

THE POSSIBILITY OF IMPLMENTATING CHAPTER VII OF THE UN CHARTER IN THE GAZA WAR OF 7 OCTOBER 2023



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Abstract:

Since 07 October 2023, nonstop acts of war have been taking place in the Gaza strip, taking lives of many civilians and ignoring any existence of humanitarian law. Under the eyes of the world and the United Nations, two huge regimes of law are being collapsed. Despite its crucial role in preserving the stability of international relations, the United Nations seems unable to achieve a ceasefire or even to prevent any aggravation of the situation, according to Article 39 of the UN Charter the ongoing war threatens international peace and security to the existence of new norms for governing international relations that led to a remarkable evolution in the definition of peace. This description requires the intervention of The UN Security Council as the first responsible organ of restoring international peace and security.

However, the political character of both the Security Council and war in the Gaza forbid the correct application of all legal instruments, and leave it blocked.

Key Words: Gaza strip; Humanitarian law; Chapter VII; The UN Security Council ; Human rights.

احتمال تطبيق الفصل السابع من ميثاق الأمم المتحدة في حرب غزة للسابع من أكتوبر

ملخص:

منذ 07 أكتوبر 2023، وأعمال حرب غير متوقفة مستمرة في قطاع غزة، أخذت حياة العديد من المدنيين ومتجاهلة أي تواجد للقانون الدولي الإنساني.

تحت أعين العالم والأمم المتحدة تنهار منظومتان قانونيتان هائلتين. بالرغم من الدور الحاسم للأمم المتحدة في الحفاظ على استقرار العلاقات الدولية تبدو غير قادرة على وقف إطلاق النار أو حتى منع أي تفاقم للحالة. حسب نص المادة 39 من ميثاق الأمم المتحدة تهدد الحرب المستمرة في غزة السلم والأمن الدولي بسبب وجود معايير جديدة لتوجيه العلاقات الدولية والتي قادت إلى تطور ملحوظ لمفهوم السلم الدولي. هذا الوصف يتطلب



تدخل مجلس الأمن التابع للأمم المتحدة كجهاز مسئول عن إعادة السلم والأمن الدوليين. غير أن الطابع السياسي لكل من مجلس الأمن وحرب غزة يحرم التطبيق الصحيح لأي وسيلة قانونية، ويتركها بذلك معلقة.

الكلمات المفتاحية: قطاع غزة، القانون الدولي الإنساني، الفصل السابع، مجلس الأمن التابع للأمم المتحدة، حقوق الإنسان.

La possibilité de mise en œuvre du Chapitre VII de la Charte des Nations Unies dans la guerre de Gaza

Résumé :

Depuis le 7 octobre 2023, des actes de guerre incessants se déroulent dans la bande de Gaza, faisant de nombreux morts parmi la population civile et ignorant toute existence de droit humanitaire. Sous les yeux du monde et des Nations Unies, deux immenses régimes de droit s'effondrent. Malgré son rôle crucial dans la préservation de la stabilité des relations internationales, l'ONU ne semble pas capable de mettre un terme à la guerre ni même d'empêcher toute aggravation de la situation. Selon l'article 39 de la Charte des Nations Unies, la guerre en cours menace la paix et la sécurité internationales en raison de l'existence de nouvelles normes régissant les relations internationales, qui ont conduit à une évolution remarquable de la définition de la paix. Cette situation nécessite l'intervention du Conseil de sécurité de l'ONU en tant qu'organe responsable du rétablissement de la paix et de la sécurité internationales.

Cependant, le caractère politique du Conseil de sécurité et la guerre à Gaza empêchent l'application correcte de tous les instruments juridiques et laissent la situation bloquée.

- **Mots Clés :** Bande de Gaza ; Droit humanitaire ; Chapitre VII ; Conseil de sécurité de l'ONU ; Droits de l'homme.



Introduction:

According to the Preamble and Article 1 of the UN Charter, maintaining international peace and security stands at the forefront of the organization's foundational objectives. This emphasis emerged following the failure of the League of Nations to prevent the outbreak of the Second World War. Consequently, the Charter clearly underscores the measures that must be taken to preserve and restore international peace and security when threatened or disrupted.

Taking a closer look at Article 1, the maintenance of international peace and security is closely linked to the development of friendly relations among the members of the international community, particularly by rejecting war as a means of settling disputes. To achieve this objective, the UN Charter entrusted the Security Council with the primary responsibility for maintaining international peace and security, granting it broad powers under Chapters VI and VII.

Avoiding wars is not the only element that shapes the concept of international peace. With globalization, several new dimensions have emerged, including respect for human rights, economic security, and compliance with international obligations arising from treaties under international law. Serious violations of these elements may constitute a threat to or breach of the peace, as stipulated in Article 39 of the UN Charter. Moreover, wars continue to occur despite all efforts, and the laws of war remain widely disregarded, particularly in light of the recent crisis in the Middle East on 7 October 2023, which has led the world to question the effectiveness of international law and its institutions.

Armed conflicts, by their very nature, result in significant losses, whether accidental or intentional. Consequently, ensuring compliance with the laws of war has become a fundamental requirement within the broader framework of law-enforcement mechanisms. The recent conflict in the Gaza Strip has triggered extensive humanitarian disasters and revived the debate on the necessity of reforming and rectifying the legal mechanisms governing situations of armed conflict. Despite the continued inability to bring hostilities to an end, Chapter VII may still be capable of influencing the trajectory of this conflict, given the specific nature of its provisions. However, the Security Council—being the sole body authorized to take action under Chapter VII—has yet to take any decisive step regarding the crisis in Palestine.

The problem of this study is: *what prevents the Security Council from applying Chapter VII provisions in the Gaza war?*

To answer this question, the research is divided into two themes:

- 1- Examining whether the Gaza war threatens international peace by exploring the constituent elements of the modern definition of international peace and its breaches.



- 2- Analyzing Chapter VII provisions concerning situations that threaten international peace, and evaluating the possibility of directing the chapter's measures in Gaza.

I/ Gaza War and Threats to International Peace

Threats to international peace put the entire world at risk. The 7 October war exemplifies such a threat, as clearly reflected in the violations committed against civilians and the humanitarian law system.

I-1 Failure to Apply IHL Provisions

International Humanitarian Law (IHL) governs the conduct of states during armed conflicts to ensure minimum protection for civilians. Any disregard or misinterpretation in the application of IHL provisions can lead to war crimes. This is clearly evident in the Gaza war, as demonstrated by the practices of the Zionist entity, which acts as an occupying power in the area.

I.1.1 The Evolution of the Concept of International Peace

To discuss the term "threat to peace," it is necessary to define "peace."

The Charter uses "peace" as a generalized term. However, a review of the UN's history shows that, after 1945, the term primarily referred to the absence of war and direct violence (peace in its negative definition). Later, following the impacts of World War II and the Cold War, the concept of peace came to include social justice through cooperation and integration (positive peace)¹.

With reference to Article 1, which links peace to security, it becomes clear that the concept entails something deeper than mere absence of conflict², it relays on states living together and cooperate in their relations between each other based on respect and harmony. Thus, becoming threat to peace significantly generalized as much as peace.

UN Charter provisions grant the Security Council the responsibility to protect this universal value in Article 24:

"Its members confer on the Security Council primary responsibility for the maintenance of international peace and security."

Returning to Article 39, the concept of a threat to peace was intentionally left undefined, allowing the Security Council to exercise its discretionary power in determining what constitutes a threat to peace. Recognizing this power for the Council aligns with the evolving nature of international relations³.

After establishing the existence of a threat to peace, the Security Council shall make recommendations or take measures within the limits of Articles 41 and 42 to maintain

¹ E. Martin Félix, "Critical Analysis of the Concept of Peace in International Relations," *Peace Research*, Vol. 37, November 2005, JSTOR, p. 46.

² حاج محمد صالح، شعبان صفيان، السلم والأمن الدوليين: دراسة على ضوء أحكام ميثاق الأمم المتحدة، مجلة الواحات للبحوث والدراسات، المجلد 11، العدد 1، 2018، صفحة 184.

³ OP.CIT, page 191, حاج محمد صالح، شعبان صفيان،



peace. This indicates that the power granted is not unlimited and must be exercised in accordance with the provisions of the Charter, making it not only a political discretion but also a juridical one¹. These measures consist of non-military and military sanctions, which are exclusively imposed by the Security Council.

At the inception of the Security Council, situations considered threats to peace were primarily found in wars between two states². Over time, the concept expanded to include new forms of threats, in line with emerging international challenges, such as terrorism, armament, and the illicit trafficking of small arms and light weapons³, violations of law and human rights, transnational crimes, climate change, and international health threats⁴...

1.1.2 Clear violations of International Humanitarian Law (IHL)

Since we are discussing threats to international peace, the ongoing 7 October war in Gaza represents a serious issue and a threat to international peace.

Within the framework of its resistance operations, Hamas carried out surprise attacks⁵ on Jews, on their Jewish holiday, in response to the Hamas operation, they declared war on Gaza, and a bloody war has started until this moment. They were not joking about it; under the eyes of the world, humanitarian law is being violated day after day. All humanity's efforts and support seem to be useless; Jews are doing their big revenge as they promised.⁶ They claimed the right to defend what they call "their own territory." However, what is presented to the world as the State of Israel is, in fact, entirely occupied Palestinian territory.

The current situation in occupied Palestine has heightened international concern and led to the emergence of various opinions, mostly condemning the brutality of the Zionists.

International Humanitarian Law (IHL) is a set of principles and rules codified in treaties and established through custom and international practice to protect human rights during times of war. It recognizes two types of armed conflicts: international

¹ أحمد مبخوتة، تطور سلطات مجلس الأمن في تطبيق أحكام الفصل السابع من ميثاق الأمم المتحدة، المجلة الجزائرية للحقوق والعلوم السياسية، المجلد 6، العدد 2، 2021، ص 5.

² CONSIDERATION OF THE PROVISIONS OF ARTICLES 39-40 OF THE CHARTER of 1946-1951, on www.main.un.org

³ Determination of a Threat to the Peace, Breach of the Peace, or Act of Aggression," www.main.un.org, viewed: 7September,2024, at:10:35pm.

⁴ Security Council Resolution 2532 (2020): "Considering that the unprecedented extent of the COVID-19 pandemic is likely to endanger the maintenance of international peace and security."

⁵ What they call Toofan El-Aqsa or El-Aqsa- Flood operation.

⁶ One of the Zionist political leaders announced that the military objectives are "to destroy the military and governmental capabilities of Hamas and bring the hostages home." Jim Zanotti and Jeremy M. Sharp, "Israel and Hamas 2023 Conflict in Brief: Overview, US Policy, and Options for Congress," Congressional Research Service, November 7, 2023, p. 1.



armed conflicts and non-international armed conflicts. IHL provides, in both cases, minimum protection to specific categories of persons, acknowledging the harsh realities and consequences of war, as witnessed in World Wars I and II.

Certainly, the most affected by the consequences of war are civilians. They are victims of all kinds of hostile actions, and since they are not direct parties to the conflict, IHL provisions obligate belligerents to respect their right to protection through the implementation of the 1949 Geneva Conventions.

Persons who do not take an active part in hostilities, and persons who find themselves, in cases of conflict or occupation, under the authority of a party to the conflict or an occupying state of which they are not nationals, are precisely the categories recognized by the Geneva Conventions. These standards distinguish between civilians and non-civilians, although the distinction remained unclear until the definition set by the 1977 Additional Protocol, in which Article 50 defines:

A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (1, 2, 3, 6) of the Third Convention and in Article 43 of this Protocol. In case of doubt as to whether a person is a civilian, that person shall be considered a civilian¹. Therefore, civilians who participate, whether voluntarily or under coercion, in hostilities are not covered by the treaty's protection. This makes the distinction between civilians and combatants more difficult in non-international armed conflicts.²

It is preferable to note that the protection offered by the Protocol aims to safeguard civilians from the impacts of war, while the treaties also prevent the abuse of authority against civilians.³

Article 4 adds that persons protected by the previous Geneva Conventions continue to be protected⁴. They are not covered by the protection of the Fourth Geneva Convention.

Such protection appears to be effective when belligerents ensure the implementation of two key rules¹:

¹ It means a civilian does not belong to these categories: Members of the armed forces, militias, or volunteer corps forming part of armed forces./Members of militias or volunteer corps of resistance movements in occupied territories./Members of regular armed forces who profess allegiance to a government or authority not recognized by the detaining power./ Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces.

² شريط وليد، حماية المدنيين في النزاعات المسلحة بين أحكام القانون الدولي الإنساني وتعاليم الفقه الإسلامي، مجلة التراث، العدد 09، 2013، ص 90.

³ خليل أحمد خليل العبيدي، حماية المدنيين في النزاعات المسلحة الدولية في القانون الدولي الإنساني والشرعية، أطروحة دكتوراه، جامعة سانت كلمنتس العالمية، 2008، ص 105.

⁴ The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, and the Geneva Convention Relative to the Treatment of Prisoners of War (1949).



- 1- **Humanitarian rule:** Civilians shall be kept away from military operations zones.
- 2- **Military rule:** Belligerents shall distinguish between civilians and combatants, as well as between military objectives and civilian objects.

Accordingly, any acts of violence against life and persons—such as murder, torture, or humiliation—are prohibited. Establishing safe and neutralized zones, and providing food and medical assistance, are mandatory.

Yet, the 7 October war has shown no respect for International Humanitarian Law, as evidenced by unlawful attacks on civilians. A total of 41,909 Palestinians have been killed, of whom 69% are children². In addition, thousands of women have been affected; over 97,303 people are injured, and more than 10,000 are either buried under the rubble or missing³. In addition, the Gaza Strip has been illegally blockaded for many years, making it difficult for humanitarian volunteers to enter and provide assistance. According to the UN, it is considered the largest prison in the world⁴. Prisoners are deprived of basic survival conditions, and the occupying authorities use the starvation of civilians as a weapon of war⁵. This is prohibited according to Article 54 of the 1977 Additional Protocol. UNRWA Commissioner-General Philippe Lazzarini stated that people in Gaza face a daily struggle to survive... they struggle daily against diseases and to find food⁶. It is already established in IHL that the creation of safe zones is necessary to protect civilians, as well as the wounded and sick, from hostilities⁷, and ensuring access to all essentials of life, including electricity, food, water, and medicine. These zones in Gaza resemble death traps; they are unsafe and offer the bare minimum conditions for survival. Many civilians have been forced to flee their homes.

Knowing that aid organizations could barely reach those in need, the occupying forces, in disregard of all IHL provisions, have proposed new laws blocking UNRWA operations⁸.

¹ محمد فهد الشلالدة، القانون الدولي الإنساني، منشأة المعارف، الإسكندرية، 2005، ص166.

² According to UNRWA, everyday 10 children lose one or both legs.

³ Alia Chughtai and Muhammad Okur, "One Year of Israel's War on Gaza," 08/10/2024, www.aljazeera.com, viewed: 09/10/2024 at 12:20 pm.

⁴ The situation in Gaza, 16/10/ 2023, www.oxfam.org, viewed: 08/10/2024 at 10:45pm.

⁵ www.hrw.org , 08/10/2024 at 10:12pm.

⁶ UNRWA commissioner general to Aljazeera, www.unrwa.org , 08/10/2024, viewed: 08/10/2024 at 11:40pm.

⁷ Article 14 of the 4th Geneva convention.

⁸ UNRWA, or the United Nations Relief and Works Agency for Palestinian Refugees, was established after the war of 1948 by UN General Assembly Resolution 302 of December 1949 to provide assistance and protection for registered Palestinian refugees. www.unrwa.org , 09/10/2024, 3:30pm. UN Secretary-General declared that UNRWA is more indispensable than ever and warned that the proposed law blocking UNRWA would be a catastrophe. www.news.un.org , 08/10/2024 at 12:04am.



Furthermore, the law explicitly prohibits attacks or bombardments on towns, villages, houses, hospitals, and buildings dedicated to religion, art, science, or even charitable purposes.¹ Furthermore, in cases of doubt as to whether an object normally dedicated to civilian use is being used for effective military purposes, it shall be presumed not to be so². IHL rules oblige parties to a conflict to direct their military operations solely against military objectives. According to Article 52 of the Additional Protocol, these are objects which, by their nature, location, purpose, or use, make an effective contribution to military action, and whose destruction offers a definite military advantage.

Conversely, in the Gaza Strip, 60% of hospitals are out of service. Over 122 schools and universities, 610 mosques, 3 churches, and 200 governmental institutions have been completely destroyed³.

IHL also imposes restrictions on the use of weapons. Hence, belligerents do not have an absolute choice in the methods and means of warfare; their actions are limited by the norms of humanity⁴.

The humanity norm behind the prohibition of certain types of weapons and means aims to reduce the indiscriminate effects of hostilities on both individuals and the environment. In this regard, Article 23 of the Hague Convention provides examples of forbidden means, including: the use of poison and poisoned weapons, killing or wounding treacherously, killing or wounding an enemy who has surrendered, and employing projectiles or materials calculated to cause unnecessary suffering.

Additionally, many other conventions provide for disarmament, such as the 1925 Geneva Protocol banning asphyxiating, poisonous, or other gases and bacteriological methods of warfare, and the 1993 Chemical Weapons Convention. The 2017 Treaty on the Prohibition of Nuclear Weapons, and the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, which may be deemed to cause excessive injury or have indiscriminate effects, also contribute to the legal framework restricting the use of harmful weapons.⁵

On the other hand, the occupying forces in Palestine have once again ignored an important IHL rule by using white phosphorus in Gaza, which is known to cause severe long-term burns⁶. It can also destroy the environment and render it uninhabitable by poisoning the soil and the air.

¹ Articles 25, 27 of the Hague Convention of 1907.

² Article 52 of the first Additional Protocol of 1977.

³ www.pcbs.gov.ps, 10/10/2024 at 2:40pm.

⁴ Article 35 of the first Additional Protocol of 1977.

⁵ www.icrc.org, Chemical and biological weapons, 10/10/2024, 04 :05pm.

⁶ www.hrw.org, "Questions and Answers on Israel's Use of White Phosphorus in Gaza and Lebanon," October 12, 2023, viewed 10/10/2024 at 4:29 PM.



On another level, more than 25,000 tons of explosives have been used in the war on Gaza—an amount comparable to two nuclear bombs¹.

I.2/ The Continuity of Violations Committed Against Human Rights

Before discussing the violations of humanitarian law and human rights that constitute severe threats to international peace and security, we shall first take a look at the law of armed conflicts.

I.2.1 The implementation of both IHL and HRL in armed conflicts

Human rights law is also a branch of international law, particularly a set of rules providing protection and access for every individual to political, economic, and social rights. It has been, and continues to be, a crucial tool in governing international relations.

In the first 20 years after World War II, human rights and humanitarian law were considered two separate legal systems, applied in different situations: one dedicated to peacetime, and the other to wartime². However, in 1968, some links began to emerge between the two legal systems at the Tehran Conference, where the international community acknowledged the failures of humanitarian law provisions during the Vietnam War. IHL appeared unable to cover all types of armed conflicts; consequently, the proportion of civilian deaths increased from 50% in World War II to 60% in the Korean War, and 70% in the Vietnam War³. IHL was indeed in need of rectification. As a result, a resolution entitled “Respect of Human Rights in Armed Conflict” was adopted. The resolution aimed to expand the application of human rights law to armed conflicts, as nothing in the legal instruments prevents its implementation outside peacetime⁴.

Subsequently, the UN General Assembly, in its Resolutions 2444, 2597, and 2675, recognized the necessity of ensuring better protection of human rights in armed conflicts of all types and emphasized respect for the laws of war in cooperation with the International Committee of the Red Cross⁵. Later, the issue of the simultaneous application of the two legal systems began to emerge, especially given the universal character of human rights law. In the ICJ’s 2004 advisory opinion on the Wall Case...

¹ “Environmental Impact of the Conflict in Gaza: Preliminary Assessment of Environmental Impacts Report, Publication of UN environment program, 18/06/2024, available on: www.unep.org

² Olukolu Yomi, “The Application of International Humanitarian Law and International Human Rights Law in International Armed Conflicts in Sub-Saharan Africa: Symbiosis or Synthesis,” *International Journal of Socio-Legal Research*, Vol. 1, Issue 1, 2015, p. 2.

³ Gerda Oberleitner, *Human Rights in Armed Conflict: Law, Practice, Policy*, Cambridge University Press, 2015, p. 53.

⁴ La protection juridique internationale des droits de l’Homme dans les conflits armés, Publication des Nations Unies, Haut-Commissariat aux Droits de l’Homme, New York et Genève, 2011, p. 6.

⁵ General Assembly Resolutions: 2444/ 1968, 2597/1969, 2675/1970.



*... As regard to the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights and, as a *lex specialis*, international humanitarian law.*

Accordingly, IHL and HRL complement each other, but IHL takes priority in application during armed conflicts as the specialized law¹, and this does not mean to prefer it over HRL, as long as the complementary is characterized by the existence of two regimes of law working together in harmony without losing their respective form or identity. They both have the same purpose “protecting individuals”².

Furthermore, the complementary appears clearly among the reciprocal integration of both human rights and IHL principles in each other documentation³. The fourth Geneva and the Additional Protocol for example contain several rights within the right to life and dignity based on none discrimination⁴, the right to education and work, the prohibition of slavery, and the prohibition of torture. On the other hand, the Convention on the Rights of the Child obligates parties to respect IHL and to ensure that persons under 15 years old do not take a direct part in hostilities⁵. The convention against torture and other cruel, inhuman or degrading treatment or punishment in its article 02 prohibits invoking state of war to justify committing torture.

In fact, this connection between IHL and HRL in their implementation during armed conflicts helps to ensure an important balance between human treatment and military necessity⁶, and it puts more responsibilities on belligerents.

I.2.2 Violations committed in Gaza Strip

In Gaza war, the violations of Human rights are over the line, indeed no respect shown to fundamental rights, occupation forces took life of women, children, old people, wounded, doctors...Everyone tasted death, and some international voices accused occupation forces by the commission of Genocide as an international crime.

¹ Yomi Olukolu, Op. cit., p. 11.

² Gerd Oberleitner, Op Cit, P 107.

³ Gerd Oberleitner, IBID, P 69.

⁴ Article 3 of the Geneva Conventions

⁵ Article 38 of the Convention on the Rights of the Child.

⁶ Volodymyr Fa. Pylypenko and others, “Features of Legal Regulation of Human Rights in Armed Conflicts,” *Journal of the National Academy of Legal Sciences of Ukraine*, Vol. 28, Issue 1, 2021, p. 47.



Besides to all this, many persons are arrested arbitrary and tortured in prisons¹, as well as a lot of them lost access to educational² and health system services.

On 26 January 2024, the ICJ adopted an ordonnance in which it ordered the Israeli occupation to take all measures to stop the commission of all acts of genocide in accordance with its obligations under the Genocide Convention, assuming that its acts in the war on Gaza since 7 October 2023 constitute elements of genocide³ Through killing and massacring Palestinians.

Genocide is one of the most dangerous international crimes; it puts not only the life of one individual in danger of death, but also the life of a national, ethnic, racial, or religious group of individuals⁴.

The Convention punishes genocide as well as conspiracy, direct and public incitement, attempts to commit genocide, and complicity in its commission.⁵

Another kind of indirect violation of human rights concerns threats to public health. Problems such as solid waste are exacerbating the situation. The blocked waste, caused by continuous bombing and the destruction of infrastructure, is rendering the land polluted and unlivable⁶. UNRWA declared that the waste management system has fallen apart⁷, humanity shall prepare for worse. Many dangerous diseases expanded because of the unsanitary living conditions, UNRWA workers have captured many Palestinians living surrounded by rubbish⁸. In a statement by the Principles of the Inter-Agency Standing Committee on the situation in the Occupied Palestinian Territory, published by the World Health Organization, the following description was provided:

¹ Comment by UN Human Rights Spokesperson Ravina Shamdasani on West Bank violence, 28/08/2024, www.un.org.

² همام عبد الله علي السردى، التعليم في غزة فترة حرب السابع من أكتوبر 2023: الواقع والحلول، مجلة الدراسات الإسلامية، المجلس الإسلامي الأعلى، عدد 01، المجلد 24، 16 أفريل 2024، ص 23.

³ Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide provides that the commission of any and all of the following acts constitutes genocide:

- Killing members of the group.
- Causing serious bodily or mental harm to the members of the group.
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
- Imposing measures intended to prevent births within the group.

⁴ عثمان يحيى أحمد أبو مسامح، المسائلة الجنائية الدولية عن الجرائم الإسرائيلية (غزة نموذجاً)، الطبعة 01، مركز الدراسات العربية، 2019، ص 114.

⁵ Article 04 of the previous convention.

⁶ Wim Zwijnenburg and others, "War and garbage In Gaza: the public health and environmental crisis from widespread solid waste pollution", published in Pax journal, July 2024, www.paxforpeace.nl, P07.

⁷ "Gaza : Frightening increase", www.news.un.org, 12/10/2024, 7 :53pm.

⁸ Wim Zwijnenburg and others, IBID, P P 06,05.



“... Women’s and girls’ dignity, safety, health, and rights have been severely compromised. The risk of famine persists, with all 2.1 million residents still in urgent need of food and livelihood assistance, as humanitarian access remains restricted... There must be accountability for serious violations of international humanitarian law and human rights law...”¹

Undoubtedly, the undeclared statistics about human rights violations are higher than the declared ones, putting international peace in peril, and international law norms in doubt of effectiveness. To date, the ongoing war in occupied Palestine increases international worries, the continuous disrespect for Human rights and humanitarian law provisions that apply extraterritorially during warfare² can be³ determined as elements of threat to peace⁴. Although this determination is exclusively within the province of the Security Council⁵, the transnational consequences and none responding to international organizations calls are crucial factors for determining threat to peace⁶. Where is the value of international provisions if they cannot ensure their applicability? Therefore, once it is identified as threat to peace, Security Council shall act under articles 41, 42 of a UN Charter.

II. The Suspended Role of the Security Council Toward the War in Gaza

The Security Council has made important strides in the promotion of international peace and security. Despite its achievements, it has not taken any serious actions regarding the Gaza conflict.

II.1 PROCEDURES SHALL BE APPLY IN GAZA WAR ACCORDING TO CHAPTER VII

The United Nations Organization is one of humankind’s most significant achievements. After the failure of the League of Nations, the UN was launched to embody the desire for a peaceful world. It revolutionized the meaning of international peace by establishing a specialized executive organ as a peace provider, known as the Security Council.

¹ Statement by the Principles of the Inter-Agency Standing Committee on the Situation in the Occupied Palestinian Territory 23 /09/2024, www.who.int/news , viewed: 12/10/2024, 8:20pm.

² Michael J.Dennis, “Application of human rights treaties extraterritorially in times of armed conflict and military occupation”, The American journal of international law, vol 99, num 01, January 2005, published by American society of international law, p 122.

⁴ “Disrespect for International Law Is a Matter of International Peace and Security,” Volker Turk, briefing to the UNSC, UN High Commissioner for Human Rights, 20/09/2024, www.ohchr.org , 11/10/2024, 10:26pm.

⁵ Daniel Apickard, “When Does a Crime Become a Threat to International Peace and Security?” *Florida Journal of International Law*, Vol. 12, No. 1, January 1998, p. 6.

⁶ Daniel Pickard, *IBID*, p 14.



SC has created to make some political balance in the UN; as the existence of an administrative body solely is not enough for realizing UN goals. The core role of this organ is ensuring the maintain of international peace and security, by evolving friendly international relations and avoiding disputes. These disputes might be judicial and political, as it might be armed.

Armed conflicts represent a very sensitive situation in international relations. They may be considered a threat to peace according to Article 39, and in light of previous practices of The Council in the field. However, the absence of a definition of terms has opened a window to many interpretations, until the set of a new vision in the conceptual level of international peace and security in world of globalization where human rights, political stability, absence of war consist main elements of the modern meaning of international peace. Although a breach of the peace and an act of aggression are more clearly defined than a threat to the peace, the notion of a *threat to peace* remains less precisely determined, as it is situated conceptually between Chapter VI—concerning the pacific settlement of disputes¹—and the actual occurrence of a breach of the peace².

The Security Council possesses wide discretionary powers to take measures in response to a threat to the peace³ to maintain or restore international peace. This extensive authority relies on the Council's power to determine the proper legal qualification of a given situation, in accordance with the broad interpretation of Article 39.

II.1.1 Article 41

Chapter 7 of the UN charter devotes instruments to handle threat to peace situation in the light of articles 40,41,42,43, based on the sanctional approach. These instruments are considered sanctions, despite the fact that the word “sanctions” does not appear in articles formulation. However, it can be extracted from the council's practice over years⁴, and it ranged from economic sanctions to military ones.⁵

¹ In case negotiation, mediation, good offices, arbitration... had failed at settle the dispute; it will rather form a threat to peace or breach of peace.

²Alexandra Novosseloff, “Chapitre VII et maintien de la paix : une ambiguïté à déconstruire,” *Bulletin de maintien de la paix*, Institut d'études internationales de Montréal, publié dans le cadre du Forum sur la sécurité et la défense (FSD) du ministère de la Défense nationale du Canada, p. 1.

³Monica Lourdes de la Serna Galván, “Interpretation of Article 39 of the UN Charter (a Threat to Peace) by the Security Council: Is the Security Council a Legislator for the Entire International Community?” *Anuario Mexicano de Derecho Internacional*, Vol. XL, 2011, Biblioteca Jurídica Virtual de la UNAM, p. 150.

⁴Eugenia Lopez Ajacoste, “The UN Collective Security System and Its Relationship with Economic Sanctions and Human Rights,” *Max Planck Yearbook of United Nations Law*, Vol. 14, The Netherlands, 2010, p. 285.

⁵ Eugenia López ja coste, IBID, p 280.



According to article 40, SC calls states to tackle the problem to prevent any exacerbation of the situation by undertaking provisional measures without clarifying the nature of these measures. Next, articles 41 and 42 include options like economic sanctions and military interventions. Article 41 excludes the use of force and mention a set of optional measures: interruption of economic relations and of rail, sea, air and all other means of communication, as well as diplomatic relations. It should also be noted that these measures have no compulsory character, meaning that the Council is not obliged to adopt them, and nothing prevents it from taking measures outside the scope of this article due to the use of the word “may.”¹

We can observe two kinds of sanctions under article 41:

- Blanket sanctions:

Blanket sanctions are often referred to none targeted sanctions applied against states to get them to execute their international obligations using economy coercion. This kind of sanctions is known with its harmful impacts on the population². Economic measures can take different shapes like: embargos, asset freezes, limitations on transfers of funds and many others, which may lead to job losses, famine, and hard living conditions.

For more clarification, when blanket sanctions had been applied against Iraq, the whole country's economy and infrastructure have been damaged, and an innocent population went wrongly victim.

- Targeted sanctions:

Targeted sanctions or smart sanctions are a reflection of human rights impacts on international decisions³. They are addressed to wrongdoers only, without putting a whole nation under restrictions and thus causing a humanitarian disaster. Such restrictions forced on freedom, access to weapons, blocking financial accounts.⁴

II.1.2 Article 42

As discussed above, article 42 speaks of the right to military intervention under SC's leadership when previous articles measures considered inadequate to stop any of situations declared in article 39. SC may intervene military by air, sea, or land forces using peacekeepers forces⁵.

Since 7 October 2023 until the moment of writing this paper, Security Council has adopted only two resolutions concerning the situation in Palestine:

- Resolution 2728 of 25 March 2024, concerning a ceasefire during the month of Ramadan and the immediate and unconditional release of all hostages.

¹ Joy Gordon, “The hidden power of new economic sanctions”, Current History Journal, January 2019, on JSTOR, P 06.

² Andrea Carlevaris et al., *Economic Sanctions and Arbitration: A Practical Guide for Parties, Counsel and Arbitrators*, International Association of Lawyers, September 2023, pp. 9–10.

³ Arne Tostensen and Beate Bull, “Are smart sanctions feasible?”, Review Project muse, P 379.

⁴ Joy Gordon, OP.CIT, P 05.

⁵ Articles 42, 43 from the UN Charter.



- Resolution 2735 of 10 June 2024, concerning a full and complete ceasefire.

The UN Security Council has recognized through these resolutions the violations of human rights and the necessity to stop them, yet it has not taken any direct action through the activation of Chapter VII, despite its wide discretions, which makes it more than a law enforcement organ¹.

As Noticed, the situation in Gaza is supposed to provoke the council's responsibility. In fact, no one denies the importance of the ceasefire to pursue protection in war zones. However, the issue is about Israel not responding to SC's calls that makes resolutions not binding on states, in the following, the council risks losing its legitimacy.

II.2 THE SECURITY COUNCIL'S MAIN CHALLENGES PREVENTING THE ADAPTION OF CHAPTER VII IN GAZA WAR

The contribution of the UN Security Council to the stability of world politics after the Cold War is undeniable. The complexity of current crisis and SC efforts to administer them² has been a reflecting surface of its limits. As a responsible of international peace maintenance, SC suffers of many weakness points, some of them are found in its basic formulation while the others come from extern.

II.2.1 The need to reform

First, the Council is composed of 15 members within 05 are permanent: The United States, France, the United Kingdom, China, and the Russian Federation together enjoy the privilege of the veto power, which is essentially a political tool. The term "veto" refers to the Latin word *veto* (meaning "I forbid" or "I refuse"), historically used by a tribune of the plebs in ancient Rome to annul or suspend acts of public authorities³. Keeping the same meaning, the use of veto power has always influenced the Council's work. Whenever a permanent member casts a veto, it blocks any draft resolution; as a result, numerous important resolutions have never seen the light.

This unlimited tool knows a rise in the use, rather to defend a permanent member's interests or to help a friendly state⁴.

In fact, The Veto power paralyses the UN collective security system; the council would never be able to take any direct actions against one of the 05 members. Moreover, SC permanent members are principal actors in world politics changes;

¹ Eugenia Lopez Jacoiste, OP.CIT, P 284.

² Jon Merrill and others, "UNSC challenges and opportunities", Institute of strategic and international studies, March 2015, on JSTOR, p 10.

³ John Fairlie, "The Veto Power of the State Governor," *The American Political Science Review* (APSA), Vol. 11, August 1917, on JSTOR, p. 473.

⁴ Jan Wouters and Tom Ruys, "Use and abuse of the Veto power", Emong Institute, 2005, On JSTOR, P14.



with the fact that any area is felt by one of the 05 great powers to keep an eye on their interests¹, and thus, it drives the events in accordance with its own perspectives.

Second, using violence to restore peace left very often many problems,² as nothing justifies the use of force. In addition, the Council's practice has shown a notorious selectiveness³, from its timidity to defend Palestine to the failure of some military intervention operations⁴.

The history proves that all military interventions have always aggravated the situation; they only take the conflict to another level, and remain in place for so long without giving a real solution to the problem⁵. thus, the council appears in the same ordinary position of conflict parties. Consequently, military humanitarian interventions are not anymore, an effective option, because they cause mostly humanitarian disasters.

Third, concepts of sovereignty, lack of confidence in the UN work mechanism, global north and south, the rigid character of the UN Charter provisions, all represent serious obstacles that effect deeply the SC itself and the UN ability to manage modern crises.

II.2.2 The dilemma of the use of chapter VII in Gaza

About the Palestinian case, it is an ancient unsolved case concerning military occupation. Military occupation is an international armed conflict in where humanitarian provisions shall be applied, as explored earlier in this study; this law ensures protection of different categories not by stopping war but rather by the collective work of all law enforcement mechanisms together, which the UN is one of them. However, a number of perspectives have been adapted due to globalization. As a result, many parties are involved in the conflict directly and politically, which gives it the complex character. The political considerations in Gaza war are more dominant than legal ones, which effect the implementation of the law in the area as well as the credibility of the Security Council.

Using the framework of chapter 7 in the war of Gaza is not an option for many reasons:

¹ Evan Luard, "The UN how it works and what it does", st. Martin's Press, the United States of America, 1985, P154.

² Dev Dhar Dubey, "Collective security: UN idea that never came into reality", Indian journal of law and legal research, Vol V, Issue IV, 2023, P 18.

³ Martti Koskenniemi, "The Place of Law in Collective Security," *Michigan Journal of International Law*, Vol. 17, 1996, p. 460.

⁴ Hitoshi Nasu, "The expanded conception of SC and international law: Challenges to the UN collective security system", ANU, College of law research paper, N 11-28, P 26.

⁵ Princeton N. Lyman, Saving the SC: a challenge for the United States, Max planck yearbook of United Nations Law, printed in the Netherland, 2000, P 133.



- The occupation forces are defended in SC by great power: USA that is one of the 05 permanent members, it has blocked all draft resolutions accusing Israel of the commission of crimes of war.
- The absence of a serious system of international responsibility. Parties involved, such as Iran, and the threat of the use of nuclear weapons, raise the question of the effectiveness of disarmament conventions.

For so, applying chapter depends on two essential elements:

- Ensuring the effectiveness of the Security Council in dealing with hard crises: This organ should act as a supreme authority in states facing threats to peace.
- SC shall be a law enforcement and not only a political organ.
- Humanitarian interventions must be limited in the act of defense only.

Conclusion:

To conclude, Chapter 07 is a very mysterious part in the UN Charter, in which the SC enjoys a broader discretion but also restricted at the same time. Such restrictions came from the main formulation of this organ. The permanent members who seem to govern international relations are known throughout history by Their colonialist moves and the illegal use of force, giving priority to their interests, raise questions about the legitimacy of the link between their colonial past and the Security Council's role as the world peacekeeper.

The war of 07 October has removed the cover of the reality of SC and International law regimes proving again the weight of force in defending cases regardless to its legality or legitimacy. It also highlighted points in need of rectification, without overlooking the necessity to establish new mechanisms for the implementation of the law of armed conflicts.

The call for Security Council reform is becoming more necessary than ever, especially given its inability to manage modern crises. The rigid character of the UN Charter provisions is deliberate but not absolute. The success of the UNSC lies in limiting the use of the veto power.

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