CHAPTER I

INTRODUCTION

A. Background

The conflict between Israel and Palestine arose as a result of the declaration of independence. This is because, prior to the creation of the State of Israel in 1948, the United Nations, through UNSCOP 1947, had a plan to divide the territory in Palestine. Immediately, countries in the Arab region such as Iraq, Syria, Lebanon Egypt, and Jordan invaded Palestine in 1948. In that year there were two large-scale waves of war, the first starting from mid-May-11 June 1948, then the second war took place from 6-19 July 1948, until the ceasefire in 1949. This was followed by another prolonged war.

Lately, the conflict between Israel and Palestine has escalated in 2021.[1] Countries are now starting to pay attention to issues that result in the deaths of war victims. In a state of war, the deaths of war victims are also justified, namely by the implementation of humanitarian law and its principles.[2] Moreover, the Islamic Resistance Movement (Hamas) launched a large-scale attack into Israel from Gaza on 7 October 2023, as part of a massive attack on the country. At the same time, armed groups crossed into Israel from Gaza, attacked police stations, and engaged Israeli forces in gunfire. Israeli civilians were also attacked by armed groups, which led to a large number of fatalities and injuries. Women, children, and senior citizens were among the hostages taken by members of armed groups from Gaza. The Supernova Festival, a public gathering that was attended by many young people, was attacked by members of armed groups from Gaza that same day, killing numerous civilians.[3]

The Kfar Aza kibbutz was attacked by armed groups from Gaza, which resulted in numerous civilian deaths, including women and children. Hamas is still firing hundreds of rockets into Israel without discrimination. There have been 1,400 fatalities and at least 4,121 injuries in Israel.[4] The military commander of Hamas's Al-Qassam Brigades announced a military operation against the Israeli occupation on 7 October 2023, in response to ongoing Israeli violations at the Al-Aqsa Mosque and crimes against the Palestinian people. According to reports, Mahmoud Abbas, the president of the Palestinian Authority, claimed that the Palestine Liberation Organization's (PLO) policies, programs.[5]

In response to the attacks by armed groups from Gaza, the Israeli Defense Forces (IDF) launched “Operation Iron Swords” military operation. Furthermore, the IDF ordered a total blockade of the Gaza Strip, preventing the entry of food, water, medicine, fuel, and electricity, and to date, indicated it will not reverse this decision

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[1] Fadhila Inas Pratiwi , M. Aryo Rasil Syarafi , Demas Nauvarian. (2022). Israeli-Palestinian Conflict Beyond Resolution: a Critical Assessment. Jurnal Ilmu Sosial dan Ilmu Politik, Vol. 26 Issue 2.).66935. p. 4

s. (2016). The Relationship of International Human Rights Law with International ions of International Armed Conflicts. Journal of Indonesian Legal Studies, Vol. 1(1).

mas attack on Israeli techno festival leaves at least 260 dead and many missing. .0/10/1204950063/hamas-attack-on-israeli-techno-festival-leaves-at-least-260-

he Situation in Israel and Gaza: Legal Analysis by Eminent Professors. Legal Action tionworldwide.org/wp-content/uploads/Israel-Gaza-Legal-Analysis-1.pdf. p. 354. 4967/Statement-by-Hamas-s-Al-Qassam-Brigades-top-military-commander

without the release of hostages. Both the bombardment and the siege of Gaza have had a major impact on the civilian population of Gaza.

Accordingly, media reports indicate there have been at least 4,385 people have been killed, including 1,756 children and 967 women. Further, 13,561 persons were injured. Humanitarian actors have also been affected as of 23 October 2023, UNWRA reported that 29 of its staff had been killed, while a further 17 have been injured since 7 October 2023. On 12 October 2023, rights groups and media reported that Israel had used white phosphorus bombs in its attacks on Gaza City, as well as in its attacks across the Israeli-Lebanon border, impacting hundreds of civilians.

Humanitarian law is the international law branch, established by an international treaty or norm, which is specifically required to address humanitarian problems arising exclusively from international and non-international armed disputes and, for humanitarian reasons, to limit the right of parties to a conflict to use the methods and means of war of their choice or to protect persons and property that may be affected by the conflict. International humanitarian law consists of Geneva law and Hague law.

Firstly, the Geneva Law provides for the protection of war victims, while the Hague Law provides for the norms and tools of war.[6] In an armed conflict situation, the perpetrators plead guilty individually through the International Criminal Court (ICC), while other forms of breaches, which will lead to state responsibility, will be under the International Court of Justice's jurisdiction.

International law is a set of rules that apply to several territories. Furthermore, international law has a very diverse set of rules. Unlike humanitarian law, which only applies during the war, international law, due to its broad nature, can apply to situations outside of conflict, such as when a country wants to report another country that violates international treaties during a conflict.

Additionally, to set out requirements for the conduct of parties to an armed conflict, international law sets out obligations for 'third states' not parties to the armed conflict. Obligations can be obtained through treaty and through customary international law.

Common Article 1 of the Geneva Conventions states *"The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."* ICRC Commentary on this article confirms this entails the obligation to abstain from conduct violating international humanitarian law and to exert their influence, to the degree possible, to stop violations of the Conventions and bring them to an end. This obligation is not limited to stopping ongoing violations but includes an obligation to prevent violations when there is a foreseeable risk that they will be committed and to prevent further violations in case they have already occurred.[7] The example of obligation to prevent is also enshrined in the Prevention and Punishment of the Crime of Genocide.

ıang Febrinayanti Dantes, Si Ngurah Ardhya, M. Jodi Setianto. "Pandangan Hukum
l terhadap Konflik Perseteruan Bersenjata Israel-Palestina. Ganesha Law Review.

Under Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide, Contracting Parties undertake to prevent genocide from occurring. The physical acts of genocide include:

a. *"Killing members of the group;*

b. *Causing serious bodily or mental harm to members of the group;*

c. *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."*

Under the Convention, Contracting Parties must also criminalize direct and public incitement to commit genocide. Where states are committing serious breaches of obligations arising under peremptory norms, other states are also under a positive duty to cooperate in order to bring to an end serious breach of international law. In the current context, third States bear an obligation to take all possible measures to maintain the integrity of international humanitarian law and ensure that even in times of conflict the fundamental principles of humanity and the rule of law are respected and upheld.

After the Israel military operation, in 2023, the Republic of South Africa filed a lawsuit against the State of Israel, asking the International Court of Justice to recommend Provisional Measures for what it claimed were Israeli violations against Palestinians living in the Gaza Strip.

According to article 36 (2) of the ICJ Statute, the ICJ jurisdiction is subjected to legal dispute concerning:

a. *"The interpretation of a treaty;*

b. *Any question of international law;*

c. *The existence of any fact which, if established, would constitute a breach of an international obligation;*

d. *The existence of any fact which, if established, would constitute a breach of an international obligation."*

In its submission, South Africa claimed that Israel had disregarded its responsibilities under the Genocide Convention, which prohibits the prevention and punishment of genocide. Regarding its implementation, South Africa categorically denounces any transgressions of international law by any involved parties, encompassing the overt targeting of Israeli citizens and other nationals as well as the kidnapping of hostages by Hamas and other Palestinian armed groups.

Nonetheless, no armed attack on a State's territory, regardless of severity, not even one involving atrocity crimes, can legally or morally justify or defend against violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention"). Because Israel aims to wipe out he Palestinian national, racial, and ethnic group that is, the the Gaza Strip the acts and omissions by Israel constitute act would constitute as a breach of Israel's obligation as ı state party.

lefined in Article 2 of the Genocide Convention as *"any of the tted with the intent to destroy, in whole or in part, a national, gious group, as such:*

a. *Killing members of the group;*

b. *Causing serious bodily or mental harm to members of the group;*

c. *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*

d. *Imposing measures intended to prevent births within the group;*

e. *Forcibly transferring children of the group to another group."*

South Africa argues that Israel's actions towards Palestinians in Gaza inflict severe physical and psychological harm, and subject them to living conditions designed to cause their deaths. Israel is responsible for these crimes, including genocide, as it has deliberately violated the Genocide Convention and failed to prevent genocide. Israel has also violated and continues to violate other fundamental obligations of the Convention, such as failing to stop or punish those who incite genocide.

South Africa is acutely aware that acts of genocide are distinct from other violations of international law sanctioned or carried out by the Israeli government and military in Gaza, such as deliberately targeting attacks against civilian populations, civilian objects, and structures related to science, art, education, and religion, as well as historical sites, medical facilities, and gathering places for the ill and injured. It was Raphael Lemkin who introduced the term "genocide," acknowledged that acts of genocide invariably constitute a continuum, and South Africa is aware on this matter.[8]

The acts of genocide, therefore, must be understood in the larger context of Israel's treatment of the Palestinian people during its 75-year apartheid, its 56-year belligerent occupation of Palestinian territory, and its 16-year blockade of Gaza. Additionally, there are numerous, serious, and ongoing violations of international law related to all of this, including flagrant violations of the Fourth Geneva Convention and other war crimes and crimes against humanity.

Nonetheless, in this Application, references are made to Israeli actions and inactions that may constitute additional transgressions of international law. South Africa's case is that those acts and omissions are genocidal, as they are committed with the requisite specific intent *(dolus specialis)* to destroy Palestinians in Gaza as a part of the broader Palestinian national, racial, and ethnical group.

According to Article 1 of the Genocide Convention, state parties are obliged to prevent and punish genocide either in peace or in time or war. Simultaneously, South Africa is aware that it has a responsibility to stop genocide as a State party to the Genocide Convention. The Genocide Convention is breached by Israel's actions and inactions towards the Palestinian people. Here, state consent is given through ratification of a treaty or convention, which imposes an obligation on the [illegible] policy under applicable law. The signing and ratification [illegible] of a state's dissemination of international agreements.[9]

[illegible]eiches, Genocide: a Political Genealogy. 2015. [illegible]hu.edu/server/api/core/bitstreams/c77edce3-5bdf-4d83-aa80-

[illegible]e Law of the Treaties (VCLT), Art. 2.

When a State demonstrates its willingness to assume the legal rights and obligations under a treaty by depositing an instrument of ratification, acceptance, approval, or accession, or by definitively signing the treaty, they are giving its consent to be bound by it. Simply, the treaty enters into force after it becomes legally enforceable for the State, and a State is legally bound by a treaty as soon as it enters into force for that State.

In the ratification process, the government has the right to revise the same international treaties but must have the same conclusion as the treaty is addressed.[10] If a state makes revisions that lead to different conclusions, the conflict between the states involved can be triggered. When contrasting interpretations occur, state parties will be faced with international duties and state sovereignty.[11]

A state cannot use the fact that its domestic laws prevent it from fulfilling an international obligation as an excuse for not fulfilling its obligations under a treaty, even in the time of war.[12] The main characteristic of an international treaty or agreement is that it imposes legal obligations and is binding under international law, as opposed to a mere political commitment.[13]

Here, South Africa in its application to the ICJ argues that their ratification as well as Israel's ratification of the Genocide Convention gives a legal obligation to South Africa to bring the genocide issue committed by Israel. Israel already ratified the Genocide Convention in 1950 and South Africa in 1998.

The application was submitted under the *erga omnes partes* doctrine, which refers to international duties that states are obligated to uphold under a treaty, particularly the protection of fundamental human rights. South Africa asserted its jurisdiction under the doctrine by stepping forward because South Africa is a non-disputing party.

In order to stop the crisis from getting worse, South Africa requested temporary measures that would force the ICJ to rule on the case right away and set up interim measures. Furthermore, these measures are meant to be temporary remedies intended to try and defuse a potentially dangerous dispute before the case is taken further. Therefore, this research will try to analyze the non-disputing party's legality in bringing a war case before the ICJ and its impact in de-escalating a dangerous dispute.

B. Research Questions

Based on the background described above, the author of this study took the following research questions:

1. Why South Africa should be get involved in the case of Israel-Palestine?
2. To what extent the South Africa's Action contributes towards humanitarian [illegible] the Israel-Palestine War As non-Disputing Parties?

Sholeh, Ida Susilowati; "Implications of State Sovereignty for the Ratification of
iyah: Journal of Islamic and International Affairs. pp. 131-150 (p. 132).
.uliyah.v8i2.9970
rnational Law (7th ed.). Cambridge University Press.

reaty Handbook." Treaty Section of the Office of Legal Affairs. Sales No. E.12.V1. P.

C. Research Objectives and Benefits

Based on the problem mentioned above statements, the author's research objectives are as follows:

1. To find out South Africa's role in involved in the Israel-Palestine war before the ICJ.
2. To find out South Africa's contributions in protecting the humanitarian issues as non-disputing parties.

Moving on from the purpose of this research, it is expected to provide theoretical and practical benefits, namely as follows:

1. This research is expected to be a source of information, knowledge, and understanding for the work of Hasanuddin University towards the development of international law, especially related to concerns over the position of the non-disputing party in the International Court of Justice.
2. The findings of this research are expected to contribute to public understanding of international human rights, especially the mechanism of application and position of non-disputing parties in the ICJ.

D. Research Originality

This thesis entitled International Legal Review on South Africa's Position in Israel-Palestine War Sued into the ICJ has been researched before. Based on the results of the literature search conducted before, which also conducted through other institutional or university repositories as well as online searches such as on the pages lis.unhas.ac.id and Google Scholar, however, the Author will provide the differences with the previous research, which are:

Table 1. 1 Research Originality 1

Author Name	: Sekar Ayu Chintani
Title of the article	: Implementasi Konvensi Genosida dalam Praktik Genosida terhadap Etnis Rohingya
Category	: Skripsi
Year	: 2018
University	: Faculty of Law, Sultan Agung Islamic University
Description of Previous Research	**Research Plan**
Issues and Problems: ı implementation of the the Prevention and Crime of Genocide ıg genocide practices a ethnic group.	1. Why South Africa should be get involved in the case of Israel-Palestine? 2. To what extent the South Africa's Action contributes towards humanitarian protection In the Israel-

	Palestine War As non-Disputing Parties?
Research Methods: Normative	Research Methods: Normative
This thesis analyzed pertain to the how does the crime of genocide ruled by international law and its implementation on the Genocide Convention. Both of the previous thesis and present research are analyze the role of Genocide Convention. However, the novelty of the present research is focus on the role of the non-disputing party, especially the Israel-Palestine war is not an ethnic cleansing. The present research also involving to what extend the law of war can preclude the victims of armed conflict.	

Table 1. 2 Research Originality 2

Author Name	: Hafara Khoirunnisa
Title of the article	: GENOSIDA BUDAYA DALAM STATUTA ROMA 1998: STUDI KASUS YAHUDISASI DI PALESTINA
Category	: Skripsi
Year	: 2024
Publisher	: Universitas Islam Indonesia
Description of Previous Research	**Research Plan**
Issues and Problems: 1. Can Judaization in Palestine be categorized as genocide in the Rome Statute of 1998? 2. Does Judaization in Palestine have the potential to be categorized as cultural genocide?	1. Why South Africa should be get involved in the case of Israel-Palestine? 2. To what extent the South Africa's Action contributes towards humanitarian protection In the Israel-Palestine War As non-Disputing Parties?
Research Methods: Normative	Research Methods: Normative
This Journal is focus on determining the intent element to consider the genocide. It is different with the present research where this research is analysing the South Africa legal justification to appear before the ICJ.	

Table 1. 3 Research Originality 3

: Tiara Wellyanda

Title of the article	: KEJAHATAN GENOSIDA SEBAGAI PELANGGARAN HAM BERAT TERHADAP ETNIS ROHINGYA DALAM PERSPEKTIF HUKUM PIDANA INTERNASIONAL
Category	: Skripsi
Year	: 2024
University	: Universitas Sriwijaya

Description of Previous Research	**Research Plan**
Issues and Problems: 1. Why did Myanmar commit genocide against the Rakhine (Rohingya) ethnic group? 2. How does international criminal law regulate genocide against the Rohingya ethnic group? 3. What is the state's responsibility for the crime of genocide, especially against the Rakhine (Rohingya) ethnic group?	1. Why South Africa should be get involved in the case of Israel-Palestine? 2. To what extent the South Africa's Action contributes towards humanitarian protection In the Israel-Palestine War As non-Disputing Parties?
Research Methods: Normative	Research Methods: Normative
This research focus on duty to prevent genocide in Myanmar. Differently, the present research is focus on legal standing of South Africa and its relation with the humanitarian aids.	

E. Theorical Basis

1. Theory on the Genocide

International law's prohibition on genocide stands as a crucial principle, reflecting a universal condemnation of the deliberate destruction of specific groups. Born from the horrors of the Holocaust during World War II, this legal norm, primarily codified in the 1948 Genocide Convention, serves as a solemn pledge to prevent its recurrence. The theory behind this prohibition is grounded in the ethical belief that all people have an inherent right to exist, irrespective of their ethnic, racial, religious, or national identity. Genocide, by its nature, violates this right, attacking the fundamental essence of humanity.

this prohibition is its definition of genocide is found by Raphael d on Lemkin's theory on genocide, genocide is describe as specific l with the intent to destroy, in whole or in part, a national, ethnic, us group. This "intent to destroy" is critical, distinguishing genocide

ocide: A Political Genealogy. Dissertation John Hopkins University. 2015.

from other forms of conflict. It highlights the premeditated and systematic nature of the crime, emphasizing the deliberate targeting of a group's existence. The prohibition extends beyond direct killing, encompassing acts such as causing severe physical or mental harm, deliberately imposing conditions intended to bring about physical destruction, enacting measures to prevent births within the group, and forcibly transferring children from one group to another. This comprehensive scope addresses the multiple ways genocide can be perpetrated.

Raphael Lemkin, a Polish-Jewish jurist, is credited with conceptualizing and naming "genocide," a term he forged from the Greek "genos" (race, tribe) and the Latin "cide" (killing).[15] Motivated by the horrific mass violence he observed, notably the Armenian genocide, Lemkin devoted his life to constructing a legal architecture aimed at averting such atrocities. In 1944, he introduced the term to encapsulate the intentional annihilation of a national or ethnic group.[16] Lemkin's understanding of genocide transcended mere physical extermination, encompassing the systematic dismantling of a group's cultural, social, and economic structures. He tenaciously campaigned for international recognition of genocide as a crime, a pursuit that culminated in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide.[17] Lemkin argued that genocide constituted a deliberate and systematic assault on a group's very existence, not merely indiscriminate killing. He believed that effective prevention required the international community to establish legal instruments that would ensure accountability for perpetrators and deter future acts.[18] Lemkin's seminal work fundamentally altered the comprehension of mass violence, providing a pivotal legal and ethical framework that continues to inform global efforts to prevent and respond to genocide.

The prohibition on genocide creates a dual obligation, which are to prevent and to punish. This duty applies to all states, regardless of their direct involvement in conflicts or their ratification of the Genocide Convention. Prevention involves a range of actions, including early warning systems, diplomatic interventions, and addressing root causes like discrimination and hatred. Punishment necessitates holding perpetrators accountable through national and international legal frameworks. The principle of universal jurisdiction reinforces this obligation, allowing states to prosecute individuals accused of genocide, even for crimes committed outside their territories. This collective responsibility emphasizes that

.d.). *Definitions of Genocide and related Crimes | United Nations*. ɔcide-prevention/definition
ɹ.). mfa.am. https://www.mfa.am/en/genocide
ɔ). *The origins of genocide | United Nations*. https://www.un.org/en/academic-

e Genocide Convention. (2016, August 2). Facing History & Ourselves. Retrieved from https://www.facinghistory.org/resource-library/raphael-lemkin-genocide-%20about%20lawyer%20and%20activist,murder%20as%20an%20international%20

genocide is not merely a domestic matter but a crime against the entire international community.

2. Obligation under International Law in Theory

The foundation of international legal obligations remains a complex and evolving area of academic discussion, as evidenced by extensive journal publications.[19] These discussions often categorize theories into distinct schools of thought. A dominant view, rooted in state sovereignty, emphasizes consent: states are bound only by what they explicitly or implicitly agree to, primarily through treaties and custom. This voluntarist approach, however, struggles to explain universally binding norms like *jus cogens*, which override state consent.

Judge Philip C. Jessup's perspective on international obligations, though not articulated as a monolithic theory, is elucidated through his jurisprudence and scholarly contributions. A cornerstone of his judicial philosophy was the pivotal role of the International Court of Justice (ICJ) in delineating and enforcing these obligations. As a member of the ICJ, Jessup held a firm conviction in the court's capacity to refine international law through its judicial pronouncements, thereby fostering a more precise comprehension of state responsibilities. He acknowledged the multifaceted nature of international law, recognizing the diverse origins of obligations, encompassing treaties, customary law, and general principles of law, and appreciated their intricate interrelationship.[20]

Jessup's understanding of customary international law was particularly sophisticated. He underscored the critical significance of consistent state practice and *opinio juris* in the genesis of binding norms, acknowledging the dynamic interplay between state conduct and the evolution of legal obligations.[21] Moreover, Jessup was keenly cognizant of the complex nexus between law and politics in international relations. He comprehended that political considerations frequently influenced the interpretation and application of international obligations, yet he maintained a steadfast belief in the law's capacity to constrain state behavior.[22]

In contrast, a natural law perspective argues for inherent obligations, stemming from justice and morality, that exist independently of state consent. This emphasizes universal values and human rights, highlighting obligations owed to the global community (*erga omnes*). Academic journals frequently analyze the interaction between these inherent obligations and established legal

CONSTRUCTING STATE OBLIGATIONS TO PROTECT AND FULFIL SOCIO-N ERA OF MARKETISATION. *International and Comparative Law Quarterly*, *71*(1). 589321000282. Pp 227.

ctions on state obligations with respect to economic, social and cultural rights in international ational Journal of Human Rights*, 15*(6). https://doi.org/10.1080/13642981003719158. pp.

on State Responsibility and the Guiding Principles of Shared Responsibility: A TWAIL ://ejil.org/article.php?article=3125&issue=154

rules, particularly in human rights and international criminal law. The formation of customary international law, through consistent state practice and a sense of legal obligation (*opinio juris*), is another key area of scholarly focus, demonstrating the dynamic relationship between state actions and evolving legal norms.

Modern scholarship also explores the impact of international organizations and non-state actors on shaping international obligations. Many research examine how resolutions and declarations from international bodies contribute to customary law and influence state behavior. The increasing recognition of multinational corporations and NGOs raises questions about their potential legal responsibilities. The concept of "soft law," non-binding instruments that influence state conduct and contribute to the development of binding norms, is also a subject of active discussion. Ultimately, the diverse exploration of international legal obligations in academic journals reflects the ongoing effort to balance state sovereignty with the need for a strong and effective global legal framework.

3. Erga Omnes Obligation

The erga omnes theory revolutionizes traditional international law by establishing that certain state obligations extend beyond bilateral agreements. It asserts that some legal duties are owed to the entire international community, not just individual states. This shift is vital, as it elevates specific norms to a level of universal importance, surpassing the limitations of conventional state-to-state legal interactions.[23]

The theory of Erga Omnes is found in the ICJ case on the Barcelona Traction. Central to erga omnes is the recognition of core values that form the foundation of international law.[24] These values, often codified as peremptory norms (jus cogens), are deemed essential for maintaining a civilized global society and cannot be unilaterally disregarded by any state. Examples include the prohibition of genocide, slavery, torture, and racial discrimination. The erga omnes character of these obligations signifies that their violation is not merely a breach between two nations but a transgression against humanity's shared values.[25]

The doctrine of *erga omnes*, while its origins lie in Roman law's concept of obligations "towards all," attained its modern prominence in international law

, Bekim, The Concept of *Erga Omnes* Obligations in International Law (November 1,
ı Nuhija, The Concept of Erga Omnes Obligations in International Law,New Balkan
ue 14, 2013, Available at
stract=3502662 or http://dx.doi.org/10.2139/ssrn.3502662
)N OBLIGATIONS ERGA OMNES PARTES. In Georgetown Journal of International
of International Law (Vol. 52). https://www.law.georgetown.edu/international-law-
;/sites/21/2021/06/GT-GJIL210018.pdf. pp. 470–503
legal consequences of obligations erga omnes in international law. *Netherlands*
68(1). https://doi.org/10.1007/s40802-021-00184-9. 33.

primarily through the judicial interpretations of the International Court of Justice (ICJ). Although the phrase itself existed prior to the court's usage, the ICJ's articulation in the 1970 *Barcelona Traction* case represented a pivotal juncture in the doctrine's formalization.[26]

In *Barcelona Traction*, the ICJ established a crucial distinction between obligations owed by a state to another specific state, typically derived from bilateral treaties or customary law, and those owed by a state to the international community as a whole.[27] These latter obligations, designated *erga omnes*, pertain to fundamental norms of universal concern. As the court asserted, "by their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*."[28] This established that certain norms, including the prohibition of aggression, genocide, and the protection of fundamental human rights such as freedom from slavery and racial discrimination, are of such paramount importance that every state possesses a legal interest in their observance.

Therefore, while the general principle of universal obligations boasts a historical precedent, the ICJ, through its definitive pronouncement in *Barcelona Traction*, significantly contributed to the solidification and clarification of *erga omnes* as a core principle of contemporary international law. This judicial decision solidified the understanding that certain fundamental norms surpass bilateral relationships, establishing a legal framework wherein all states share a collective responsibility for their adherence.[29]

Practically, erga omnes grants every state a legal interest in the observance of these obligations, regardless of whether they have been directly harmed. This diverges from traditional international law, which typically limited legal standing to directly affected states. The erga omnes principle empowers the international community to hold states accountable for violating fundamental norms, even when no specific state claims direct victimhood. This fosters collective enforcement, highlighting the shared responsibility of all states to uphold the fundamental values of international law.[30]

F. Framework of Thought

[26] Urs, P. (2021). Obligations erga omnes and the question of standing before the International Court of Justice. *onal Law*, *34*(2),. https://doi.org/10.1017/s0922156521000091. pp. 505–525
bligations erga omnes (Partes) and the participation of third states in Inter-State *ctice of International Courts and Tribunals*, *22*(2),. https://doi.org/10.1163/15718034-

unter-claims and Obligations Erga Omnes before the International Court of Justice. *ernational Law* (Vol. 9, Issue 9). http://www.ejil.org/pdfs/9/4/694.pdf, pp. 724–736.
ons erga omnes, international crimes and Jus Cogens: A tentative analysis of three *uyter eBooks*. https://doi.org/10.1515/9783110901603.151, pp. 151–160
(2005). *Enforcing ObligationsErga omnesin international Law*. 9780511494116

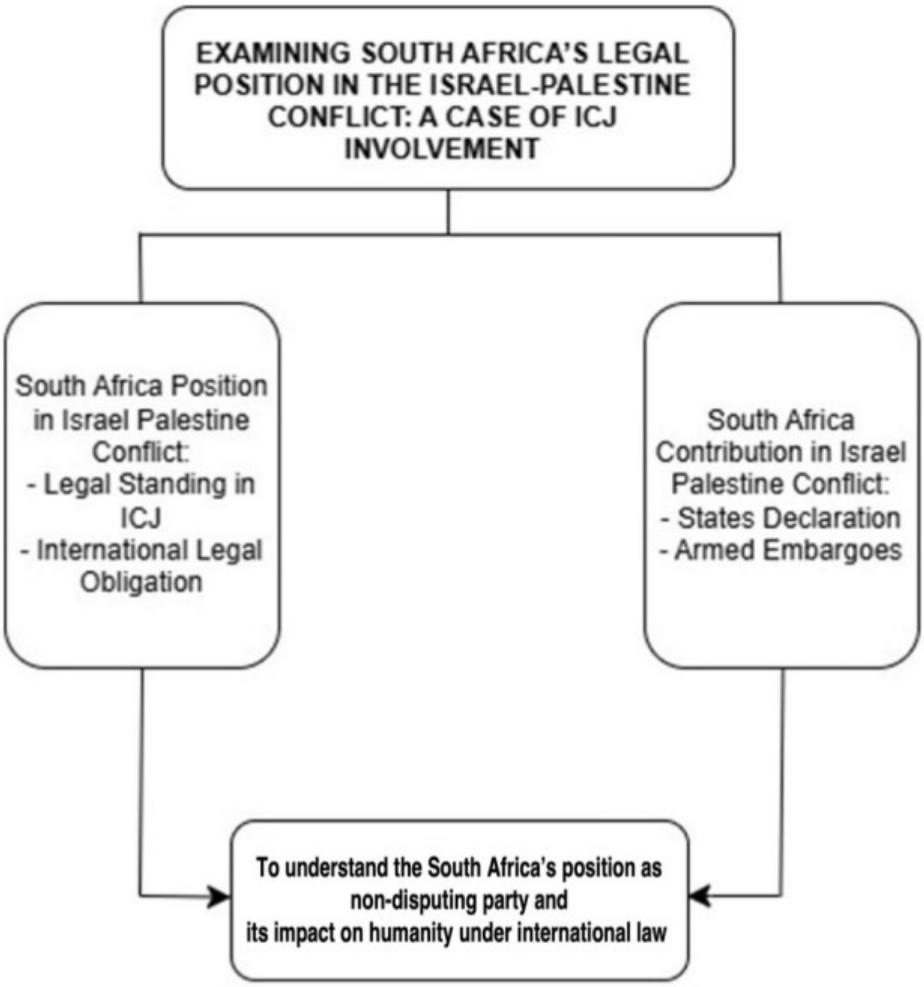
The framework of thought of this research is obtained through distribute the main questions. Framework of thought make the research to be more constructed comprehensively. The use of this framework focus on examining South Africa's Position as South Africa is not a party in Israel-Palestine armed conflict.

Furthermore, its role within international forums, such as the United Nations and the African Union, and its relationships with other nations, particularly those in the Global South, must be carefully considered to understand the broader context. The legal foundation of South Africa's position requires a thorough examination of relevant international law principles. This includes the right to self-determination, the prohibition of racial discrimination and apartheid, the laws of occupation and humanitarian law, and the legality of settlements in occupied territories. Crucially, the doctrine of *erga omnes* obligations, which posits that certain fundamental norms are owed to the international community as a whole, must be analyzed. This analysis must be supported by a deep understanding of ICJ jurisprudence, particularly advisory opinions and judgments related to the occupied Palestinian territory, such as the 2004 advisory opinion on the Legal Consequences of the Construction of a Wall. Additionally, the interplay between South African domestic law and international law in this context must be elucidated.

Furthermore, in this framework the first question will focus on the legal standing in International Court of Justice. As the South Africa submitted their claim before the International Court of Justice. Secondly is to understand the international legal obligation that obtained through this case, such as prevent genocide.

On the second question, it will discuss pertain South Africa's contribution in Palestine Conflict. This research will focus on state declaration together with South Africa's application, and pertain the armed embargoes that occurs due to state emergency in stopping a grave violation of human rights. Here, this research aims to obtain understanding of South Africa's position as non-disputing party and its impact on humanity under international law.

Figure 1. 1 FRAMEWORK CHART



CHAPTER II

RESEARCH METHOD

A. Research Type and Approach

This research is a study that uses normative juridical methods. Normative research is research that seeks to examine library materials in the form of legal materials, both primary, secondary and tertiary legal materials. The research implementation was carried out by conducting the following research approach:

a. Statute Approach

In this research, the statute approach will focus on legal sources that come from legislation such as, conventions, statutes, and case law as the basic reference material in this research.

b. Conceptual Approach

In this research, the conceptual approach will focus in giving perspective on the topic and research question under the legal concept or either from the values contained in the enactment of a regulation in relation to the concepts used. It also consist of the basic theory that used in the International Public Law.

c. Study Case Approach

In this research, study case approach will focus in giving perspective based on jurisprudence and its relevancy with the present research. The case that will brought is from international court which is the jurisprudence of the International Court of Justice.

B. Type and Source of Legal Materials

In legal research, research materials are unknown because in legal research, especially normative ones, they are obtained from the literature. In normative legal research, library source materials are part of secondary legal materials.

Primary legal materials are legal materials that are authoritative. In this research, primary legal materials consist of laws and regulations, conventions, statutes, and others as basic materials in conducting research. Secondary legal materials are materials consisting of textbooks written by influential legal scholars or legal experts, journals, legal cases, jurisprudence, and the results of recent symposia related to the research topic. In this research, secondary legal materials used are relevant reference books, journals, and jurisprudence. Tertiary legal materials are legal materials that provide guidance on primary and secondary legal materials in the form of dictionaries, articles, and explanations accessed via the internet.

Collection Technique

aterial collection technique in this research was carried out ds of legal material search techniques, which are literature irst, by using gathered, examined primary, secondary, and s to get justifications and resolutions for the case in question. egal material collection method is to gather scientific data to concepts that are pertinent to this research.

Furthermore, the author examines and cites legal materials from sources that include relevant literature, laws, and regulations. The author's collection, the Hasanuddin University Faculty of Law library collection, and the central library collection of Hasanuddin University will all provide legal materials for this project. Second, websites and journals that are relevant to the legal issues in this research are accessed through internet media in order to gather legal materials. After that, the legal materials were methodically examined and organized in accordance with the research's problem formulation. A review of the literature and an online search were done to obtain pertinent data and help the author understand South Africa's claim before the ICJ.

D. Analysis of Legal Materials

The analysis of legal materials used in this research is a descriptive method of analysis and is carried out by grammatical interpretation techniques of laws and regulations. The descriptive method of analysis is carried out so that the author can describe thoroughly and in depth the regulation of the South Africa's claim before the ICJ.

Interpretation of laws and regulations is carried out to find and apply the understanding of the arguments contained in the law in accordance with the ordinary meaning. After conducting research with existing findings, the author will then describe systematically following the flow of systematic discussion. Then an in-depth analysis is carried out related to the legal review on the South Africa's claim before the ICJ.