

**The International Court of Justice’s contribution to addressing the  
genocide in Gaza: “analysis and evaluation”**

Submitted to: **Global Tribunal on Palestine**,  
Geneva, Switzerland, 6-8 June 2024

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**Introduction**

The occupied Palestinian territories have been witnessing the most heinous violations of international humanitarian and human rights law since the Palestinian Nakba in 1948 to this day; the conscience of the international community has not been shaken by the horror of these violations committed by the Israeli occupation authorities for seventy–six years to put an end to them, as they constitute serious international crimes that undermine international peace and security for the entire international community.

On October 7, 2023, the Israeli occupation authorities launched the worst genocidal holocaust in contemporary history against Palestinian civilians in the Gaza Strip in response to acts of Palestinian resistance, which are regulated by international law and legitimized by the right of resistance, including armed struggle.

The UN Security Council, one of the main organs of the United Nations and primarily responsible for the maintenance of international peace and security, has not taken any steps to stop these crimes under its powers, as defined by

Chapter VII of the UN Charter, as it did in the former Yugoslavia and Rwanda in the 1990s.

Rather, it stood helpless before the interests of the United States of America and the use of its veto power, which aborted draft resolutions calling for a cease-fire, and supplying the Israeli occupation State with all kinds of legal and illegal weapons and ammunition under the pretext of the occupation state's right to self-defense, until we became certain that the United States of America is running the genocidal practice in the Gaza Strip.

In face of the horror of this genocide and the silence of the international community, the voices of those who believe in international law, human rights, and the realization of justice were raised; the need to stop this crime by a decision of the International Court of Justice under Article 9 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, so the State of South Africa submitted a complaint to the International Court of Justice against the Israeli occupation state, and Nicaragua filed another complaint against Germany.

The Palestinian people now have a glimmer of hope that this court will play a vital role in protecting civilians and consolidating peace, by achieving general deterrence by prosecuting countries that support the Israeli occupation state and even partner with it in the crimes against Palestinian civilians, and establishing individual international criminal responsibility for the original and secondary contributors to this genocide and prosecuting them before the competent courts afterwards.

**Importance of the study:**

The flames of the genocide in the Gaza Strip are escalating every day in light of the shameful international silence, and even the siding of some countries

with the Israeli occupation state by providing material and military support to it. The inability of the UN Security Council to do its duty and put an end to the violation of international peace and security since October 7, 2023, has necessitated resorting to the International Court of Justice to hold the Israeli occupation state and its partners responsible for the genocide and put an end to it.

Therefore, we hope that this study will be a new addition to the legal library in highlighting the contribution of the International Court of Justice in putting an end to the genocide in the Gaza Strip, if amendments are made to the procedural aspects of the mechanism for implementing the decisions of this court.

We also aspire to establish a legal basis that strengthens the international position in activating the work of the ICC and its role as one of the main organs of international justice, and to confront the challenges and legal loopholes that the Israeli occupation state and its partners may resort to, in order to paralyze the court's hand from holding them accountable.

Finally, we hope that this study will be the beginning of the road towards mobilizing a front of specialized jurists and legal research in prosecuting the occupying state and its partners for the genocide in the Gaza Strip and determining the responsibility of criminals and their subsequent trial before the International Criminal Court, special courts and national courts in accordance with the principle of universal criminal jurisdiction.

### **Research Problem:**

Since October 7, 2023, the Gaza Strip has been witnessing a genocide without the UN Security Council, which is primarily responsible for maintaining international peace and security, moving a finger to stop this genocide.

Therefore, the State of South Africa, based on Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, resorted to the International Court of Justice with a complaint against the Israeli occupation state. To stop the genocide, Nicaragua filed a complaint with the court against Germany for its responsibility for material and military support for the Israeli occupation state. The study issue is summarized in the following main question: How effective is the contribution of the International Court of Justice in confronting the genocide in the Gaza Strip?

**Subordinate questions:**

- What is the International Court of Justice (ICJ)?
- How has the ICJ handled complaints in the context of stopping the genocide in the Gaza Strip?
- Have the ICJ's decisions been effective in addressing the genocide in the Gaza Strip?
- What are the challenges facing the ICJ in addressing the genocide?
- What solutions are proposed to build an effective ICJ within the existing international system?

**Research Objectives:**

- Introduce the International Court of Justice (ICJ).
- Highlight how the ICJ deals with complaints submitted in the context of stopping the genocidal holocaust in the Gaza Strip.
- Explain the impact of the ICJ's decisions on the genocide in the Gaza Strip.
- Uncover the challenges facing the ICJ in addressing the genocide in the Gaza Strip.
- Provide solutions to ensure the effectiveness of the ICJ.

**Research Methodology:**

The descriptive, analytical, and interpretive approach is followed, in which, attempts to describe the incineration of the elements subject of the study. Then analyze the texts contained in international charters and conventions, and lastly try to express an opinion on them and their interpretation by referring to the jurisprudential studies on the subject of the study.

**Research plan:**

The research is divided into two chapters as follows:

First: The role of the International Court of Justice in confronting the genocide in Gaza.

Second: Evaluating the effectiveness of the ICJ's contribution to the Gaza genocide.

## **Chapter 1**

The role of the International Court of Justice in confronting the genocide in Gaza.

Since October 7, 2023, the Israeli occupation state has launched an ongoing attack on the Gaza Strip, indiscriminately targeting civilians and civilian objects protected by international humanitarian law, without distinguishing between civilians and combatants. The daily massacres constitute a genocidal holocaust of Palestinians in the Gaza Strip, and the world is a silent witness to this genocide, expressing its helplessness by merely denouncing and condemning without taking any serious action to stop these crimes.

The State of South Africa initiated a complaint to the International Court of Justice against the Israeli occupation state, as a refuge that international justice is the way to stop the genocide, followed by Nicaragua with a complaint against Germany for its responsibility for material and military support to the Israeli occupation state in its criminality.

Therefore, we address this requirement in two sections as follows:

Section I: Definition of the International Court of Justice.

Section II: The International Court of Justice's response to complaints related to the Gaza genocide.

### **Section I:**

Definition of the International Court of Justice.

The International Court of Justice is the main judicial organ of the United Nations, as it resolves legal disputes that arise between states, as it exercises

its jurisdiction either by hearing cases brought before it, or by expressing an opinion on any legal matter submitted to it under certain conditions<sup>1</sup>.

The Court was established under the Charter of the United Nations to fulfill the main objectives of the United Nations, namely the invocation of peaceful means in accordance with the principles of justice and international law for the settlement of international disputes which might lead to a breach of the peace<sup>2</sup>. It began functioning in 1946 when it replaced the Permanent Court of International Justice established in 1920 under the auspices of the League of Nations. The Court is composed of fifteen judges, assisted by a Registry – its administrative organ – and its official languages are English and French. The court is considered always in session<sup>3</sup>.

The Court has the dual role of settling legal disputes submitted to it by States in accordance with international law -- a judicial role -- and rendering advisory opinions on legal questions referred to it by authorized organs and specialized agencies of the United Nations -- an advisory role<sup>4</sup>.

The Court may adjudicate in disputes relating to the maintenance of international peace and security that are submitted to it, even if the disputes are before the Security Council or the General Assembly. The Court's role is limited to dealing with the legal aspects of such disputes and thus makes a distinctive contribution to the maintenance of international peace and security<sup>5</sup>.

Only States may be parties of a dispute before the Court, so the Court cannot consider disputes between a State and an international organization or between two international organizations, nor can it consider written and oral

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<sup>1</sup> د. محمد السعيد الدقاق، التنظيم الدولي، الدار الجامعية، الإسكندرية، 1987، ص388-392.

<sup>2</sup> د. جعفر عبد السلام، المنظمات الدولية، ط6، دار النهضة العربية، القاهرة، 1990، ص427.

<sup>3</sup> محكمة العدل الدولية(اسئلة واجوبة عن الجهاز القضائي الرئيسي للأمم المتحدة) إدارة شؤون الإعلام بالأمم المتحدة، نيويورك، 2001، ص2.

<sup>4</sup> د. عبد الرحمن علي وآخرون، ط1، مركز الزيتونة للدراسات والاستشارات، بيروت، 2011، ص138.

<sup>5</sup> د. جعفر عبد السلام، مرجع سابق، ص438.

applications received in the Registry from private entities such as companies, organizations or individuals, no matter how prestigious or influential they may be<sup>6</sup>.

In other words, the ICJ has no criminal jurisdiction and therefore cannot prosecute individuals; this task belongs to national jurisdictions, specialized criminal courts and the International Criminal Court (ICC).

The court can only hear a case if the states concerned have agreed in one way or another to be parties to the proceedings before the court (the principle of consent of the parties). This is a basic principle governing international disputes, because sovereign states are free to choose the means of resolving their disputes<sup>7</sup>.

## **Section II:**

The International Court of Justice's response to complaints related to the Gaza genocide.

South Africa filed a lawsuit with the International Court of Justice (ICJ) against Israel on December 29, 2023, accusing Israel of committing genocide against Palestinians in the Gaza Strip, based on the following documented facts:

Firstly, Israel's widespread killing and maiming of Palestinian civilians.

Secondly, the use of dumb bombs against civilians.

Thirdly, forcing civilians into mass displacement and destroying the neighborhoods in which they live.

Fourth, denying civilians access to food, water, medical care, shelter, clothing, hygiene and sanitation.

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<sup>6</sup>أنظر: المادة(34) من النظام الأساسي للمحكمة.  
<sup>7</sup>أنظر: المادة(2/36) من النظام الأساسي للمحكمة.

Fifth, incitement to murder and destruction based on a series of statements by Israeli officials, including calls for the use of atomic bombs against Palestinians.

The Court's acceptance of the case is an acknowledgment that Israel's request to dismiss the case was not considered, which implicitly recognizes that Israel has taken actions that give the Court the right to respond to the case submitted by South Africa<sup>8</sup>.

The Court's acceptance of South Africa's claim emphasizes the importance of the rights of Palestinians guaranteed by international conventions, the need to provide protection from the genocidal acts practiced by Israel in the Gaza Strip, and Israel's international responsibility for these criminal acts and to put an end to them.

In such grave and urgent situations, the International Court of Justice may order provisional measures for the protection of rights under Article 41 of the Statute of the Court to prevent or avoid imminent irreparable damage to the rights of the disputing parties, including the rights of persons<sup>9</sup>.

In this context, the Court requested Israel at the January 26, 2024 session to commit to provisional measures, namely: Immediately ensure, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide with respect to the Palestinians in Gaza, that it takes all measures within its power to prevent the commission of all acts within the scope of Article 2 of this Convention, in particular: Killing members of the community, causing serious bodily or mental harm, imposing deliberate living conditions on the population in Gaza in order to carry out acts of physical

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<sup>8</sup> د. وليد عبد الحى، قرار محكمة العدل الدولية بين الحياد القانوني والضغط السياسي في معركة طوفان الأقصى، ورقة علمية، مركز الزيتونة للدراسات والاستشارات، بيروت، فبراير 2024، ص9.

<sup>9</sup> انطونيو أوغوستو كانسادو ترينيداد، النظام الأساسي لمحكمة العدل الدولية، United Nations Audiovisual Library of International Law، 2017، ص16.

destruction in whole or in part, imposing measures aimed at preventing births<sup>10</sup>.

The Court ruled that Israel must ensure that its forces do not carry out any of these acts, and take measures to prevent and punish participation in direct and public incitement to commit genocide in relation to the Palestinians.

The Court also ordered Israel to take immediate and effective measures to enable the provision of essential services and humanitarian assistance urgently needed to address the dire living conditions of Palestinians in the Gaza Strip, and for Israel to take effective measures to prevent the destruction of evidence relating to allegations within the scope of Articles II and III of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and for Israel to report to the Court on all measures taken to implement this Order within one month from the date of this Order<sup>11</sup>.

At the request of South Africa, on March 26, 2024, the Court imposed additional provisional measures on Israel under its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which included, in light of the deteriorating living conditions faced by Palestinians in Gaza, in particular widespread acute hunger and impending famine, taking all necessary and effective measures to ensure – without delay and in full cooperation with the United Nations<sup>12</sup>:

The unimpeded and widespread provision of urgently needed basic services and humanitarian assistance – including food, water, electricity, fuel, shelter,

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<sup>10</sup> محكمة العدل الدولية تطالب إسرائيل بمنع ارتكاب أعمال تتضمنها اتفاقية منع الإبادة الجماعية، أخبار الأمم المتحدة، من خلال: <https://news.un.org/ar/story/2024/01/1128017> تاريخ الزيارة 18 أبريل 2024.

<sup>11</sup> محكمة العدل الدولية تطالب إسرائيل بمنع ارتكاب أعمال تتضمنها اتفاقية منع الإبادة الجماعية، أخبار الأمم المتحدة، من خلال: <https://news.un.org/ar/story/2024/01/1128017> تاريخ الزيارة 18 أبريل 2024.

<sup>12</sup> محكمة العدل الدولية تقر تدابير مؤقتة إضافية في دعوى جنوب أفريقيا ضد إسرائيل بخصوص غزة، أخبار الأمم المتحدة، من خلال: <https://news.un.org/ar/story/2024/03/1129661> تاريخ الزيارة 18 أبريل 2024.

humanitarian aid, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza – including by increasing the capacity and number of land crossing points and keeping them open for as long as possible.

The Court also said in its decision that Israel must immediately ensure that its military forces do not commit acts that violate any of the rights of Palestinians in Gaza as a protected group under the Genocide Convention, including by preventing through any action, the delivery of urgently needed humanitarian aid.

The Court requested that Israel report to it on all measures taken to implement this decision, within one month from its date.

However, the Israeli occupation state has flouted the implementation of all these temporary measures and has not complied with any of them, but has persisted in killing, imposing difficult living conditions, inflicting physical and mental damage on Palestinians, obstructing the delivery of water, humanitarian, food and medical aid, and using starvation as a method of warfare, in other words, the Israeli occupation state is still carrying out a genocidal holocaust against the Palestinians in the Gaza Strip. In other words, the Israeli occupation state is still carrying out a genocidal holocaust against the Palestinians in the Gaza Strip, and is threatening to invade Rafah, where more than one and a half million Palestinian civilians are concentrated, despite international warnings of the danger and catastrophic consequences of such an invasion<sup>13</sup>.

There is no doubt that the role of the International Court of Justice does not end with the issuance of judicial rulings in the matter before it, if it must notify

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<sup>13</sup>إسرائيل لا تمتثل لأمر محكمة العدل الدولية في قضية الإبادة الجماعية، هيومن رايتس ووتش، من خلال: <https://www.hrw.org/ar/news/2024/02/26/israel-not-complying-world-court-order-genocide-case> تاريخ الزيارة 19 أبريل 2024.

the States Parties, the Secretary-General of the United Nations and the Security Council of the decisions it takes<sup>14</sup>, and it is the responsibility of the States Parties to the case to take the necessary care to implement these rulings<sup>15</sup>, but Israel's non-compliance with the provisional measures order issued by the Court gives South Africa the right to resort to the Security Council to implement the decision as the primary responsibility for maintaining international peace and security under Article (94) of the United Nations Charter<sup>16</sup>, as these provisional measures with a preventive dimension have a mandatory character. In addition, the text of Article 94 of the UN Charter mentions the term decisions issued by the Court without specifying them as provisional or final<sup>17</sup>.

Failure to respect these provisional measures constitutes a breach of the international obligations of the States concerned and entails international legal responsibility, and the Court's final judgment takes full account of the respect or violations of provisional measures issued during the investigation<sup>18</sup>.

In the context of the International Court of Justice's response to the genocidal holocaust in the Gaza Strip, on March 1, 2024, Nicaragua submitted a request to the Court to initiate proceedings against Germany before the Court, accusing Germany of political, financial and military support for Israel and

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<sup>14</sup>د. نزار أيوب، تداعيات عدم تنفيذ إسرائيل للتدابير المؤقتة لمنع الإبادة الجماعية في غزة، سلسلة تقييم حالة، المركز العربي للأبحاث ودراسة السياسات، قطر، 5 مارس 2024، ص5.

<sup>15</sup>د. أحمد أبو الوفا، القانون الدولي والعلاقات الدولية، دار النهضة العربية، القاهرة، 2006، ص141.

<sup>16</sup>المادة 94 الفقرة 2 من ميثاق الأمم المتحدة .

<sup>17</sup>د. نوبس نبيل، القوة الإلزامية للتدابير المؤقتة لمحكمة العدل الدولية، مجلة الحقوق والعلوم السياسية، جامعة عمار ثليجي، الأغواط، الجزائر، العدد 13 مارس 2017، ص162-171. وتجدر الإشارة أن محكمة العدل الدولية فصلت بمسألة التزام الأطراف بأوامر التدابير المؤقتة في قضيه (لاغراند) عندما طلب منها للمرء الأولى ان تحدد الآثار القانونية الناشئة عن عدم الامتثال لأوامر التدابير المؤقتة الصادره عنها في النزاع الناشئ بين المانيا والولايات المتحدة بشأن انتهاك الاخير امر المحكمه بالاشارة الى تدابير مؤقتة، وقد قررت في حكمها الصادر في عام 2021 ان التدابير الوارد ذكرها في المادة 41 من نظام المحكمه تتمتع بالقوه الالزاميه بمواجهه اطراف النزاع، وانه يتعين على كل من المانيا والولايات المتحدة الامتثال لها، وقد خلصت المحكمه إلى أن التدابير المؤقتة تتمتع بقوه ملزمة بمواجهه اطراف لضمان حقوقهم التي سيحددها الحكم النهائي وتجنب الاضرار الاضرار بها، أنظر: د. نزار أيوب، مرجع سابق، ص5.

<sup>18</sup>القاموس العملي للقانون الدولي الانساني، محكمة العدل الدولية، من خلال: <https://ar.guide-humanitarian-law.org/content/article/5/mhkm> -dl-idwlyw/ تاريخ الزيارة 19 أبريل 2024.

withdrawing its funding for UNRWA; which facilitates the commission of genocide in the occupied Palestinian territories, especially in the Gaza Strip, and Nicaragua submitted a request for provisional measures from the Court as soon as possible to demand that Germany stop supporting Israel militarily and revoke the decision to stop funding UNRWA.

We believe that this request sets a precedent for holding states that provide material and military support to the Israeli occupation accountable and holding them internationally responsible for violating international law and committing international crimes in the Occupied Palestinian Territories, which contributes to other states that provide material and military support to the occupying state in committing the genocide in the Gaza Strip to withdraw this support; for fear of incurring international responsibility and individual criminal responsibility for its political and military leaders, and making it in the eyes of the international community a state that violates the provisions and principles of international law. This is reflected in the shortage of weapons and ammunition, which is a tool and means for the occupying state to commit the genocidal holocaust and violate international law; and thus its retreat from continuing this holocaust, especially as it threatens to invade Rafah, which would have dire consequences for the Palestinian people and all of humanity.

We also believe that this lawsuit against the Israeli occupation represents a victory for justice and a belief by members of the international community to end the silence on the crimes of the occupation, and we call on the countries of the world that believe in the United Nations Charter and human rights to follow the same approach in compelling the Israeli occupation state to stop its continuous violations of the principles and provisions of international law.

However, on April 30, 2024, the Court issued a decision that it was not competent to issue provisional measures against Germany, but we believe that

this refusal, in light of the massacres and genocide in the Gaza Strip, does not comply with the Court's duty, which calls for other countries to file complaints against countries that support the Israeli occupation state with weapons, to draw the attention of the court, and make it more certain and convinced to take such measures against countries contributing to the genocidal holocaust.

## **Chapter 2**

Evaluating the effectiveness of the ICJ's contribution to the Gaza genocide

The genocidal holocaust in Gaza is not just a bilateral issue between Israel and Palestine, but an international issue of concern to all parties of the international community, because of the threat and breach of international peace and security in the whole world.

Accordingly, we address this chapter in two sections as follows:

Section I: Analyzing the impact of the Court's decisions in addressing the Gaza genocide.

Section II: Challenges and proposals to strengthen the Court's role in addressing the Gaza Holocaust.

### **Section I:**

Analyzing the impact of the Court's decisions in addressing the Gaza genocide.

The ICJ's decisions, regardless of their provisional nature, contribute to mobilizing official and popular public opinion and directing the world's attention to Israel's flagrant violations of the provisions and principles of international law

and international legitimacy in the Occupied Palestinian Territories in general and in the Gaza Strip in particular.

These resolutions can be the basis for delegitimizing the actions of the Israeli occupation state from the entire international community<sup>19</sup>, and an acceptable legal basis for the General Assembly to suspend Israel from exercising the membership rights given to it by the Charter of the United Nations, because it has violated the membership conditions it committed to earlier when applying for membership, and continues to violate the principles and provisions of international law, which requires its separation from the United Nations body<sup>20</sup>, that is, it will reflect on Israel's international status and make it isolated for its violation of international law<sup>21</sup>.

It also contributes to dropping the fig leaf of the United States of America, which has shown that it has never been a sponsor of peace in the Middle East, but rather a sponsor of Israel and a supporter of every violation of international law against the Palestinian people. This means that stopping the genocidal holocaust and reaching the two-state solution will only be under the umbrella of the international community and in the light of the principles and provisions of international law, away from the domination of the United States of America and submission to its will according to its interests in the Middle East under the unipolar policy.

On the other hand, these resolutions will put the UN Security Council in a position to adopt them in its future resolutions in order to be more or less consistent with the letter and spirit of international law and the general opinion that will be issued by the court, and in order not to put itself in a situation

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<sup>19</sup> Thomas Obel Hansen, The Broader Significance of the ICJ's Ruling on Genocide in Gaza, E-International Relations,30 January,2024,p.2.

<sup>20</sup> أنظر: المادة(6) من ميثاق الأمم المتحدة.

<sup>21</sup> Douglas C. Youvan, The Holocaust and the Gaza Genocide: 'Never Again' in the Light of the ICJ's Ruling, RsearchGate,26 January,2024,p.8.

where it is accused of violating judicial rulings issued by the highest judicial body in the world.

It is worth noting that the history of the International Court of Justice shows that most of its judicial rulings, which have binding force on the parties to the conflict and the possibility of implementation through the Security Council, have been implemented by the free will of the parties concerned; for fear of being subjected to Security Council sanctions pursuant to Chapter VII of the UN Charter, or to avoid facing condemnation from the international community and the global humanitarian conscience<sup>22</sup>. These resolutions can be a pressure card on the occupying power to compel it to stop the genocidal holocaust in the Gaza Strip and comply with the provisions and principles of international law.

These resolutions can also serve as a legal basis for members of the international community to boycott the Israeli occupation state politically, diplomatically, economically and culturally to force it to stop the genocidal holocaust in the Gaza Strip.

## **Section II:**

Challenges and proposals to strengthen the Court's role in addressing the Gaza Holocaust.

Domestic legal systems grant the authority to execute judgments issued by national courts to the executive authority, meaning that the role of the judiciary ends when issuing decisions and judgments, and the role of the executive authority begins to translate what is stated in the decisions and judgments on the ground, and at the international level, the execution of judgments is

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<sup>22</sup>د. الخير قشي، إشكالية تنفيذ أحكام المحاكم الدولية بين النص والواقع، ط1، المؤسسة الجامعية للدراسات والنشر، بيروت، 2000، ص71.

considered an executive function that must be assigned to an executive body<sup>23</sup>.

However, the International Court of Justice does not have an executive body to implement the orders and judgments it issues. Rather, it relies on the international cooperation of states to perform its work, as its success depends on the cooperation of states with it in what it conducts within the framework of its jurisdiction<sup>24</sup>, and if a state refuses to implement what is stated in the judgment, the other state party to the case in question can resort to the Security Council to take whatever recommendations or measures it deems necessary to put the judgment into effect<sup>25</sup>, which means that the success of the Court depends primarily on the cooperation of states with it.

However, the Israeli occupation state has not complied with the court's decisions, which opens the door for South Africa to appeal to the Security Council to implement the court's decisions. There is no doubt that giving the Security Council the authority to enforce the Court's decisions in accordance with Article 94/2 of the UN Charter will fill a gap in the international judicial system, especially when states refrain from implementing the Court's decisions. This authority also eliminates the need to establish an executive organ for the Court in this global system, thus preserving the prestige, effectiveness and status of the Court in the international community.

However, the unipolarity of the international community and the dominance of the United States of America over the Security Council and its use as a tool to serve the US and Israeli political agenda calls into question the impartiality and objectivity of the Security Council in cases involving Palestine, and the use of

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<sup>23</sup>. الخير قشي، مرجع سابق، ص79.

<sup>24</sup> جوهري اسماعيل، اشكالية تنفيذ القرارات القضائية الدولية (قرارات محكمة العدل الدولية وقرارات المحكمة الجنائية الدولية "كناذج")، رسالة ماجستير، كلية الحقوق والعلوم السياسية، جامعة مولود معمري، الجزائر، 2016، ص6.

<sup>25</sup> أنظر: المادة (94) الفقرة (2) من ميثاق الأمم المتحدة.

the veto power to block draft resolutions submitted to stop the genocidal holocaust in the Gaza Strip is proof that this council follows a policy of double standards.

Reliance on the Security Council prevents the Court from exercising its jurisdiction under Article 36 of the Statute of the Court and Article 9 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and represents a grave breach of the principle of equality before the law and the judiciary and prevents justice for all and for all. It undermines confidence in the International Court of Justice and, indeed, in the world order as a whole.

Thus, the Security Council, with its current policy, has become an instrument of oppression and injustice in the hands of the permanent members, led by the United States of America. This has caused people to lose confidence in the international system, which reflects very serious consequences, most notably the collapse of the United Nations in the near future.

We believe that the text of Article 94/2 of the Charter of the United Nations should be amended to add that if the Security Council fails to take a decision on measures to implement ICJ decisions in cases that constitute a threat to international peace and security, the State party can resort to the General Assembly as the competent authority, under the Uniting for Peace clause<sup>26</sup>.

International justice cannot remain in the circle of the eternal struggle between the force of law and the law of force, due to the practices of the United States of America and its hegemony over the UN Security Council<sup>27</sup>.

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<sup>26</sup> أنظر: قرار الجمعية العامة للأمم المتحدة "الإتحاد من أجل السلام" رقم 377 (د. 5) الصادر سنة 1950 .

<sup>27</sup> د. أحمد لطفي السيد، نحو تفعيل الإنفاذ الجنائي الوطني لأحكام القانون الدولي الإنساني، مجلة الحقوق والعلوم السياسية، جامعة الملك سعود، المجلد (24) يناير 2012، ص 103.

## **Conclusion**

Through this study, analysis and evaluation, the researcher came up with a number of findings and recommendations, most notably the following:

### **I. Key findings:**

1. Committing, directly and publicly inciting or attempting to commit the crime of genocide entails international responsibility, and individual international criminal responsibility.
2. The Israeli occupation authorities are committing the crime of genocide with the intention of completely eliminating the Palestinians in the Gaza Strip and express an organized and systematic policy against the Palestinians as such.
3. The acceptance of South Africa's claim against the Israeli occupation state proves the occupation state's responsibility for the genocidal holocaust in the Gaza Strip.
4. Despite the measures imposed by the International Court of Justice on the Israeli occupation state to stop the genocidal holocaust in the Gaza Strip, the occupation state flouted these orders.
5. The interim orders can be invoked against the Israeli occupation state to expel it from membership in the United Nations.
6. The ICJ's interim decisions will put pressure on the Security Council to fulfill its duties to stop the genocidal holocaust in the Gaza Strip.
7. The provisional decisions issued by the International Court of Justice against the Israeli occupation state can be a legal basis for the countries of the world to boycott the occupation state at various levels.
8. Relying on the Security Council to implement the ICJ's decisions would tie the court's hands and prevent it from achieving justice.

## **I I. Recommendations:**

1. Call on the Palestinian Ministry of Foreign Affairs to mobilize support and ask members of the international community to cooperate with the International Court of Justice and provide it with the necessary support in investigating and prosecuting the crime of genocide in the Gaza Strip.
2. Calling on the countries of the world to join South Africa in filing complaints against the Israeli occupation state at the International Court of Justice for committing genocide in the Gaza Strip.
3. Calling on the UN General Assembly to suspend the membership of the Israeli occupation state in the UN body for violating the conditions for accepting its membership.
4. Calling on the countries of the world to boycott the Israeli occupation state at the political, diplomatic, economic, military and cultural levels to force it to abide by the provisions and principles of international law.
5. Demanding the activation of the Uniting for Peace resolution, so that the General Assembly replaces the UN Security Council in maintaining international peace and security, and to miss the opportunity for the United States of America, which has become an instrument of oppression of peoples through the veto power.
6. Amend the text of Article 94/2 of the UN Charter to add that in the event that the Security Council fails – for lack of unanimity among its permanent members – to take a decision on measures to implement the decisions of the International Court of Justice in cases that constitute a threat to international peace and security, the state party

can resort to the General Assembly as the competent authority, under the Uniting for Peace clause.

## References

### English References:

- Adam Jones, Genocide "A Comprehensive Introduction", First published, by Routledge,2006.
- Douglas C. Youvan, The Holocaust and the Gaza Genocide: 'Never Again' in the Light of the ICJ's Ruling, RsearchGate,26 January,2024.
- Hemendra Pal, Genocide and Crimes Against Humanity : A Violation of International Law in Gaza, ALTREICH THINKTANK, India,25 December,2023.
- Thomas Obel Hansen, The Broader Significance of the ICJ's Ruling on Genocide in Gaza, E-International Relations,30 January,2024.
- William A.Schabas,(Genocide in International Law),Cambridge University Press,2000.

### Arabic Research Papers:

- نزار أيوب، تداعيات عدم تنفيذ إسرائيل للتدابير المؤقتة لمنع الإبادة الجماعية في غزة، سلسلة تقييم حالة، المركز العربي للأبحاث ودراسة السياسات، قطر، 5 مارس 2024.
- وليد عبد الحي، قرار محكمة العدل الدولية بين الحياد القانوني والضغط السياسي في معركة طوفان الأقصى، ورقة علمية، مركز الزيتونة للدراسات والاستشارات، بيروت، فبراير 2024.

## 6. الانترنت

- الجهاز المركزي للإحصاء الفلسطيني، من خلال: [https://www.pcbs.gov.ps/site/lang\\_\\_ar/1405/Default.aspx](https://www.pcbs.gov.ps/site/lang__ar/1405/Default.aspx) تاريخ الزيارة 25 أبريل 2024.
- المركز الاعلامي، منظمة الصحة العالمية، من خلال: <https://www.emro.who.int/ar/media/news/risk-of-disease--spread-soars-in-gaza-as-health-facilities-water-and-sanitation-systems-disrupted.html> تاريخ الزيارة 13 أبريل 2024.
- ماهر الشريف، الغزيون ضحايا الحرب: مجاعة، نقص المياه ومخاطر الأوبئة، مؤسسة الدراسات الفلسطينية، 22 يناير 2024، من خلال: <https://www.palestine-studies.org/ar/node/1655096> تاريخ الزيارة 22 أبريل 2024.

- محكمة العدل الدولية تطالب إسرائيل بمنع ارتكاب أعمال تتضمنها اتفاقية منع الإبادة الجماعية، أخبار الأمم المتحدة، من خلال: <https://news.un.org/ar/story/2024/01/1128017> تاريخ الزيارة 18 أبريل 2024.
- محكمة العدل الدولية تقر تدابير مؤقتة إضافية في دعوى جنوب أفريقيا ضد إسرائيل بخصوص غزة، أخبار الأمم المتحدة، من خلال: <https://news.un.org/ar/story/2024/03/1129661> تاريخ الزيارة 18 أبريل 2024.
- إسرائيل لا تمتثل لأمر محكمة العدل الدولية في قضية الإبادة الجماعية، هيومن رايتس ووتش، من خلال: <https://www.hrw.org/ar/news/2024/02/26/israel-not-complying-world-court-order-genocide-case> تاريخ الزيارة 19 أبريل 2024.
- القاموس العملي للقانون الدولي الإنساني، محكمة العدل الدولية، من خلال: <https://ar.guide-humanitarian-law.org/content/article/5/mhkm-l-dl-ldwlyw/> تاريخ الزيارة 19 أبريل 2024.
- جوهر اسماعيل، إشكالية تنفيذ القرارات القضائية الدولية (قرارات محكمة العدل الدولية وقرارات المحكمة الجنائية الدولية "كنماذج")، رسالة ماجستير، كلية الحقوق والعلوم السياسية، جامعة مولود معمري، الجزائر، 2016.

### Arabic scientific journals:

- أحمد لطفي السيد، نحو تفعيل الإنفاذ الجنائي الوطني لأحكام القانون الدولي الإنساني، مجلة الحقوق والعلوم السياسية، جامعة الملك سعود، المجلد (24) يناير 2012.
- محمد خليل مرسي، جريمة الإبادة الجماعية في القضاء الجنائي الدولي، مجلة الأمن والقانون، كلية شرطة دبي، العدد (1) يناير، 2003.
- نوبس نبيل، القوة الإلزامية للتدابير المؤقتة لمحكمة العدل الدولية، مجلة الحقوق والعلوم السياسية، جامعة عمار تليجي، الأغواط، الجزائر، العدد 13 مارس 2017.
- الملاحقة القضائية لمرتكبي جرائم الإبادة الجماعية، صحيفة الوقائع (3)، صادرة عن مشروع العدالة الجنائية الدولية، 1 أغسطس 2000.

### Arabic Books:

- أحمد ابو وفا، القانون الدولي والعلاقات الدولية، دار النهضة العربية، القاهرة، 2006.
- انطونيو أوغوستو كانسادو ترينيداد، النظام الأساسي لمحكمة العدل الدولية، United Nations Audiovisual Library of International Law، 2017.
- جعفر عبد السلام، المنظمات الدولية، ط6، دار النهضة العربية، القاهرة، 1990.
- حميد السعدي، مقدمة في دراسة القانون الدولي الجنائي، ط1، مطبعة دار المعارف، بغداد، 1971.
- الخير قشي، إشكالية تنفيذ أحكام المحاكم الدولية بين النص والواقع، ط1، المؤسسة الجامعية للدراسات والنشر، بيروت، 2000.
- عبد الرحمن علي وآخرون، ط1، مركز الزيتونة للدراسات والاستشارات، بيروت، 2011.
- عبد الله علي عبوسلطان، دور القانون الدولي الجنائي في حماية حقوق الإنسان، ط1، دار دجلة، عمان، 2009.

- عبد الواحد الفار، الجرائم الدولية وسلطة العقاب عليها، دار النهضة العربية، القاهرة، 1995.
- علي عبد القادر القهوجي، القانون الجنائي الدولي، ط1، منشورات الحلبي القوقية، بيروت، 2001.
- محمد السعيد الدقاق، التنظيم الدولي، الدار الجامعية، الإسكندرية، 1987.
- محمد الصاوي، أحكام القانون الدولي في مجال مكافحة الجرائم الدولية وإبادة الأجناس واختطاف الطائرات وجرائم أخرى، دار المطبوعات الجامعية، الإسكندرية، 1984.
- محمد غزوي، جريمة إبادة الجنس البشري، ط2، مؤسسة شباب الجامعة، الإسكندرية، 1982.
- محمد ماهر، جريمة الإبادة الجماعية: في المستشار / شريف عتلم، المحكمة الجنائية الدولية (المواءمات الدستورية والتشريعية)، اللجنة الدولية للصليب الأحمر، القاهرة، 2003.
- منتصر سعيد حمودة، المحكمة الجنائية الدولية (دراسة نظرية للجريمة الدولية وأحكام القانون الدولي الخاص)، بدون رقم طبعة، دار الجامعة الجديدة، الإسكندرية، 2006.
- محكمة العدل الدولية (اسئلة واجوبة عن الجهاز القضائي الرئيسي للأمم المتحدة) إدارة شؤون الإعلام بالأمم المتحدة، نيويورك، 2001.

### Arabic References:

- ميثاق الامم المتحدة.
- النظام الأساسي لمحكمة العدل الدولية.
- منظمة العفو الدولية، وثيقة: MDE:15/7718/2024