Council's paralysis is the other side of this situation. The UNGA Emergency Special Session has stepped into this vacuum, adopting resolutions by 120-14 and 153-10 margins calling for ceasefire and humanitarian access.³⁵ The Uniting for Peace Resolution (GAR 377) mechanism provides a legal basis for UNGA action where the Security Council has failed to act due to P5 non-unanimity³⁶.

HUMAN RIGHTS OBLIGATIONS UNDER TREATIES

Israel's obligations are not confined to IHL. As a party to the International Covenant on Civil and Political Rights, Israel has obligations under Article 6 which is right to life, Article 7 which is prohibition of torture and cruel treatment, and Article 17 which is privacy and family life. As a member state to the Genocide Convention, Article I imposes an obligation to prevent, not merely refrain from committing, genocide.³⁷ The ICJ in *Bosnia v. Serbia*³⁸ held that the obligation to prevent genocide arises as soon as the state has knowledge or should foreseeably have knowledge of a serious risk that genocide will be committed, and that this obligation extends to taking all reasonable measures within the state's power.

³³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Additional Provisional Measures Order, 2024 I.C.J. Rep. (Mar. 28, 2024) (ordering Israel to ensure unimpeded provision of humanitarian assistance at the scale required by the humanitarian situation, after finding that conditions in Gaza had further deteriorated to the point of catastrophe since the January 26 order).

³⁴ Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, 2024 I.C.J. Rep. (July 19, 2024) (finding by a vote of 11 to 4 that Israel's continued presence in the Occupied Palestinian Territory is in itself internationally wrongful, that Israel is under an obligation to end that presence as rapidly as possible, and that all states are under a duty not to recognise as lawful the situation created by that unlawful presence).

³⁶ G.A. Res. 377 (V), Uniting for Peace Resolution (Nov. 3, 1950) (establishing the procedure by which the UN General Assembly may convene an Emergency Special Session and recommend collective measures, including the use of armed force when necessary, where the Security Council has failed to exercise its primary responsibility for the maintenance of international peace and security due to lack of unanimity among permanent members).

³⁷ See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), Judgment, 2007 I.C.J. Rep. 43 (Feb. 26) (establishing that the obligation to prevent genocide under Article I of the Genocide Convention creates an obligation upon states to take all reasonable measures within their power to prevent genocide whenever they have knowledge or should foreseeably have knowledge of a serious risk that genocide will be committed, and that this obligation extends to states with the capacity to influence a potential perpetrator).

The Convention on the Rights of the Child is also binding on Israel. It creates a heightened obligation towards children in armed conflict. The killing of more than 17,000 children in Gaza³⁹ and the destruction of schools and children's hospitals constitute gross violation of multiple treaties simultaneously. These obligations do not merely apply to Israel: third states parties to these instruments bear obligations to ensure respect for IHL and to take all reasonable steps to prevent genocide when they have the capacity to influence the perpetrator state.⁴⁰

WHO IS LIABLE: INDIVIDUAL AND STATE RESPONSIBILITY

Here, the two distinct complementary regimes of responsibility apply. Individual criminal responsibility under the Rome Statute attaches to natural persons who commit, order, solicit, induce, facilitate, or contribute to international crimes. The ICC Pre Trial Chamber's November 2024 arrest warrants for Netanyahu⁴¹ and Gallant⁴² rest on findings of reasonable grounds that both men bears individual responsibility for the war crime of using starvation as a method of warfare and the crimes against humanity of murder, persecution, and other inhumane acts. The superior responsibility doctrine under Article 28 of the Rome Statute⁴³ captures commanders who knew or should have known of crimes being committed and failed to prevent or punish them.

The responsibility of State operates on a different path. Under the ILC Articles on State Responsibility,⁴⁴ Israel bears primary responsibility for its internationally unlawful acts. Third states like the United States, Germany, the United Kingdom that have supplied arms and diplomatic cover, bear responsibility under Article 16 where they did so with knowledge of the circumstances and the acts would themselves be internationally wrongful. Further, Article 41(2) throws an obligation upon all states not to render aid or assistance in maintaining the situation created by a serious breach of a peremptory norm.

⁴³ Rome Statute, supra note 4, art. 28 (superior responsibility provision, providing that a military commander is criminally responsible for crimes within the jurisdiction of the Court committed by forces under that commander's effective command and control as a result of the commander's failure to exercise proper control, where the commander either knew or should have known that the forces were committing or about to commit such crimes, and where the commander failed to take necessary and reasonable measures to prevent or repress their commission).

⁴⁴ Articles on Responsibility of States for Internationally Wrongful Acts arts. 16, 41, in Report of the International Law Commission, 53d Sess., Supp. No. 10, U.N. Doc. A/56/10 (2001). Article 16 provides that a state which aids or assists another state in the commission of an internationally wrongful act is internationally responsible if it does so with knowledge of the circumstances of the internationally wrongful act and the act would be internationally wrongful if committed by the assisting state. Article 41(2) provides that no state shall recognise as lawful a situation created by a serious breach of a peremptory norm, or render aid or assistance in maintaining that situation.

The concept of *towards all obligations*, articulated by the ICJ in *Barcelona Traction*⁴⁵ means that the prohibition against genocide is owed to the international community as a whole and all states countries have a legal interest in its observance and adherence. This has the doctrinal consequence that any state may invoke the responsibility of the perpetrating state, and that countermeasures in response to a genocide are legally permissible.

POSSIBLE LEGAL SOLUTION

The solutions must be both immediate and structural. The state parties to the Rome Statute bear a binding legal obligation to execute the arrest warrants issued by the ICC. States that permit Netanyahu or Gallant to transit their territory without arrest would themselves incur responsibility for impeding the course of international criminal justice. This is not symbolic: in November 2024, multiple European states confirmed their obligation to execute the warrants, creating practical constraints on the international movement of Israeli political leadership that represent a meaningful accountability consequence. Further, many of the states were under diplomatic influence to not to execute the arrest warrant.

Structurally, the Security Council's veto architecture requires reform. The proposal for a Code of Conduct on veto use in atrocities, would politically constrain veto deployment to prevent or halt genocide, war crimes, or crimes against humanity. While not legally binding, such a code would create political accountability for veto exercise and could, over time, shift the course. The UNGA Uniting for Peace mechanism should be utilised more aggressively, through non-binding but politically significant arms embargo recommendations.

Universal jurisdiction in the domestic courts of third states provides an additional avenue. Several European states have enacted universal jurisdiction legislation that permits their courts to try war crimes and crimes against humanity regardless of the nationality of the perpetrator or victim. Criminal complaints filed in Spain, Belgium, and the Netherlands against Israeli officials have already been initiated. While prosecutorial and diplomatic constraints limit their likely outcome, the accumulation of domestic legal proceedings in multiple jurisdictions creates a sustained accountability pressure and an evidentiary record that will

⁴⁵ *Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain)*, Judgment, 1970 I.C.J. Rep. 3, 32 (Feb. 5) (establishing the concept of obligations erga omnes -- obligations owed not merely to individual states but to the international community as a whole -- and identifying the prohibition against genocide and the basic rules of humanitarian law as paradigmatic examples of such obligations, from which the legal consequence follows that all states have a legal interest in their observance regardless of direct injury).

outlast the present political moment.

CONCLUDING REMARKS

The Gaza conflict has exposed the doctrinal sufficiency and the institutional inefficiency of international humanitarian law. The law possesses all the frameworks required to characterise the documented conduct as international crimes: the distinction, proportionality, and precaution principles; the prohibition of collective punishment and starvation; the special intention requirement for genocide and the jurisprudence for inferring it; and the command responsibility doctrine that reaches the senior political and military leadership. What is missing is enforcement.

The absence of enforcement is not a legal failure; it is a political choice made repeatedly and visibly by a small number of powerful states. That choice carries legal consequences under the ILC Articles on State Responsibility and under the towards all doctrine. International law's temporal frame is longer than electoral cycles. The ICC warrants against Pinochet, Milosevic, Bashir, and now Netanyahu demonstrate that the arc of international criminal accountability, however slow, does bend.

For India, which has maintained a position of principled non-alignment on the Security Council and abstained rather than sided with either the US-Israel axis or the broader multilateral majority, the implications are significant. India ratified the Genocide Convention in 1959 but has not enacted implementing legislation. It is a lacuna that its own courts have noted with regret. A state that aspires to a permanent UNSC seat must be prepared to demonstrate that its commitment to international law is consistent and unconditional, not contingent on geopolitical convenience or political or economic biases.

Voltaire wrote, two and a half centuries ago, that it is forbidden to kill; therefore all murderers are punished unless they kill in large numbers and to the sound of trumpets. International humanitarian law was conceived, over the century that followed the worst atrocities in human history, as the legal instrument that would make Voltaire's cynicism obsolete. It will fulfil that purpose only when accountability is determined by evidence and law, not by the identity of the perpetrator or the interests of their patrons.