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OVERVIEW

The Journal of International Criminal Law (*JICL*) is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;



- historical accounts that address the international, regional, and national levels; and
- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about “ecocide” is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

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Prosecuting International Law: Diagnosing the International Legal Asthenia Concerning the Gaza Crisis

by Yassin Abdalla Abdelkarim*

ABSTRACT: This article simulates a court trial of international law because of the grievous failure it proved regarding the deterioration of the humanitarian situation in Gaza, which is a direct impact of the revengeful Israeli military operations against Hamas and the brutal war crimes committed by the Israeli Defense Forces (IDF) against civilians. The research will take the form of a judicial trial before a virtual court named “The Supreme Court of Humanity”, an *ad hoc* court with a cosmopolitan jurisdiction to maintain the chief human values. The proceedings are conducted by the values of justice and trustworthiness of international law, which are the *Plaintiff*, versus international law, the *Defendant*. This trial is fictitious since it is based on an entirely virtual judicial process. The research aims to clarify the state of severe weariness of international law application that the war in Gaza revealed in addition to diagnosing the causes of this asthenia thus jurisprudence can overcome its negative impacts on justice. Furthermore, it introduces a universal solution to this dilemma to maintain the integrity of the international legal system by solidifying the efficient and impartial application of International Law.

KEYWORDS: Complicity in Genocide; International Justice; International Law; Legal Asthenia; The Right to Self-Defence.

I. Introduction

With the continuity of the IDF’s military operations in the Gaza Strip, jurisprudence found an unprecedented state-of-the-art of international law. The inaction and weariness of international legal mechanisms, besides their inability to suppress the atrocities in Gaza, led legal scholars and jurists to trigger the idea of the pointlessness of international law. They witnessed the ongoing massacres against innocent civilians in Gaza without prosecuting them. The enormous figures of the Palestinian victims of the Israeli non-discriminative military operations created a legal shock among jurists and law academics. The major question was about the justification of the international judicial standstill concerning the genocide in Gaza.

Needless to say, when reality fails the anticipations of humanity, fiction occupies a prominent order to fix the status quo. Therefore, this research introduces fictional judicial proceedings before a virtual court of humanity to prosecute the perpetrators of the Gaza atrocities. It adopts a qualitative theoretical methodology that brings together the normative arguments of the litigation parties and refutes them to conclude a consensual set of legal frameworks. The objective of these frameworks is to provide the international legal system with

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the practical foundation to support international legal interventions against atrocities and criminalise legal silence under political pressures. The fictional litigation ends with a legal conclusion based on logic that manifests the actual outcomes of the research.

II. The Governing Legal Instruments

Regardless of the litigation fictionality, its judicial process should be governed by formal legal instruments that provide the Court with the required legitimacy. After a curious reading of the outstanding real international legal instruments, the research creates a parallel set of legal instruments that govern the litigation from the beginning to giving the judgment. These instruments are:

A. The Parallel Statute of the Supreme Court of Humanity

A legal document establishes the authority, composition, jurisdiction, and procedures of the highest judicial body of the human race. The United Nations General Assembly adopted the statute in 2023 after a series of global conflicts and crises that threatened the survival and dignity of humanity. The statute aims to promote and protect human rights, uphold international law, resolve disputes among states and other entities, and ensure accountability for crimes against humanity and other grave violations. The statute also contains articles on justice, such as the principles of impartiality, independence, fairness, and transparency that guide the court's work and the rights and obligations of the parties, witnesses, victims, and other participants in the proceedings. It is a parallel document of the International Court of Justice Statute.

B. The Charter of the United Nations

It includes the universal objectives and requirements to maintain cosmopolitan peaceful cohabitation.

C. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights is a document that was adopted by the United Nations General Assembly in 1948. It outlines the basic rights and freedoms that all human beings are entitled to, regardless of race, religion, gender, nationality, or any other status. The declaration consists of 30 articles that cover civil, political, economic, social, and cultural rights. Some of the rights include the right to life, liberty, and security; the right to equality before the law; the right to education; and the right to participate in the cultural life of one's community. The declaration is not legally binding, but it serves as a common standard of achievement and a source of inspiration for human rights movements around the world.

III. The Judgment

A. Factual Backgrounds

On the 7th of October 2023, the Palestinian resistance organization Hamas, among other resistance armed groups, unleashed surprise attacks against Israeli targets.¹ These attacks aimed at melting the political icebergs regarding the ongoing Israeli occupation of the Palestinian West Bank and breaking the solid siege of the Gaza Strip. The strategic starting point of these attacks was the Gaza Strip, a narrow 40 km long beach on the Middeterianean. The Gaza Strip has been de facto controlled by Hamas since 2007;² this organisation held the actual control of the Strip, which is populated with over 2.2 million civilians.³ Hamas military attacks within Israel constituted a severe national shock due to the high casualties they inflicted and the variety of targets they hit during the operations.⁴ As a response, the IDF launched a mass striking campaign against targets in Gaza, enraged by the severe casualties and the intelligence failure to anticipate any suspicious military activity in the Strip.⁵ Correspondingly, wide-scaled non-discriminative bombarding missions attacked the Strip since 7 October, leading to civilian casualties of more than 14,500 deaths toll, 20,000 injuries and approximately 1.5 million displaced.⁶ The Brutality of the Israeli bombings created a tragic humanitarian situation in Gaza that transferred the whole Strip to another Stalingrad.⁷

Not only the humanitarian crisis that deteriorated the human situation in Gaza but also the gross war crimes and genocide that occurred during the Israeli operations. The United Nations explicitly urged the international community to intervene to prevent the possible genocide of the Palestinians by the IDF.⁸ The UN Experts noted that the IDF destroyed about 40 thousand dwellings and necessary life facilities.⁹ At that unprecedented pace, civilians in the Strip are facing an actual genocide that requires effective preventive measures by the International community. Describing its severity, the UN Regional Information Center for

¹ Tom Perry, Angus McDowall, *Timeline of Conflict Between Israel and Palestinians in Gaza*, REUTERS (Oct. 7, 2023), <https://www.reuters.com/world/middle-east/conflict-between-israel-palestinians-gaza-2023-10-07/>.

² Allison Meakem, *The Geopolitics of Palestine, Explained*, FOREIGN POLICY MAGAZINE (Oct. 10, 2023), <https://foreignpolicy.com/2023/10/10/israel-palestine-conflict-gaza-hamas-war-geography-history/>.

³ *Gaza Strip in Maps: Life in Gaza under Siege*, BBC (Nov. 23, 2023), <https://www.bbc.com/news/world-middle-east-20415675>.

⁴ Israel admitted that Hamas attacks led to 1,200 Israelis killed and other 240 were taken hostage by Hamas, see Cassandra Vinograd, Isabel Kershner, *Israel's Attackers Took About 240 Hostages. Here's What to Know About Them*, THE NEW YORK TIMES (Nov. 20, 2023).

⁵ Julian E. Barnes, David E. Sanger, Eric Schmitt, *Hamas Attack Raises Questions Over an Israeli Intelligence Failure*, THE NEW YORK TIMES (Oct. 8, 2023), <https://web.archive.org/web/20231008234117/https://www.nytimes.com/2023/10/08/us/politics/israel-hamas-intelligence.html>.

⁶ *Deaths in Gaza surpass 14,000, According to Its Authorities*, ECONOMIST (Nov. 23, 2023), <https://www.economist.com/graphic-detail/2023/11/23/deaths-in-gaza-surpass-14000-according-to-its-authorities>.

⁷ John Reed, Srivastava Mehul, *Residents Flee Gaza City as Israel Tells 1.1mn to Leave*, FT (Oct. 13, 2023), <https://www.ft.com/content/8ea2374e-c21c-4232-bc69-615e36b26caa?shareType=nongift#>.

⁸ *Gaza: UN Experts Call on the International Community to Prevent Genocide Against the Palestinian People*, UNITED NATIONS MEDIA CENTER (Nov. 16, 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>, they justified their conclusion by stating that “Israel remains the occupying power in the occupied Palestinian territory, which also includes the Gaza Strip, and therefore cannot wage a war against the population under its belligerent occupation”.

⁹ *Id.*

Prosecuting International Law: Diagnosing the International Legal Asthenia Concerning the Gaza Crisis

Western Europe warned that Palestinians are ahead of a second Nakba,¹⁰ similar to what they encountered in 1948 upon the establishment of the State of Israel.

The mass atrocities committed in Gaza by the IDF triggered a global urge to implement the universal legal rules of international law, conventional and customary, to prosecute the perpetrators and establish their accountability for the war crimes that the whole humanity witnessed in Gaza.¹¹ International criminal law should be utilised firmly and equally against all atrocity perpetrators in this conflict. From his part, the International Criminal Court (ICC) Prosecutor Karim Khan declared that the prevention of humanitarian aid delivery to civilians in armed conflict zones qualifies as a war crime.¹² However, the Prosecutor did not initiate official investigations or any other judicial proceedings against the IDF's atrocities against the civil population within the Gaza Strip. As a response to this judicial sluggishness, singular states submitted individual referral requests to the ICC against Israel, seeking to bring the Israeli perpetrators to trial.¹³ Therefore, Khan noted, in an official statement, that the prosecution office has started to investigate alleged war crimes and crimes against humanity in the Palestinian territories since 2021.¹⁴

As a result, no judicial reaction was taken to suppress the ongoing atrocities against the civil population in Gaza. The IDF continues the non-discriminative military operations to eliminate Hamas, disregarding the terrible civilian casualties. This judicial standstill deteriorates the true concept of international justice and turns it into a dead letter. With this consequence, international justice loses its trustworthiness and will be no longer considered the humanitarian umbrella that secures global peaceful cohabitation.

Consequently, while finding no shelter in the real legal system of international justice to defend this noble concept besides the ongoing mistrust in international law, both International Justice and Trustworthiness chose to initiate virtual judicial proceedings before the Supreme Court of Humanity, hoping to cure the deficiencies of the real judicial systems.

In their Statement of Claims (hereinafter referred to as the Statement) International Justice and Trustworthiness accuse International Law of passiveness and subordination to political bias and double standards. This contradicts the required impartiality and neutrality of International Law rules. Through this litigation, they urge the Court to introduce a legal mechanism to enhance the effectiveness and credibility of International Law and prevent its hypocritical utilization under politically motivated double standards.

¹⁰ *Palestine: Preventing a Genocide in Gaza and a New "Nakba"*, UNRIC (Nov. 21, 2023), <https://unric.org/en/palestine-preventing-a-genocide-in-gaza-and-a-new-nakba/>.

¹¹ James A. Goldston, *Don't Let Gaza Be Another Example of International Criminal Court Double Standards*, POLITICO (Oct. 26, 2023), <https://www.politico.eu/article/dont-let-gaza-conflict-be-another-example-international-criminal-court-icc-double-standards-ukraine/>.

¹² *Impeding Relief Aid to Gaza May Be a Crime under ICC Jurisdiction, Prosecutor Says*, REUTERS (Oct. 29, 2023), <https://www.reuters.com/world/middle-east/icc-prosecutor-rafah-border-crossing-says-hopes-visit-gaza-israel-2023-10-29/>.

¹³ Mogomosti Magomi, *South Africa Refers Israel to ICC over Gaza Attacks as Pressure Mounts to Cut Diplomatic Ties*, ASSOCIATED PRESS NEWS (Nov. 16, 2023), <https://apnews.com/article/south-africa-israel-palestinians-icc-referral-6f1dd2b3af534d4d42d56a156968eae4>; Michael Rios, *Five Countries Ask International Criminal Court to Investigate the Situation in Palestinian Territories*, CNN (Nov. 17, 2023) <https://edition.cnn.com/2023/11/17/middleeast/israel-gaza-war-crimes-icc-referral/index.html>. Those states are Bangladesh, Bolivia, Comoros, Djibouti and South Africa.

¹⁴ *Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the Situation in the State of Palestine and Israel*, ICC (Oct. 30, 2023), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>.

B. Statement of Jurisdiction

The Supreme Court of Humanity establishes its jurisdiction over the present litigation under The Parallel Statute of the Court. Art. 3 of this Statute grants it the ultimate authority to settle the submitted litigation concerning maintaining global peaceful cohabitation among human beings. Since the litigation subject includes a direct threat to this cohabitation because it sheds light on the vulnerability of International Law, which is the supreme code organizing relations between nations, the Supreme Court of Humanity proves competent to settle this litigation under the Charter of the United Nations and the Universal Declaration of Human Rights.

C. The Applicable Legislation

In this litigation, the Court applies the articles of the Parallel Statute to the formal aspects of the litigation. The Court applies the articles of the United Nations Charter and the Universal Declaration of Human Rights to the subject of the litigation.

D. Appointment of the Judges

According to Art. 4 of the Parallel Statute, the cosmopolitan nature of the litigation in addition to its relevance to the fundamental values of humanity implies choosing competent adequate judges. For this reason, the Bench includes the following judges:

- (i) Conscience, which is a reflection of the human's true self that grants him a good piece of advice to prevent evil.¹⁵ It is the supreme ruler of human conduct that judges each act to determine which side it belongs to good or evil.¹⁶ According to Merriam-Webster Conscience is "the sense or consciousness of the moral goodness or blameworthiness of one's conduct, intentions, or character together with a feeling of obligation to do right or be good."¹⁷ The judging theme of this concept qualifies it to preside over the Bench.
- (ii) Mercy, the rigid nature of conscience implies the existence of another humanitarian value as a relief. Thus, Mercy is appointed as a member of the judicial Bench that hears the litigation. Despite the academic criticism of adopting mercy in the judicial context, its contribution to the appropriate judgment is undeniable¹⁸ because mercy enhances the judicial endeavours to achieve justice in each litigation *per se*. Mercy permits the judges to express their empathy while keeping the convicted accountable for his deeds through the careful comprehensive analysis of the litigation aspects.¹⁹

¹⁵ Naresh Kumar, *Human Conscience – Some Perspectives*, 9(3) THE INTERNATIONAL JOURNAL OF INDIAN PSYCHOLOGY 2153 (2021), at 2153.

¹⁶ *Id.*, at 2154.

¹⁷ *Conscience*, Merriam-Webster Dictionary.

¹⁸ Doron Menashel, *Should We Be Merciful to the Merciless—Mercy in Sentencing*, 35(4) EMORY INTERNATIONAL LAW REVIEW 549 (2021), at 552.

¹⁹ *Id.*, at 556.

- (iii) Wisdom, this value is inherent within the whole judicial process; it is found in the procedural and objective aspects of the litigation.²⁰ It is the result of interpersonal processes, influenced by professional training.²¹ Practical judicial experience, besides intelligence and adequate legal knowledge, drives the judge to make the best utilisation of wisdom in his judgments.²² Therefore, Wisdom is a crucial contributor to deciding the judgment in this sensible litigation.

E. The Proceedings of the Litigation

On 25 November, International Justice and Trustworthiness (*Plaintiff*) initiated the litigation by submitting a statement of claims at the Court Registrar against International Law (*Defendant*). The latter responded three days later by submitting a statement of claims to the Registrar. Both statements fulfilled the formality requirements and hence the Registrar referred them to the Bench. The hearings started on 2 December and continued to 7 in the same month. They were all in public at the Court headquarters, the Virtual Humanity Palace. The *Plaintiffs* were represented by Support the Peaceful Cohabitation Movement while the *Defendant* was represented by Protect the Atrocity Survivors Institution. The Judges ensured that both parties expressed their requests and arguments liberally and maintained the *Defendant's* ultimate right to defence.

F. Summary of the Plaintiffs' Claims

In their statement of claims, International Justice and Trustworthiness, represented by Support the Peaceful Cohabitation Movement, reviewed International Law failure concerning the mass atrocities committed by the IDF in Gaza. They noted that international judicial bodies stood in languish while the IDF intensified the bloodshed of innocent civilians therein. Under the due diligence theory, this inaction elevates to constitute complicity in genocide, disregarding its causes. Moreover, the *Defendant's* situation disclosed its clear subordination to political bias and double standards, the state of the art that endangers humans' peaceful cohabitation. Thus, the Court is requested to deprive the *Defendant* of its authority and impose binding judicial measures against the *Defendant* that compel it to accomplish its original humanitarian contribution to peace and security.

G. Summary of the Defendant's Claims

In its statement, International Law, represented by Protect the Atrocity Survivors Institution, the *Defendant* pleaded with the Court to dismiss the *Plaintiffs'* allegations. The attorney indicated that the conflict parties in Gaza did not adopt the official path to activate International

²⁰ Heidi M. Levitt, Bridget R. Dunnivant, *Judicial Wisdom: The Process of Constructing Wise Decisions*, 28(3) JOURNAL OF CONSTRUCTIVIST PSYCHOLOGY 243 (2015), at 244.

²¹ *Id.*, at 245.

²² *Id.*, at 251.

Law; the latter had no concern with the political causes that jeopardize this path. Furthermore, the IDF military operations were a pure application of the right to self-defence that was used in a cautious discriminative manner that decreased the civilian losses as far as possible.

H. Arguments of the Plaintiffs

The *Plaintiffs* initiated their arguments by mentioning the original role of the *Defendant*. They argued that International Law's chief responsibility is to maintain world peace and security under the UN Charter.²³ Since Justice is a part and parcel of peace, International Law should utilize all its mechanisms to achieve Justice on a universal basis. Justice is the moral requirement to legitimate International Law toolkits.²⁴ Therefore, International Law should intervene wherever Justice is threatened. That was the basis of the establishment of the ICJ.²⁵ According to the UN General Assembly, the effective role of International Law enhances the universal rule of law.²⁶ Therefore, the inaction of International Law against the genocide being committed in Gaza violated the UN Charter because it frustrates the global endeavours to maintain world peace and security.

Furthermore, the *Plaintiffs* reasoned this inaction by the subordination of International Law application to politics. While certain states expressed their sympathy and immediate support for Israel upon the 7th of October attacks, they deliberately turned a blind eye and deaf ear to the atrocities committed in Gaza as a response.²⁷ This standing reflected Western double standards concerning the conflict in Palestine, which is a chief sort of political bias. The purpose of the latter is to maintain political domination within a region, regardless of the human rights situation therein.²⁸ Indeed, the subordination of International Law to politics erases the democratic theme of Western states and reveals their authoritarian attitudes.²⁹ The judicial inaction concerning this conflict strengthens the impunity of the perpetrators of core crimes and weakens International Justice. Furthermore, International Law has expressed an explicit judicial bias, as explained by the ICC,³⁰ that disqualifies it from being the legal shield of humanity because it contradicts the presumed impartiality of legal rules.

Most importantly, the *Plaintiffs* argued that the *Defendant* violated its natural obligation to preserve universal peaceful cohabitation under the theory of due diligence.³¹ Since it is the

²³ UN Charter, art. 1.

²⁴ Terry Nardin, *Justice and Authority in the Global Order*, 37(5) REVIEW OF INTERNATIONAL STUDIES 2059 (2011), at 2061.

²⁵ Statute of the International Court of Justice, art. 1.

²⁶ UNGA A/RES/72/120.

²⁷ Muhannad Ayyas, *The West's Double Standards Are Once Again on Display in Israel and Palestine*, THE CONVERSATION (Oct. 19, 2023), <https://theconversation.com/the-wests-double-standards-are-once-again-on-display-in-israel-and-palestine-215759>.

²⁸ Ramesh Thakur, *Ethics, International Affairs and Western Double Standards*, 3(3) ASIA & THE PACIFIC POLICY STUDIES 370 (2016), at 377.

²⁹ Miro Cerar, *The Relationship Between Law and Politics*, 15(1) ANNUAL SURVEY OF INTERNATIONAL AND COMPARATIVE LAW 19 (2009), at 23.

³⁰ ICC, Germain Katanga, ICC-01/04-01/07, Annex to: Notification of the decision on the application of the legal representative for victims for the disqualification of a Judge (July 22, 2014), paras 38-40.

³¹ It refers to "a qualifier of behaviour, which is triggered by a due diligence obligation that is particularly relevant when a risk has to be controlled or contained, in order to prevent harm and damage done to another actor or a public interest". For more, see HEIKE KRIEGER, ANNE PETERS, LEONHARD KREUZER, *DUE DILIGENCE IN THE INTERNATIONAL LEGAL ORDER* (2020), at 2.

chief maestro of international judicial reactions, International Law should have exerted an adequate effort to eliminate the risks that humanity faces in Palestine. A due diligence obligation endorses the International Law contribution to defend the fundamental human rights of marginalised persons within the occupied territories, who face oppression by a much stronger occupying authority.³² Hence, obliging the *Defendant* to implement its due diligence duties enhances justice and trustworthiness since this theory seeks to prevent gross violations of human rights.³³ It is a strong mechanism to ensure International Justice.³⁴

Consequently, the *Defendant* was complicit in committing genocide by standing still concerning the atrocities committed in Gaza against civilians by the IDF. This accusation is based on the judicial interpretation of complicity in committing genocide as aiding or betting the perpetrator while realising his criminal intent towards the victims.³⁵ Accordingly, the *Defendant's* inaction against the mentioned atrocities while knowing the IDF's intentions regarding the victims in Gaza qualifies this behaviour as complicity in committing genocide.

I. Arguments of the Defendant

International Law defended itself against the *Plaintiffs'* arguments by arguing that it is not the true perpetrator of the atrocities. They were committed by human beings against other human beings so International Law, as a value, has no concern with them.

The official referral to the ICC pathway was not adopted by either state because there was no consensus at the UN Security Council on this question.³⁶ Therefore, International Law should never be blamed for delaying judicial proceedings regarding the Gaza crisis. In particular, the political bias was clear in the utilization of Veto power by certain states at the Security Council against early ceasefire suggestions.³⁷ This political contradiction is the main cause of the ongoing atrocities in Gaza since it prevents International Law from achieving its role of enforcing peace and security.

Furthermore, as argued by the *Defendant's* attorney, the IDF military operations in Gaza are a pure application of the right to self-defence against terrorism.³⁸ On 7 October 2023, Hamas

³² Medes Malaihollo, *On Due Diligence and the Rights of Indigenous Peoples in International Law: What a Māori World View Can Offer*, 70 NETHERLANDS INTERNATIONAL LAW REVIEW 65 (2023), at 70.

³³ *Id.*, at 77.

³⁴ ICC, Bemba Gombo *et al.*, ICC-01/05-01/13-2206, para 16.

³⁵ ICTR, Lauren Semanza, ICTR-97-20-A, Appeal Chamber, Judgment (May 20, 2005), para 369.

³⁶ Article 16 of the Rome Statute of the ICC implies the UNSC referral to the Court or the Prosecutor to initiate investigations.

³⁷ *Israel-Gaza crisis: US vetoes Security Council Resolution*, UN NEWS (Oct. 18, 2023), <https://news.un.org/en/story/2023/10/1142507>; Michelle Nichols, Kanishka Singh. Russia, *China Veto US Push for UN action on Israel, Gaza*, REUTERS (Oct. 25, 2023), <https://www.reuters.com/world/russia-china-veto-us-push-un-action-israel-gaza-2023-10-25/>.

³⁸ *The White House Joint Statement on Israel* (Oct. 9, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/09/joint-statement-on-israel/>. It stated "We make clear that the terrorist actions of Hamas have no justification, no legitimacy, and must be universally condemned. There is never any justification for terrorism. In recent days, the world has watched in horror as Hamas terrorists massacred families in their homes, slaughtered over 200 young people enjoying a music festival, and kidnapped elderly women, children, and entire families, who are now being held as hostages. Our countries will support Israel in its efforts to defend itself and its people against such atrocities. We further emphasize that this is not a moment for any party hostile to Israel to exploit these attacks to seek advantage".

attacked Israel and it is natural to respond under the right to self-defence. The IDF's conduct meets the classical requirements of a just war against evil and aggression.³⁹

J. The Court's Discussion

Concerning the *Plaintiffs'* argument that the *Defendant* violated its formal role, as designated by the UN Charter, the Court should first recall that the idea of establishing a global judicial organisation was motivated by the universal need to prevent atrocities by settling potential legal disputes between the UN Member States.⁴⁰ Therefore, the UN Charter indicates that the concept of global justice is a prerequisite to maintaining world peace and security. Because of its moral relevance to the discrimination between good and evil,⁴¹ International Justice considerations must be the governing scheme of international relations among the peoples of the UN. There is a cosmopolitan commitment of the latter to ensure the ultimate achievement of International Justice. Moreover, the ICC decided the obligation to prosecute offenders who manage to obstruct justice deliberately to protect International Justice.⁴² International judicial measures should comply with the interests of International Justice.⁴³

It should be noted that practice revealed the challenging uncoupling of International Justice and Politics to prevent arbitrary selective utilization of International Justice.⁴⁴ When politics hold the upper hand, International Justice turns into an exploited diplomatic weapon by superpowers. This consequence contradicts the pure humanitarian objective of International Justice because it makes the latter an illusory concept in the international legal system.⁴⁵ The political dimension of the international judicial proceedings limited their effective contribution to distributive justice.⁴⁶ Furthermore, the selectivity of these proceedings has negatively impacted the Trustworthiness of International Law because it deteriorated its credibility among nations;⁴⁷ these proceedings introduce a deceptive victory of justice and, *de facto*, enhance international impunity.

Although the judicial selectivity of the international criminal justice system might be a consequence of offsetting the interests of justice, which grants the judicial authority the power to decide the continuation of proceedings or not,⁴⁸ International Justice and Trustworthiness require the depoliticization of this evaluation. This stipulation is a requirement for maintaining the independence and impartiality of international judicial organs.

Because of the cruciality of International Justice impartiality, the ICC managed to elaborate on its decisions on certain cases against allegations of politicization. Regarding the ICC's territorial jurisdiction over Palestine, the court decided that the heinous nature of the core

³⁹ Onder Bakircioglu, *The Right to Self-defence in National and International Law: The Role of the Imminence Requirement*, 19(1) INDIANA INTERNATIONAL AND COMPARATIVE LAW REVIEW 1 (2009), at 6.

⁴⁰ The Court (The International Court of Justice website), <https://www.icj-cij.org/court>.

⁴¹ Andrew Linklater, *The Evolving Spheres of International Justice*, 75(3) INTERNATIONAL AFFAIRS 473 (1999), 477.

⁴² ICC, Prosecutor v. Ruto and Sang, ICC-01/09-01/11-1938-Anx-Corr-Red2, Trial Chamber, Decision (Aug. 19, 2015), paras 42-43.

⁴³ ICC, Situation in Côte d'Ivoire, Legal Finding ICC-02/11-14-Corr (Nov. 15, 2011).

⁴⁴ Stefanie Bock, Nicolai Bülte, *The Politics of International Justice*, in INTERNATIONAL CONFLICT AND SECURITY LAW: A RESEARCH HANDBOOK (Sergey Sayapin, Rustam Atadjanov *et al.* eds., 2022), at 966.

⁴⁵ *Id.*

⁴⁶ *Id.*, at 968.

⁴⁷ *Id.*, at 969.

⁴⁸ *Id.*, at 972.

crimes committed in Palestine is a core part of its jurisdictional activity.⁴⁹ The debate on the political *status quo* of Palestine,⁵⁰ a state or a territorial authority, should never prohibit the judicial endeavours to suppress atrocities. Accordingly, the potential political consequences of the ICC's decision do not restrict its jurisdiction over gross core crimes committed in Palestine.⁵¹ This international judicial conclusion enhances the authority of international judicial organs, *i.e.*, The Supreme Court of Humanity, over the serious crimes perpetrated in Palestine.

The Court noted that the *Plaintiff* established their petition upon the theory of due diligence. They claimed that International Law violated its due diligence obligation to intervene against the atrocities committed in Gaza. This theory represents a well-established international system of accountability requiring states, and sub-state actors, to comply their conduct with their obligations to maintain the humanitarian status of all individuals.⁵² In international doctrine, due diligence is categorized under two regimes: the law on international liability and the law of state responsibility.⁵³ The main objective of due diligence is to prevent acts that endanger the peaceful cohabitation of human beings⁵⁴ by obliging the members of the international community to act in good faith and follow the good neighbourliness principles.⁵⁵ Despite the dispute around its legal classification, due diligence is not an independent law principle but an ancillary to other obligations.⁵⁶ Nevertheless, it is a prominent theory in international law because it bridges the gap between law and normativity.⁵⁷ The International Court of Justice (ICJ) affirmed the Serbian obligation to utilize the possible and appropriate means to prevent genocide in Bosnia under due diligence standards.⁵⁸ By virtue of that, states, and other interacting entities on the globe, should maintain conduct that prevents injuries of

⁴⁹ ICC, ICC-01/18-143 1, Legal Finding (Feb. 5, 2021), para 56.

⁵⁰ *Id.*, paras. 53-55, the ICC stated "Some participants, including certain amici curiae, State Parties, and representatives of victims, have raised the argument that the Prosecutor's Request is of a political nature rather than a legal one. On this basis, some have argued that a ruling on the Court's jurisdiction over the territory of Palestine, with the political consequences it would entail, would constitute a political decision and potentially affect the Court's legitimacy. Others have stated that the territorial scope of the Court's jurisdiction is a legal question and falls within the Court's competence to determine, notwithstanding any political ramifications. It is necessary to address those arguments since they not only encompass the case and its developments but also the Court's work and its very mandate.

- The issues raised by the Prosecutor [...] clearly raise legal questions regarding the Court's jurisdiction. Arguments to the effect that the aim or consequence of the Prosecutor's Request would be the creation of a 'new State' reflect a misunderstanding of the actual subject-matter of the Request. Indeed, the creation of a new state pursuant to international law [...] is a political process of high complexity far detached from this Court's mission.

- Further, some participants have stated that because of the highly political aspect of the Situation in Palestine, it should not be examined by this Court. It should however be noted that, by the very nature of the core crimes under the Rome Statute, the facts and situations that are brought before the Court arise from controversial contexts where political issues are sensitive and latent. Accordingly, the judiciary cannot retreat when it is confronted with facts which might have arisen from political situations and/or disputes, but which also trigger legal and juridical issues".

⁵¹ *Id.*, para. 57.

⁵² Joanna Kulesza, *Human Rights Due Diligence*, 30(2) WILLIAM AND BARY HUMAN RIGHTS BILL JOURNAL 265 (2021), at 265.

⁵³ *Id.*

⁵⁴ *Id.*, at 268.

⁵⁵ *Id.*, at 271.

⁵⁶ Anne Peters, Heike Krieger, Leonhard Kreuzer, *Due Diligence: The Risky Risk Management Tool in International Law*, 9(2) CAMBRIDGE INTERNATIONAL LAW JOURNAL 121 (2020), at 122.

⁵⁷ *Id.*, at 123.

⁵⁸ ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Feb. 26, 2007), paras. 428-438.

other international community members.⁵⁹ They should exert their best efforts to achieve this consequence.

In the context of the existing litigation, International Law is legally obliged to take the necessary procedures to prevent atrocities in Gaza. At least, the *Defendant* should have utilized its universal judicial toolkits to prosecute the perpetrators of core crimes in the area of conflict. Since *Defendant* did not follow these required procedures, its conduct inflicted harm to the *Plaintiffs*, as indicated in their statement of claims. Its negligence, despite the international urges to intervene, delayed the suitable legal response to the crisis, allowing the IDF to increase the genocide pace. Consequently, the common trust in International Justice deteriorated to an unprecedented level, arousing scepticism about the functionality and effectiveness of the entire international criminal justice system.

The final argument of the *Plaintiffs* comes around the *Defendant's* complicity in the atrocities committed in Gaza. Complicity is a form of criminal liability that does not include the perpetrator's physical intervention in the crime commission.⁶⁰ The International Criminal Tribunal for the Former Yugoslavia (ICTY) Statute indicated that complicity in a war crime refers to committing these acts: aiding, abetting, planning, instigating, and ordering.⁶¹ Prominently, complicity in war crimes, or other international core crimes, does not require the direct conduct of the *Defendant* as the ICTY decided that the specific direction is not a threshold of complicity by aiding and abetting.⁶² According to criminal law jurists, complicity in crimes includes all sorts of criminal acts except the direct commission of the crime.⁶³ Furthermore, the ICC requires active complicity in international core crimes to consider the *Defendant* accountable for this mode of liability.⁶⁴ Therefore, the *Defendant's* accountability is dismissed once he provides the court with any proof of the procedures he took, regardless of their nature or scope, to prevent the crime. In addition, ICC Judge Eboe-Osuji, in his separate opinion, argued that the mere presence of the *Defendant* at the crime scene does not qualify his conduct to be complicit in that crime.⁶⁵ Nonetheless, he admitted that the officials' negligence in taking preventive measures, which are relevant to their duties, despite the ability to do so, is qualified to be complicity in international core crimes.⁶⁶ These limitations of the concept of criminal complicity aimed to provide international jurisprudence with a disciplined interpretation of the modes of liability introduced by the Rome Statute.⁶⁷

Under these legal rules, the Court analyse the *Defendant's* conduct regarding the core crimes committed in the Gaza Strip since the 7th of October 2023. Despite the global urges, International Law did not initiate investigations, or other judicial proceedings, against the IDF to suppress those mass atrocities. The *Plaintiffs* did not submit proof of the *Defendant's* positive complicity in the perpetrated atrocities; their claims accused International Law of languishness and inaction. They are the chief pillars of the *Defendant's* conduct regarding the Gaza crisis, which reflects passive conduct. It should be noted that jurisprudence profiles activities that

⁵⁹ RICCARDO PISILLO MAZZESCHI, *INTERNATIONAL HUMAN RIGHTS LAW: THEORY AND PRACTICE* (2021), at 147.

⁶⁰ Marina Aksenova, *Returning to Complicity for Core International Crimes*, 17 FICHL POLICY BRIEF SERIES 1 (2014), at 1.

⁶¹ ICTY Statute (May 25, 1993), S/RES/ 827, art. 7, para. 1.

⁶² ICTY, Šainović *et al.*, IT-05-87-A, Appeal Chamber, Judgement (Jan. 23, 2014), para. 1649.

⁶³ WILLIAM SCHABAS, *THE U.N. INTERNATIONAL CRIMINAL TRIBUNALS: THE FORMER YUGOSLAVIA, RWANDA AND SIERRA LEONE* (2006), at 305.

⁶⁴ ICC, Bemba Gombo, ICC-01/05-01/08-3636-Anx3_24, para 291.

⁶⁵ ICC, Bemba Gombo, ICC-01/05-01/08-3636-Anx3, Concurring Separate Opinion of Judge Eboe-Osuji, para 167.

⁶⁶ *Id.*, para 186.

⁶⁷ The Rome Statute of the ICC (1998), art. 25, para. 3.

facilitate the perpetrators' actions during war times, even without knowing their actual conduct, criminal complicity because of their gross impacts on civilians.⁶⁸ The casual contribution to civilian unjust harm triggers the ultimate combatant's liability, even when the conduct is merely passive.⁶⁹ Aiding a morally corrupted mentality to inflict severe damage on innocents is an original contribution to the atrocity beyond the perpetrator's direct conduct.⁷⁰ Therefore, the Court concludes that jurisprudence, when classifying passive indirect conduct, prioritizes focusing on civilian damage, which qualifies that conduct to establish legal criminal responsibility. The IDF's deliberate systematic targeting of civilians in Gaza inflicted gross harm to their fundamental human rights while the responsible legal organ, *the Defendant*, neglected its duties and stood still. These facts drive the Court to conclude the *Defendant's* clear complicity in the IDF's atrocities in Gaza.

Regarding the *Defendant's* arguments, under the Parallel Statute of the Court, non-physical items are valid for prosecution and trial since Article 1 addresses the virtual theme of this Court, permitting it to operate over values and norms. This formality applies to the *Defendant*.

The Court accords with the *Defendant* in attributing the judicial delay to the abuse of the Veto by superpowers at the UN Security Council. Despite the diplomatic consensus on the UNSC resolutions that referred certain atrocity allegations to the ICC,⁷¹ this mechanism failed to refer the situation in Gaza to the ICC due to political causes. The political bias at the UNSC deprives it of accomplishing its main objective of maintaining world peace and security. While Article 103 of the UN Charter permits the UNSC to Intervene In each event of conflict to prevent unwanted negative impacts, the Veto abuse wastes the UNSC's true authority. Furthermore, the abusive use of the Veto to frustrate justice deteriorates the moral feature and credibility of International Justice because it deprives all International judicial organs of their power to achieve justice.⁷² It is a direct damage to the *Plaintiffs*. The referral mechanism and the political control of the Veto usage subordinate the ICC *de facto* to the UNSC,⁷³ i.e., the Permanent Members who hold the Veto, despite the official initiations to avoid using the Veto against mass atrocities.⁷⁴ As a consequence, International Justice loses its impartiality and independence, generating a bleak scene of human justice. Political manipulation is the chief threat to the impartiality and credibility of the international criminal justice system.⁷⁵ Even the claim of the UNSC's subordination to the UN Charter principles and purposes⁷⁶ does not relieve the burden of the political bias effects on justice; the legal practice regarding Gaza revealed that politics can transfer the whole international legal system in vain. The UNSC mechanisms were created originally to serve the Council in defending the global peaceful cohabitation. Thus,

⁶⁸ Adam Cebula, *Collective Complicity in War Crimes. Some Remarks on the Principle of Moral Equality of Soldiers*, 48 PHILOSOPHIA 1313 (2020), at 1322.

⁶⁹ *Id.*, at 1324.

⁷⁰ Neta Crawford, *Individual and Collective Moral Responsibility for Systematic Military Atrocity*, 15(2) THE JOURNAL OF POLITICAL PHILOSOPHY 189 (2007), at 191; Cebula, *supra* note 68, at 1326.

⁷¹ UNSC S/RES/1593 (2005) for Sudan and UNSC S/RES/1970 (2011) for Libya.

⁷² Alexandre Skander Galand, *UN Security Council Referrals to the International Criminal Court*, in LEIDEN STUDIES ON THE FRONTIERS OF INTERNATIONAL LAW (Carsten Stahn, Larissa van den Herik, Nico Schrijver eds., 2019), at 220.

⁷³ *Id.*

⁷⁴ Jennifer Trahan, *Why the Veto Power Is Not Unlimited: A Response to Critiques of and Questions About, Existing Legal Limits to the Veto Power in the Face of Atrocity Crimes*, 54(1) CASE WESTERN RESERVE INTERNATIONAL LAW JOURNAL 110 (2022), at 116.

⁷⁵ Galand, *supra* note 72, at 222.

⁷⁶ Trahan, *supra* note 74, at 122.

Member States should not permit abusing them to protect severe violations of fundamental human rights.

Regarding the *Defendant's* attorney's allegation that Israel was just defending itself against terrorism. The state's right to self-defence is an inherent right deriving its authority from state sovereignty and customary international law.⁷⁷ International judgements supported this origin of the right to self-defence.⁷⁸ Nevertheless, jurisprudence affirms this right with no need to explore its origin because it is rooted in international relations before the beginning of International Law.⁷⁹ Disregarding this debate, the critical point concerning the exercise of self-defence is identifying the actual International Law right included in a state's practice of self-defence.⁸⁰ The Court, therefore, should investigate the *Defendant's* conduct to determine its compliance with humanitarian requirements and rules.

Article 51 of the UN Charter admits the state's inherent right to self-defence "if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security". The explicit legal text of this article permits states to launch military operations against their attackers. According to positivists, the occurrence of an armed attack is a prerequisite to using the right to self-defence.⁸¹ Furthermore, the UNSC affirmed the lawfulness of the state's self-defence operations against terrorists and sub-state actors.⁸² This broad interpretation of the term "armed attacks" of Article 51 grants states a wide umbrella to justify their military operations abroad. Therefore, the Court admits the legitimacy of military operations responding to armed attacks.

Nevertheless, the right to self-defence is not absolute. Armies and their military commanders are obliged to follow the humanitarian restrictions included in International Humanitarian Law (IHL) to maintain the integrity of innocent lives. Moreover, the European Court of Human Rights (ECHR) decided that self-defence operations should use the appropriate and necessary lethal force to prevent the attacker's threats;⁸³ the exaggerated military reaction is unlawful and can elevate to a war crime, or other core crimes.

Furthermore, military self-defence operations are subordinated to the notion of control. The latter reflects the direct administration of acts and responsibility for their consequences under the obligation to prevent harm in International Law.⁸⁴ State officials should exercise adequate control over their subordinates to limit unnecessary casualties.⁸⁵ It is a moral obligation that defends the morality of the right to self-defence by preventing its exploitation for blind revengeful operations. Thus, states are responsible for surveilling the military actions of national forces to prevent humanitarian losses. International judgements affirm this concept

⁷⁷ Murray Colin Aldar, *The Inherent Right of Self-Defence in International Law*, in IUS GENTIUM COMPARATIVE PERSPECTIVES ON LAW AND JUSTICE (Mortimer N.S. Sellers, James Maxeiner eds., 2013), at 93.

⁷⁸ ICJ, *Asylum (Columbia v Peru)* (1950) ICJ Rep 266, 276–277; ICJ, *United States Nationals in Morocco (France v United States of America)* (1952) ICJ Rep 176; *Continental Shelf (Federal Republic of Germany v Denmark)* (Federal Republic of Germany v The Netherlands) (1969) ICJ Rep 3, at 77–78; Aldar, *supra* note 77, at 93 fn 9.

⁷⁹ *Id.*, at 94.

⁸⁰ *Id.*

⁸¹ *Id.*, at 96.

⁸² UNSC S/RES/1377 (2001).

⁸³ ECtHR, *Armani De Silva v the United Kingdom*, Application no. 5878/08, Grand Chamber, Judgment (Mar. 30, 2016), paras. 245–248.

⁸⁴ Gentian Zyberi, *The Shaping of the notion of 'Control' in the Law on International Responsibility by Certain International and Regional Courts*, in MILITARY OPERATIONS AND THE NOTION OF CONTROL UNDER INTERNATIONAL LAW (Ogier Bartels, Jeroen C. van den Boogaard *et al.* eds., 2021), at 285.

⁸⁵ *Id.*

of state responsibility under International Law.⁸⁶ In addition, the occupying state, which has the ultimate control over a region, is responsible for preventing human rights violations within the occupied territory.⁸⁷ Under this norm, the ECHR established the Turkish responsibility for the military actions of its soldiers in Northern Cyprus.⁸⁸

Consequently, the analysis of the aforementioned legal findings drives the Court to decide the IDF's direct responsibility for protecting civilians in Gaza. Since the IDF hold the upper hand within the Palestinian territories as a whole, Israel is obliged to ensure the protection of civilians and prevent the mass atrocities committed in areas of conflict. International Law imposes this obligation on Israel since it is the occupying authority. Indeed, the Gaza Strip is an occupied Palestinian territory since the IDF holds the ultimate military domination over Gaza airspace and sea; Hamas cannot enforce military presence within this sphere. Israel controls all Gaza entry points and the flow of food, water, medical supplies, and power under a tough siege since 2007. Therefore, according to the Hague Regulations, Gaza is considered an occupied territory by the IDF.⁸⁹

Furthermore, exercising the pure right to self-defence does not justify wrongful acts against the civil population. According to the ICJ, Israel must not rely on its right to self-defence to justify wrongful acts.⁹⁰ Apartheid is still apartheid regardless of its causes and motivation. Also, international core crimes are still international core crimes regardless of their political and legal justifications. Above all, security concerns shall not permit breaching the fundamental pillars of peaceful cohabitation entitled in the UN Charter. Thus, Israel should comply its policies in Palestine with obligatory International Law rules.⁹¹ It is concluded that the IDF's military operations under the right to self-defence do not permit Israel to derogate from its obligations towards civilians according to IHL.⁹² It goes without saying that non-discriminative bombing missions that inflict damage on innocent civilians in Gaza violate the basic rules of IHL and, therefore, trigger Israeli accountability for mass atrocities caused by these operations. Regardless of the Israeli justifications, humanity implies that atrocities do not justify other atrocities.⁹³

K. The Court Conclusions

⁸⁶ ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (2005), para. 214.

⁸⁷ Zyberi, *supra* note 84, at 289.

⁸⁸ ECtHR, *Manitaras and Others v. Turkey*, Application No. 54591/00, Fourth Section, Judgment (June 3, 2008), para. 27.

⁸⁹ 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. The Hague (29 July 1899), art. 42.

⁹⁰ ICJ, *Advisory Opinion on the Legal Consequences of the Construction of A Wall in the Occupied Palestinian Territory* (July 9, 2004), para. 142.

⁹¹ *Id.*, para. 143.

⁹² Terry Gill, *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: SYMPOSIA (Nov. 13, 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/>.

⁹³ Omer Bartov, *Massacre Doesn't Justify Massacre: Israel, Gaza and War Crimes*, HAARETZ (Dec. 6, 2023), <https://www.haaretz.com/opinion/2023-12-06/ty-article-opinion/.premium/massacre-doesnt-justify-massacre-israel-gaza-and-war-crimes/0000018c-3585-d55e-adbf-7fd7c8900000>.

Under the analysis of the litigation parties' claims and arguments, with full consideration of the oral hearings at which they expressed their pleadings, the Court concludes this state-of-the-art of the international criminal justice system.

The Court conclusions begin with affirming the prohibition of targeting civilians in International Law. Civilians should never be a target of military operations and the conflict parties must provide them with the appropriate protection which prevents losses. The Court does not find any eligible justification for shooting, kidnapping, and murdering civilians. Furthermore, there is no justification for destroying essential civilian facilities to deprive the population of life essentials. If a civilian facility was used for warfare, military group should adopt the utmost required precautions to prevent civilian losses. The Court directs these words to the conflict parties in Palestine.

The Court expresses its dire grievance for the current status of International Law; because of biased politics and double standards, the *Defendant* lost its humanitarian core and turned into a sharp sword in the hands of neo-colonialism and imperialism. The greedy political objectives of superpowers emptied this cosmopolitan norm of its true core due to subordinating its application to the interests of superpowers. No evidence of that other than the employment of the Veto at the UNSC to prevent ceasefire resolutions, which reflects the politics' crucial impact on legal proceedings. Therefore, International Law became an illusory component in international legal relations; it appears only against weak nations while it turns a blind eye to atrocities packed by superpowers. The Gaza crisis reveals an ultimate collapse of the entire *Defendant's* establishment and the actual value of law versus politics.

The ongoing atrocities in Gaza by the IDF along with the jeopardization of International Law mechanisms deteriorated critically the reputation of the *Defendant*. It lost a chief deal of trustworthiness because of the apparent inaction to spare innocent lives in Palestine. Therefore, oppressed victims would seek justice by other methods rather than legal proceedings. Their methods could be revengeful and lethal. Thus, this consequence constitutes a threat to world peace and security. Needless to say, armed reactions to oppression lead to the ultimate absence of the legal framework of International Justice; the law of the jungle prevails.

The Court should note that complicity in international core crimes does not require a direct physical commitment to their *acts reus*; weak little tricky silence is qualified to complicity as it leaves the door open to the perpetrators to continue their atrocities. Inaction against atrocities is an ultimate atrocity; intervention to spare innocent lives is a humanitarian requirement of global peaceful cohabitation.

The Court calls states and individuals to respect the purely humanitarian nature of the right to self-defence. Self-defence was developed in practice to protect the integrity of state sovereignty and the well-being of its nationals. It should be used under this restriction as the excessive use transfers it into a revengeful killing machine. Furthermore, operative militants under this right are still accountable for crimes and atrocities they commit during their missions. Self-defence does not exempt war criminals from their legal responsibility. Indeed, international jurisprudence should develop an observatory system of armed conduct related to self-defence to ensure legal accountability for atrocities. It should be an obligation of the *Defendant*.

Furthermore, it is necessary for humanity to develop a flexible referral mechanism to the international judicial organs, e.g., the ICC. The core of this mechanism should be purely legal. Then, politics would not influence the referral proceedings. Consequently, an impartial mechanism enhances the effectiveness of International Law and strengthens the universal trustworthiness of the entire criminal justice system. In addition, legal mechanisms cut off international impunity and support the victims' access to justice. The *Defendant* should exert reasonable efforts to release the international judicial process from political pressures; under

the domination of politics, International Justice is lost. It is a due diligence obligation of the *defendant* to cure the practical asthenia that deprives it of achieving the humanitarian objectives.

Therefore, the Court concludes that International Law has become ink on paper; the uselessness of the *Defendant* in the context of the Israeli massacres against innocent civilians in Palestine contradicts the chief feature of legal rules, which is equitable applicability. In this case, a judicial deprivation of authority might be imposed to protect the pure essence of the leading rules that organize the entire humanitarian relations.

The deprivation is time-limited. The Court would impose judicial rehabilitating measures on the *Defendant* as a mandatory program until it restores its impartiality and equitable applicability. These measures imply isolating the *Defendant* from the direct influence of politics through the enhancement of International Law pure legal concept. The Court addresses the executive office to monitor the *Defendant's* commitment to these measures.

Therefore, under Article 9 of the Parallel Statute, the Court decides:

- (i) The admission of the *Plaintiffs'* pleadings and the dismissal of the *Defendant's* claims.
- (ii) The Deprivation of the authority of International Law until accomplishing the rehabilitation program.
- (iii) The imposition of an obligatory framework on the Defendant to enhance the impartial applicability of its rules as a remedy for the Plaintiffs.

IV. Conclusion

The virtual trial designed by the article intended to clarify the current status of chief legal principles in international legal practice to diagnose the prevailed asthenia in legal practice. The trial achieved its objective by reviewing the arguments of virtual litigation parties simulating the parties of the ongoing conflict in Gaza. This fictitious trial sought to reintroduce international law norms within a designated legal context to preserve their efficiency and credibility.

The fictionality of the trial objects and procedures contributes to overcoming global disappointment caused by international law bodies inaction concerning the atrocities committed in Gaza. Fiction proves efficient in surpassing reality's ordeals and relieving humanity's desperate conscience. Therefore, the trial reviewed the pleas of each party and the legal norms they utilized in the arguments to clarify the accurate interpretation of legal principles that maintains their integrity. To do so, the trial recalled relevant literature and international judicial precedents that anchored the abstraction and impartiality of international law rules.

In its decision, the virtual court linked the absence of the neutral application of international law to the deprivation of its authority in legal practice. Selectivity of application bares legal rules of the abstraction and generality required for authority, which destabilizes the civilized international legal system and transforms international law into a political weapon that serves solely superpowers. An impartial and neutral application of international law is critical for humanity since international peace cannot be achieved unless justice prevails.

V. Appendices. The Parallel Statute of the Supreme Court of Humanity

Because of the deficiencies of the international judicial system, the United Nations established this virtual Court to stand as a shelter for defending the fundamental universal values of humanity. It shall be constituted and functioned under the following provisions.

Art 1. The Supreme Court of Humanity is the virtual judicial organ of the United Nations that governs virtual litigations between virtual parties and values.

Art 2. The aim of the Court is to maintain world peace and security under the Charter of the United Nations by providing a global virtual judicial platform to defend the integrity of humanity's values.

Art 3. The jurisdiction of the Court is universal. It is competent to settle litigations that include violations of fundamental humanitarian values that threaten peaceful cohabitation.

Art 4. The Court bench consists of three judges. The virtual nature of the Court does not imply the human nature of the judges; values, slogans, and theories are admitted as judges. The appointment of the judges should be suitable to the subject of each litigation and the nature of the parties.

Art 5. The Court has a Registrar's office. Litigation parties should submit their statements to the Registrar, who is entitled to refer them to the Bench to be heard during the fixed period. These statements of claims include each party's pleading, arguments, and requests for remedy. They should be written in formal legal language and comply with the discipline requirements of judicial documents.

Art 6. The Court conducts the hearings in public. Litigation parties should express their pleadings before the Bench and each other. Each party is obliged to submit an official copy of its statement and documents to the other party.

Art 7. Litigation parties might appoint an attorney to stand for them before the Court. It is not an obligation because the Court should admit the statement and conduct the hearings regardless of this appointment upon the presence of the litigation parties.

Art 8. After the hearings, the Bench should give their judgment on the litigation. It should include the judges' names, dates, factual backgrounds, the statements that express the parties' admittance of the court jurisdiction, the applicable legislation, the reasons for the judges' appointment, the judicial proceedings, each party's arguments, the judicial discussion of these arguments, and the conclusion.

Art 9. The judges should submit their judgment reasoning within a period of thirty (30) days after giving the judgment. Their judgment should be in compliance with the legislation that governs the litigation.

Art 10. The Court judgments are absolute. Litigation parties are not permitted to appeal them before other judicial bodies.