

A LEGAL ASSESSMENT OF ISRAEL’S ATTACKS ON GAZA

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ABSTRACT

Since 1948, Israel has continued to violate human rights in the occupied Palestinian territories. Especially since 2006, it has been keeping hundreds of thousands of Palestinians living in the Gaza Strip under blockade. In reaction to this situation, on 7 October 2023, Palestinian resistance groups launched military attacks against Israel from the Gaza Strip. In response to this attack, the Israeli armed forces targeted the Gaza Strip and the West Bank. As a result of these attacks of the Israeli forces, 44 thousand people, mostly children and women, have been killed and more than a hundred thousand civilians have been injured. Since the first day, Israel has bombarded cities and towns continuously from the air, land and sea. Gaza in particular has been turned into an uninhabitable place. As a result of these attacks disregarding the rules of international humanitarian law, Israel has committed crimes against humanity, war crimes and genocide.

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In this study, the crime of genocide, one of the crimes committed by Israel in Gaza, is analysed on the basis of the cases in international criminal courts and the case brought by the Republic of South Africa against Israel in the International Court of Justice.

Keywords: Genocide, Palestine, Gaza, war crimes, crimes against humanity.

İSRAİL'İN GAZZE'YE SALDIRILARINA İLİŞKİN HUKUKİ BİR DEĞERLENDİRME

ÖZ

1948 yılından beri, İsrail işgal altında tuttuğu Filistin topraklarında insan hakları ihlallerini sürdürmektedir. Özellikle 2006 yılından bu yana Gazze Şeridi'nde yaşayan yüzbinlerce Filistinliyi abluka altında tutmaktadır. Bu duruma tepki olarak 7 Ekim 2023 günü Gazze Şeridi'nden İsrail'e yönelik Filistinli direniş grupları tarafından askeri saldırılar gerçekleştirildi. Bu saldırıya karşılık İsrail silahlı kuvvetleri Gazze Şeridi ve Batı Şeria'yı hedef aldı. İsrail güçlerinin bu saldırıları sonucu şimdiye kadar çoğunluğu çocuk ve kadınların oluşturduğu 44 bin kişi ölmüş ve yüz binden fazla sivil yaralanmıştır. İsrail ilk günden itibaren havadan, karadan ve denizden aralıksız olarak şehirleri ve kasabaları bombaladı. Özellikle Gazze yaşanılmaz bir yer haline getirildi. Uluslararası insancıl hukuk kurallarını hiçe sayan bu saldırılar sonucunda İsrail insanlığa karşı suçlar, savaş suçları ve soykırım suçunu işlemiştir.

Bu çalışmamızda İsrail'in Gazze'de işlemekte olduğu suçlardan soykırım suçu uluslararası ceza mahkemelerinde görülen davalar ile Güney Afrika Cumhuriyetinin İsrail'e karşı Uluslararası Adalet Divanında açtığı dava esas alınarak incelenmektedir.

Anahtar Kelimeler: Soykırım, Filistin, Gazze, savaş suçları, insanlığa karşı suçlar.

I. INTRODUCTION

In this study, the crime of genocide, one of the crimes committed by Israeli forces in Gaza and the West Bank since October 7, 2023, is evaluated in terms of international law. Since October 2023, Israeli forces have committed crimes against Palestinians such as collective punishment, deliberate testing of all kinds of weapons on Palestinians,

gross human rights violations against Palestinian hostages and prisoners, destruction of property, blockade, restriction of all kinds of mobility, targeting the infrastructure necessary for civilian life in Gaza, forced displacement of Palestinians and ethnic cleansing. These crimes constitute crimes against humanity, war crimes and genocide.

Methodologically, this study uses a qualitative approach based on a wide range of sources, including international legal documents, reports by human rights organizations, and academic articles. This approach facilitates a nuanced understanding of the profound impact of the crimes committed by Israeli forces on the fabric of Palestinian society.

In conclusion, this study argues that the Israeli occupation and attacks constitute a structured approach to the subjugation of Palestinians and are contrary to the fundamental principles of international humanitarian law. It underscores the urgency of protecting human rights and dignity in the face of conflict and occupation, and calls for a concerted international effort to address and prevent Israeli attacks and to hold perpetrators to account before the judiciary.

II. PALESTINE

The state of Palestine, which is recognized as a state by 146 member states of the United Nations (UN)¹ and has the status of an observer state to the UN, geographically consists of the West Bank and Gaza.

The West Bank, including East Jerusalem, forms the bulk of the occupied Palestinian territory. It covers an area of 5,655 km². It is home to 2.9 million Palestinians². The West Bank is geographically separated from Gaza and fragmented by Israeli settlements.

¹ See for detailed information. <https://www.aljazeera.com/news/2024/5/22/mapping-which-countries-recognise-palestine-in-2024> (15.10.2024)

² See for detailed information. https://en.wikipedia.org/wiki/State_of_Palestine (08.09.2024)

Under the Oslo Accords, the West Bank was divided into three areas³. Areas A, B and C. The administrative authority of these areas is divided between the Palestinian Authority and Israel. Area A covers 18% of the West Bank and is under the full administrative control of the Palestinian Authority. Area B covers 22% of the West Bank and is under the administrative control of the Palestinian Authority and under Israeli security control. Area C covers 60% of the West Bank is under full Israeli administrative and security control. Since the 1967 Israeli-Arab War, Israel has built 279 settlements in the West Bank for Jewish citizens⁴. Through these new settlements, Israel has acquired 185,329 dunams of Palestinian land. The UN Security Council has adopted several resolutions declaring that these settlements “have no legal validity and constitute a flagrant violation of international law and a major obstacle to the achievement of a just, lasting and comprehensive peace for a two-state solution”⁵. Despite this, the number of Israeli settlers in the West Bank rose to over 700,000 in 2023⁶. The Chief Prosecutor of the International Criminal Court (ICC) has stated that “there is a reasonable basis to believe that the Israeli authorities have committed war crimes, particularly in relation to the settlement of Israeli Jews in the West Bank”⁷.

³ See for detailed information. <https://www.refworld.org/legal/agreements/par/1995/en/20547> (08.09.2024)

⁴ See for detailed information. <https://www.un.org/unispal/document/human-rights-council-hears-that-700000-israeli-settlers-are-living-illegally-in-the-occupied-west-bank-meeting-summary-excerpts/> (11.07.2024)

⁵ McGarry Brain ,” Introductory Note To United Nations Security Council Resolution 2334”, International Legal Materials, Vol. 56, Is.3, 2017.p.645.

⁶ See for detailed information. <https://www.un.org/unispal/document/human-rights-council-hears-that-700000-israeli-settlers-are-living-illegally-in-the-occupied-west-bank-meeting-summary-excerpts/> (11.07.2024)

⁷ Situation In The State Of Palestine, https://www.icc.cpi.int/sites/default/files/CourtRecords/CR2020_00161.PDF (11.07.2024)

III. THE HISTORY OF THE ISRAEL-PALESTINIAN CONFLICT

Until the First World War, Palestine was a territory under the Ottoman Empire. During World War I, Jewish immigration to Palestine increased with the British Foreign Secretary Arthur James Balfour declaration on November 2, 1917. By 1948, Palestine had a significant Jewish population. In 1947, the UN General Assembly proposed a major partition plan to end the Jewish-Arab conflict. According to the new plan, Jews, who owned only seven percent of the land, would receive 55 percent of Palestine, while Palestinians would receive 42 percent⁸. Many Jews were happy with the outcome at the UN. But the resolution was nevertheless opposed by some hardliners, such as the Arab League, which decided to create the Arab Liberation Army against the UN plan.

On May 14, 1948, Britain withdrew its troops from Palestine. On the same day, the Jews declared the establishment of Israel. Before the creation of the Jewish state, the Jews had well-developed state institutions, as many state institutions had been in operation during the British Mandate. In addition, the Jews had built up a powerful army of paramilitary forces. In the aftermath of the Nakba⁹, a massive campaign

⁸ See for detailed information <https://www.un.org/unispal/document/auto-insert-185393/> (14.07.2024)

⁹ On April 8, 1948, the Deir Yassin village massacre took place. Before the massacre, the village signed a non-combat agreement with neighboring Jewish settlements to avoid a sudden attack (see Khalidi 1999). The village also refused to participate in resistance activities led by Abdel-Qader al-Husseini, preferring to remain neutral. Nevertheless, the village, located in West Jerusalem, was attacked by Jews before dawn while most of the villagers were asleep. These troops marched from house to house and massacred the village with grenades, rifles and explosives. Whole families were killed both inside their homes and outside as they fled into the alleyways. Houses in the village were looted and money and jewelry was taken from the corpses. Some of the human corpses from the village were burned and others, along with the survivors, were loaded onto trucks and driven around Jerusalem to be mocked and spat upon. As a result of the massacre, 250 non-combatants were killed and many more wounded. Deir Yassin became one of the darkest episodes in Palestinian history and a wound that never healed. Upon hearing of the massacre, the surrounding

of terror and intimidation was launched against the Arabs in order to cleanse the land of its indigenous population. Palestinian villages were crushed and weakened by British forces.

After the Nakba, the Gaza Strip came under Egyptian control, while Jordan declared control over the West Bank¹⁰. The Arab states that participated in the 1948 war, including Egypt, Syria, Lebanon and Jordan, signed ceasefire agreements with Israel in Rhodes, Greece, under the auspices of the United Nations¹¹.

In 1964, Palestinian resistance groups formed the Palestine Liberation Organization (PLO)¹². During the same period, the Fatah National Movement, led by Arafat, carried out several sabotage attacks against Israeli targets¹³. Fatah gained more prestige for its actions than the PLO.

In 1967, Egyptian President Abdel Nasser demanded that the UN emergency force, deployed since 1956 to keep the peace, withdraw from Sinai and be replaced by Egyptian troops. Israel saw this demand as a reason to attack Egypt¹⁴. On July 5, 1967, Israel destroyed Arab military jet squadrons in a matter of hours. This facilitated Israel's movement and advance on the ground and allowed it to end the war in six days. As a

villages were immediately evacuated for fear of the same fate. Deir Yassin became synonymous with the Nakba, the Arabic word for catastrophe, symbolizing the creation of Israel. It also served as a symbol and battle cry for many generations of Palestinians, even among moderates and intellectuals.

¹⁰ Bar-On, Mordechai, *The Gates of Gaza: Israel's Road to Suez and Back, 1955-1957*, St. Martin's Press. New York, 1994, p.171

¹¹ Egyptian-Israeli General Armistice Agreement, February 24, 1949, https://avalon.law.yale.edu/20th_century/arm01.asp. (11.05.2024).

¹² Becker, Jillian, *The PLO: The rise and fall of the Palestine Liberation Organization*. AuthorHouse,, 2014, s.41-48.

¹³ Becker, p.49-58.

¹⁴ Khalidi, Rashid, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917-2017*. Metropolitan Books, New York, 2020, p. 98.

result of the Six Day War, Israel captured Sinai, the Golan Heights, the West Bank, East Jerusalem and Gaza¹⁵.

After the Six Day War, the intifada began in Palestine on December 8, 1987¹⁶, as political developments in Palestine did not produce a lasting solution and socio-economic conditions deteriorated. Palestinians were fed up with political uncertainty and discriminatory policies implemented by Israel. The main catalyst for the outbreak of the intifada was the crushing death of four Palestinian workers by an Israeli truck¹⁷. Palestinians participating in the Intifada called for a solution to the conflict, as well as an end to the Israeli occupation and a halt to Israeli settler expansion.

The Intifada continued for five years, ending in 1993 with the signing of the Oslo Accords between the PLO and Israel. More than a thousand Palestinians were killed and thousands injured. The Intifada was a crucial historical turning point in the conflict, as it pursued a non-violent approach and succeeded in drawing the world's attention to Israel's oppression of the Palestinians.

In parallel, secret peace talks between the PLO and Israel were taking place in Oslo. The negotiations lasted for several years and culminated in the signing of the Oslo Accords in Washington on December 13, 1993¹⁸. The main principles of the agreement were as follows: First, the PLO must recognize the legitimate existence of Israel as a Jewish state. Second, Israel, in return, must recognize the PLO as the sole representative of the Palestinians, but must state that this does not imply recognition of a sovereign state or political will. Third, the PLO should cease its attacks and operations against Israel and instead rely on peaceful negotiations. Fourth, the PLO should end armed resistance in the occupied Palestinian territories and strengthen security coordination with Israel to combat terrorism. Fifth, Israel would gradually withdraw from some territories in Gaza and the West Bank and grant autonomy to the

¹⁵ Mohammad, Kardo Karim Rached , Bali, Ahmad Omar , “The Six-Day War and Its Impact on Arab and Israeli Conflict”, History Research, Mar.-Apr., 2017, Vol. 7, No. 2, p.91.

¹⁶ Pappé, Ilan, The biggest prison on earth: A history of the occupied territories. London, UK: Oneworld Publications, 2017, p. 173- 190.

¹⁷ Pappé, p.173, Khalidi ,p. 168.

¹⁸ Shlaim, Avi. “The Oslo Accord”. Journal of Palestine Studies, Vol. 23, No.3, 1994, p.24.

Palestinians¹⁹. Other complex issues of Palestinian concern, such as the right of return of Palestinians, Palestinian refugees, East Jerusalem, Israeli settlements, borders and other arrangements were to be discussed three years after the signing of the agreement. However, none of these issues have been resolved to date.

The failure of Oslo to give the Palestinians unconditional political will and an independent and sovereign Palestinian state led to the outbreak of a second Intifada around September 2000²⁰. The uprising erupted after Ariel Sharon visited the Al-Aqsa Mosque with dozens of security guards as part of his election campaign²¹. Sharon's provocative visit led to widespread demonstrations and strikes. The second Intifada was even more violent, as it witnessed a wave of suicide attacks against Israeli targets, mostly carried out by Hamas²². The increased use of live ammunition by Israeli forces caused a shocking number of casualties among Palestinians. Israel then used tanks, helicopters and artillery to suppress the demonstrators.

In 2002, Israeli forces surrounded Yasser Arafat's headquarters in Ramallah, where he was terminally ill²³. The Palestinian leader died in Paris on November 11, 2004. After Yasser Arafat's death, Mahmoud Abbas was appointed PLO chairman. In 2005, Abbas became Palestinian president.

In 2005, Israel unilaterally decided to withdraw all its troops and settlers from Gaza. However, the surprise withdrawal from Gaza later became an excuse for Israeli crimes and attacks in the Gaza Strip. This withdrawal was seen as an attempt to repair Israel's damaged image after the two Intifadas and to give the impression of goodwill and a serious intention to negotiate with the Palestinians. However, this withdrawal

¹⁹ Shlaim. 25-27.

²⁰ Pressman, Jeremy. "The second intifada: Background and causes of the Israeli-Palestinian conflict", *Journal of Conflict Studies*, Vol 23, No.2,2003, p.114-133.

²¹ Pearlman, W. *Violence, nonviolence, and the Palestinian national movement*. Cambridge, UK: Cambridge University Press, 2011,p.150.

²² Brym, J. Robert, Araj, Bader., "Suicide bombing as strategy and interaction: The case of the second intifada", *Social Forces*, Vol.84, No.4,2006 p.1970.

²³ Khalidi, p.214.

turned out to be part of a different plan. After Israel's withdrawal, it imposed a blockade on Gaza.

With the inaction of the international community and the continued support of the United States, Israel has been emboldened to commit more crimes against the residents of Gaza. Between 2005 and 2014, Israel launched more than five major attacks on Gaza. More than four thousand Gazans were killed and tens of thousands injured. In addition, thousands of buildings were destroyed, including civilian apartments, universities, UN schools and government facilities²⁴. In the 2014 offensive alone, Israel carried out more than 6,000 airstrikes²⁵.

IV. ISRAEL'S ATTACK ON GAZA

By October 7, 2023, the political, military and economic blockades imposed by Israel had exhausted the Palestinian people.

On the morning of October 7, the Kassam Brigades, the military wing of Hamas, launched armed attacks on Israeli-occupied Palestinian territories, Jerusalem and some Israeli cities. In these attacks, dubbed the "Al-Aqsa Flood", according to the first Israeli statements, over 1200 people were killed and over 240 were captured by the Kassam Brigades²⁶.

After these attacks, the Israeli Air Force launched attacks on Gaza. Israeli Prime Minister Binyamin Netanyahu said that they were in a state of war, while Israeli Defense Minister Yoav Gallant said that the supply of electricity, fuel and food to the Gaza Strip had been completely cut off and that they had begun a "total" blockade²⁷.

²⁴ Human Rights Watch Report 2014. https://www.hrw.org/sites/default/files/media_2023/01/HRW%20World%20Report%202014.pdf (11.05.2024)

²⁵ Khalidi, p.223.

²⁶ See for detailed information <https://www.aljazeera.com/news/2023/11/10/israel-revises-death-toll-from-october-7-hamas-attack-to-1200-people> (17.07.2024)

²⁷ Acer, Yücel, "Israel's Crimes in Gaza", TYB Akademi, vol.14,No.41,2024, p.274.

These statements by Israeli officials and the military attacks since October 7 have no legal legitimacy²⁸. Under Article 8 of the Constitutive Treaty of the International Criminal Court (ICC), the planning, preparation, initiation and execution of an act of aggression by a person or persons exercising or directing effective control over political or military institutions constitutes the crime of aggression. This offense gives rise to the personal criminal responsibility of political and military leaders who initiate and wage war²⁹.

Israel's military attacks and other military measures target Gaza as well as the West Bank and Jerusalem. In the ground and aerial attacks carried out by the Israeli army, civilian places are directly targeted and civilians are deliberately killed and injured³⁰. Israel's attacks on Gaza are in clear violation of International Humanitarian Law.

V. THE LEGAL NATURE OF THE CRIME OF GENOCIDE COMMITTED BY ISRAEL IN GAZA

Developments in international human rights law in the post-World War II period have led to significant advances in the legal framework of individual responsibility. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide is the best example of this. This Convention, which was concluded in peacetime, outlined the framework of individual responsibility for genocide.

The Genocide Convention has been ratified by many states. The Convention's provisions on genocide and individual responsibility have become part of customary international law and general principles of international law.

Before the 1948 Genocide Convention was signed, there was no specific provision in international law on the prohibition of genocide in peacetime. Until this period, the act of genocide was dealt with within the framework of crimes against humanity and war crimes. The "Convention

²⁸ Aral, Berdal, "Israel's Fateful March: From Settler Colonialism to Genocidal State", Insight Turkey , Fall 2023, Vol. 25, No. 4 , 2023, p.184-185.

²⁹ Acer , p. 279.

³⁰ Aral., p.186.

on the Prevention and Punishment of the Crime of Genocide”, signed in 1948, clearly defines genocide as a crime under international law³¹. Furthermore, in its advisory opinion on reservations to the Genocide Convention of 28 May 1951, the International Court of Justice (ICJ) stated that the principles underlying the Genocide Convention are those recognized by civilized nations³². This decision confirmed that the prohibition of genocide is a general principle of international law.

Article 2 of the Genocide Convention defines genocide as the following acts committed against all or part of the members of a race, nation, ethnic group or religious group.

-Killing of group members,

-Grievous damage to the minds or bodies of group members,

-Deliberately harming the living conditions of all or some members of the group, deliberately inflicting physical harm on them,

-Forcing people to take measures to prevent birth in order to prevent the group from reproducing,

-Forcibly transferring children from one group to another³³.

Article 4 of the relevant Convention states that superiors, public officials and individuals who plan an act of genocide or other acts referred to in Article 3 of the Convention, such as directly or indirectly inciting or encouraging the commission of genocide, or assisting in the commission of the crime of genocide, shall be punished.

The Convention states that genocide can occur even if there is an intention to destroy a group only partially. According to the Convention, the crime of genocide will occur if any of the acts defined in Article 2 are

³¹ Graditzky, Thomas., “Individual Criminal Responsibility For Violations of International Humanitarian Law Committed in Non- International Armed Conflict”, IRRC, No. 822, March 1998, p.30-31.

³² Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide <https://www.icj-cij.org/sites/default/files/case-related/12/012-19510410-ORA-01-00-BI.pdf> (11.05.2024).

³³ For the text of the Convention see https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf (10.05.2024)

committed. The Convention defines all of the following acts as acts of genocide if they are committed with the intent to commit genocide. These acts include: raids, arbitrary arrests and imprisonment, any act causing serious bodily or mental harm, deprivation of food, fuel, shelter and means of subsistence in camps, depriving victims of medical care, causing injury or disease, forced sterilization, gang rape or separation of men from women, and transfer of children from the victim group to the perpetrators' group. The words or actions of perpetrators are evidence of genocidal intent. Perpetrators can be state or non-state actors.

The Convention applies in times of war and peace. States are obliged not only to punish genocide after it has occurred, but also to prevent it. The Convention includes two new concepts in terms of individual criminal responsibility. The first one is 'command responsibility', which means that not only those who commit the crime but also those who have authority over them are considered guilty. The second is universal jurisdiction. Thanks to this authority, perpetrators can be arrested and tried in any country, not only in their own country or the country where the crime was committed. Both of these concepts are included in the Rome Statute of the International Criminal Court.

The Genocide Convention states that individual responsibility is not extinguished by virtue of being a public official or legally responsible executive (art. 4). Article 5 of the Convention states that effective penalties must be imposed on those who commit the crime of genocide and on individuals who commit the crimes specified in Article 3. Article 6 of the Convention stipulates that those who commit the crime of genocide and those who commit the acts listed in Article 3 must be tried in the courts of the State where the act occurred or in an international criminal court whose jurisdiction is recognized by the parties concerned³⁴.

In the absence of an international criminal court established for the purpose of prosecuting the crimes set out in the Convention, the

³⁴ Rosenne, Shabtai, "War Crimes and State Responsibility", War Crimes in International Law ,Ed. Yoram Dinstein And Mala Tabory , The Hague , Martinus Nijhoff Publishers, 1996,s.91. Sunga, Lyal S., Individual Responsibility in International Law For Serious Human Rights Violations , Dordrecht, Martinus Nijhoff Publishers , 1992.,p.70.

prosecution of individuals who commit such crimes is primarily the responsibility of the State where the crime occurred (Article 6).

The Convention states that the legal framework for gross violations of human rights that require special arrangements should be determined in the context of international law, with the cooperation of the international community. The Convention emphasizes that the rules of international law applicable to genocide should be implemented within an institutional framework³⁵.

Apart from the Genocide Convention, the crime of genocide is also recognized as a gross violation of human rights in the Geneva Conventions³⁶. In order for the provisions of the Geneva Conventions to be effective, States Parties have the responsibility to make the necessary legal arrangements to adapt these provisions to their domestic laws. If these arrangements are not made, the Convention does not include measures and sanction mechanisms to ensure that states implement the provisions of the Convention³⁷.

However, the Genocide Convention stipulates that the crime of genocide is a type of international crime and is part of the general principles of international law. Therefore, it is to envisage that the provisions of the Convention apply to persons under international law, not only for a reason arising from the Convention, but also because it is a general principle of international law.

VI. THE CRIME OF GENOCIDE IN THE DECISIONS OF INTERNATIONAL CRIMINAL COURTS

The first of the international criminal tribunals, the Nuremberg International Criminal Tribunal, was an ad hoc court. It was established to try crimes committed during World War II. Since the Tribunal was established before the Genocide Convention, it dealt with the crime of genocide within the scope of crimes against humanity.

The indictments of the Nuremberg International Criminal Tribunal state that genocide is an international crime committed on

³⁵ Sunga, p.71-72.

³⁶ Sunga, p.72.

³⁷ Sunga, p.72.

political, racial, religious or other grounds. Although the Nuremberg Tribunal condemned this crime, it did not explicitly treat it as a type of crime in its own right³⁸.

The only reference to the crime of genocide was made in the Nuremberg trial of Hermann Goering³⁹. In the Goering trial, the Nuremberg Tribunal stated that Goering authorized the use of civilians as slaves. In addition, the Court charged Goering with violations of the laws and customs of war and crimes against humanity for preparing and implementing genocidal policies against Jews and other races. In addition, the Court found Goering guilty of individual criminal responsibility for failing to take measures to prevent those under his command from committing such crimes⁴⁰ and sentenced him to death⁴¹.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), established in the 1990s for crimes committed during the armed conflicts in Yugoslavia and Rwanda, have both dealt with the crime of genocide.

When the judgments of the International Criminal Tribunals for the former Yugoslavia and Rwanda are evaluated, it is observed that the elements of the crime of genocide are subject to a binary distinction. The courts have stated that the constitutive elements of the crime of genocide are the material element and the subjective element. In the decisions of the courts, the essential element in the crime of genocide is the specific intent inherent in the crime of genocide. Therefore, the perpetrator who commits any of the acts falling under the material element must commit his/her acts with the aim of the total or partial destruction of the group.

When we examine the Statute of the ICTY, the crime of genocide, as defined in Article 4 of the Statute, includes two basic elements. These are; (a) the act must be a prohibited act, (b) it must have

³⁸ Moris ,Virginia, Michael P. Scharf, An Insider's Guide to The International Criminal Tribunal For The Former Yugoslavia , Vol. 1 , New York , Transnational Publishers,1995,p.85.

³⁹ Hermann Goering was the most important person in Nazi Germany after Hitler. Until 1943, when his relations with Hitler broke down, Goering was one of the most influential people on Hitler in military and political matters.

⁴⁰ Moris , Scharf,,p.85.

⁴¹ Ball, Howard, Prosecution War Crimes and Genocide: The Twentieth Century Experience, Kansas, University Press of Kansas,1999, p.51

the purpose of destroying all or part of the members of a national, ethnic, racial or religious group. The definition of genocide in Article 4 of the ICTY is a definition within the jurisdiction of the court. Therefore, in order to better understand genocide, it is necessary to consider the prohibited acts that are within the jurisdiction of the court.

Genocide, as defined in Article 4 of the ICTY Statute, is listed among the prohibited acts in the context of the crimes against humanity specified in Article 4 (2) (a, b, c). The relevant article lists some of the acts that fall under this crime as follows: the killing of members of the group, torture, starvation, rape committed systematically in specially prepared places, other acts that instill fear in people, forcible confinement of people from their homes, other acts that cause severe physical and mental harm, and acts that cause the physical destruction of part or all of the group by deliberately harming the living conditions of the group members⁴².

The Court issued its first judgment on genocide in 2011 in the Krstić case. The conviction of Radislav Krstić became the first high-ranking official to be linked to the mass killings in Srebrenica. Krstić was charged with genocide or complicity in genocide, persecution, extermination, murder and forcible transfer or deportation under Articles 7(1) and 7(3) of the Statute for his role in the events that followed the attack by Serb forces on the town of Srebrenica between July and November 1995.

The Court therefore considered whether there was an “intent to destroy a group in whole or in part” as defined in the Genocide Convention and thus whether the killings amounted to genocide. Furthermore, in its judgment on the crime of genocide, the Court emphasized that genocide requires the existence of a specific intent to destroy a victim group, which emphasizes the comments made earlier before the International Criminal Tribunal for Rwanda. In its judgment, the Court also stated that genocide “encompasses only acts committed with the intent to destroy all or part of a group”. The Court discussed how the destruction of a group can take place in the context of genocide. The Court found that customary international law limits the crime of genocide

⁴² In the Celebici case, the ICTY sentenced Delalic, Mucic, Delic, Delic, Landzo for the offences of torture, rape and inhuman treatment. (Case no. IT-96-21-T 16 January 1998).

to the physical and biological destruction of all or part of a group. The Court considered that “where physical or biological destruction is involved, there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group, and these attacks are legitimately taken as evidence of an intention to physically destroy the group”. It therefore concluded that the deliberate destruction of mosques and houses belonging to Bosnian Muslims was in fact evidence of an intention to destroy the group.

The ICTY Appeals Chamber overturned the ICTY Trial Chamber’s genocide judgment. The Appeals Chamber concluded that: “Even if it is accepted that Krstić was aware on the basis of these reports that executions were taking place in the Zvornik Brigade’s area of responsibility, this knowledge cannot support the conclusion that he harbored genocidal intent. There is no evidence that Radislav Krstić actually directed these executions or supervised their execution by the Zvornik Brigade.”⁴³ Furthermore, the Appeals Chamber held that Radislav Krstić’s knowledge of these executions was not sufficient to support the conclusion that he shared the intent to commit genocide⁴⁴. In light of the above arguments, the Appeals Chamber reversed the conviction for genocide and found him criminally responsible for aiding and abetting genocide, which requires a lower threshold of intent.

In 1998, when the International Criminal Tribunal for Rwanda convicted Jean-Paul Akayesu⁴⁵ of genocide, it was a landmark decision in international criminal law. It was the first conviction to apply the Genocide Convention’s definition of genocide as contained in the Statute of the International Criminal Tribunal for Rwanda. In applying the definition, the Court also interpreted the elements of the crime, including genocidal intent. The Court held that genocide does not involve the actual destruction of the entire group, but that one of the acts set out in Article 2 of the Statute is committed with genocidal intent to destroy in whole or in

⁴³ ICTR, Prosecutor v. Radislav Krstić, Appeal Judgment, Case No. IT-98-33-A, Appeal Chamber, 19 April 2004, para. 111.

⁴⁴ ICTR, Prosecutor v. Radislav Krstić, p. 121

⁴⁵ Jean-Paul Akayesu is a person found guilty by the ICTR of crimes of genocide and crimes against humanity, which he participated in and directed during his term as mayor of the town of Taba, Rwanda.

part a specifically targeted group, namely a national, ethnic, racial or religious group⁴⁶.

The Court first considered the definition of “group”. It found that the common characteristic of the national, ethnic, racial or religious group protected by the Genocide Convention is that their membership “appears to be innate, permanent and generally irremediable and unchallengeable by the members of the group to which they belong”⁴⁷. The Court held that genocide is a type of crime in which victims are targeted not because of their qualities or characteristics or because of who they are, but because they are part of a group.

In its judgment, the Court referred to the Karadzic and Mladić cases of the International Criminal Tribunal for the former Yugoslavia to illustrate the facts from which specific intent can be inferred. Furthermore, the Court stated that the following circumstances could be taken into account when assessing specific intent: (i) the general political situation giving rise to the acts in question, (ii) the repetition of subversive and discriminatory acts, (iii) the commission of acts which violate the very basis of the group or which are recognized as such by the perpetrators; (iv) other acts committed systematically against the same group, (v) the scale and general nature of the attacks and the deliberate and systematic targeting of the victims on account of their membership of a particular group⁴⁸.

Having regard to the foregoing, the Court finds that, on the basis of the acts and words of the accused, the accused bears individual criminal responsibility for ordering, committing or otherwise aiding and abetting the commission of the acts and for direct and public incitement to commit genocide. This was established through speeches made by the accused on various occasions in which he more or less explicitly called for the commission of genocide⁴⁹. Furthermore, the genocidal intent of the accused is inferred beyond reasonable doubt from the very high number of crimes committed against the victim group, their widespread prevalence throughout the country, and the deliberate and systematic

⁴⁶ 9 ICTR, Akayesu, para 497.

⁴⁷ 9 ICTR, Akayesu, para. 511.

⁴⁸ 9 ICTR, Akayesu, para. 728..

⁴⁹ 9 ICTR, Akayesu, para. 729.

selection of victims because they belonged to a particular group⁵⁰. Subsequent cases at the ICTR were decided on the basis of the Akayesu case as a basis for determining genocidal intent.

In the Akayesu judgment, the Court interprets “intent to destroy” as a special intent. In the decision, it is stated as “special intent that the perpetrator intends to carry out the acts that are necessary as a constitutive element of the offense and that are explicitly attributed to the perpetrator”⁵¹. In the Akayesu judgment, the important element of “intent” is that the perpetrator targets a group because they belong to a group and has the desire to bring destruction to the group⁵². To this end, the Court presented a long list of possible evidence to establish intent.

It should be noted that the Court dealt with a ‘clear’ case of genocide in the Akayesu judgment, and the intent to destroy was inferred without controversy. In its subsequent cases, the Court followed the Akayesu judgment and required the existence of an “intent to destroy one of the protected groups” for the act to be considered genocide. These cases include Musema, Kayishema and Ruzindana. In Musema, the Court followed the purpose-based approach of the Akayesu judgment⁵³. Furthermore, in Kayishema and Ruzindana, the Court referred to Akayesu’s ruling that intent can be difficult to ascertain, that the accused’s “actions, including circumstantial evidence, may provide sufficient evidence of intent” and that “intent can be inferred from words or actions and demonstrated by a deliberate pattern of action”⁵⁴.

The Genocide Convention was first implemented at the international level through the ad hoc tribunals in Rwanda and the former Yugoslavia. Cases relating to the crime of genocide are also pending before the ICC.

⁵⁰ 9 ICTR, Akayesu para. 730.

⁵¹ Dick De Mildt, *The Name of People : Perpetrators of Genocide in The Reflection of Their Post-War Prosecution in West- Germany*, The Hague, Kluwer Law International, 1996, p.19-40.

⁵² Rather , Steven R, Jason , Abrahams: *Accountability For Human Rights , Atrocities in International Law* , Oxford , Clarendon Press, 1997,p.163-64. Beigbeder, Yves, *Judging War Criminals*, London, Macmilan Press and St. Martin Press, 1999, p.54-55.

⁵³ ICTR, Musema, supra note 185, para.166.

⁵⁴ 4 ICTR, Kayishema and Ruzindana, supra note 134, para.93 and 527.

The ICC Statute was signed in Rome in 1998. The Court became operational in 2002. Today, more than 120 states are parties to the ICC Statute. It completed its first trial in 2012 and issued numerous arrest warrants. One of the ICC's arrest warrants is the arrest warrant against former Sudanese President Omar al-Bashir for gross human rights violations committed against ethnic groups in the Darfur region of Sudan. The problems in Sudan's Darfur region stemmed from clashes between rebel groups from South Sudan and the Khartoum-based government due to the uneven distribution of power and wealth between South and North Sudan. Attacks by rebel groups and retaliation by the Sudanese government have led to unprecedented gross human rights violations in the Darfur region. Many residential areas were attacked by Sudanese government troops and armed militias. In these attacks, many people were killed, women were raped, water was deliberately polluted and mass killing campaigns were organized⁵⁵.

The UN observers' report on the region was crucial as it set out the UN position on the Sudanese government's acts of violence in Darfur. The report concluded that the Sudanese government was not engaged in a campaign of genocide and excluded state responsibility for genocide, basing its reasoning on the lack of genocidal intent on the part of government officials, but allowed competent courts to comment on the possibility that genocide may have been committed by individuals in Darfur⁵⁶.

In 2009, the International Criminal Court issued an arrest warrant against al-Bashir for war crimes and crimes against humanity in Darfur for the grave human rights violations committed in Darfur. However, the Prosecutor's genocide application was rejected by the Court on the grounds that there were no reasonable grounds to believe that the individuals in question acted with genocidal intent. The decision was criticized for the high standard of intent required⁵⁷. Following an appeal

⁵⁵ 8 Report to the UN Secretary-General, issued by the UN International Commission of Inquiry on Darfur, para. 62, https://www.un.org/News/dh/sudan/com_inq_darfur.pdf (24.08.2024)

⁵⁶ 8 Report to the UN Secretary-General, issued by the UN International Commission of Inquiry on Darfur, p.4.

⁵⁷ Claus Kreß, "The Crime of Genocide and Contextual Elements, A Comment on the ICC Pre-Trial Chamber's Decision in the Al Bashir Case", *Journal of International Criminal Justice*, Volume 7, 2009, p.304-306

by the Prosecutor, the Pre-Trial Chamber issued a second arrest warrant for genocide in February 2010, this time on reasonable grounds. The charges against al-Bashir included, inter alia, genocide under Articles 6(a) (genocide by killing), 6(b) (genocide by causing serious bodily or mental harm) and 6(c) (genocide by deliberately inflicting on each target group conditions of life calculated to lead to its physical destruction) of the Rome Statute⁵⁸.

The al-Bashir case will provide insight into the Court's approach to genocidal intent. However, until al-Bashir is arrested and brought before the court, his case will remain at the Pre-Trial stage. The case against al-Bashir is on hold because Sudan has so far refused to cooperate with the ICC. The Court's arrest warrant will differ from arrest warrants issued by ad hoc tribunals in terms of permanence and long-term effectiveness.

If the arrest warrant against al-Bashir becomes a case, it will be the first time the ICC has dealt with the issue of genocide.

On November 21, 2024, Pre-Trial Chamber I of the International Criminal Court issued arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant⁵⁹. The Court found them criminally responsible for crimes against humanity and war crimes. If this case continues, it is highly likely that the crime of genocide in Palestine will be added to the case. In this case, in addition to al-Bashir, Netanyahu and Gallant would be two senior statesmen who could be put on trial.

There is no real consistency in the interpretation of intent with respect to the crime of genocide as addressed in cases heard by both ad hoc international criminal tribunals and the ICC. Nevertheless, some of the judgments to date point to a clear trend towards an intent-based approach. Since Akayesu, it has been recognized that specific intent must be established by 'extrinsic evidence', i.e. circumstantial or circumstantial evidence. In Akayesu, the ICTR convicted perpetrators on the basis of their 'participation and foresight'. In its judgments, the ICTR

⁵⁸ See for detailed information. <https://www.icc-cpi.int/darfur/albashir> (19.08. 2024).

⁵⁹ See for detailed information. <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (24.11.2024).

took into account the manner in which the perpetrator committed the act of killing in order to determine the intent of the perpetrator. In these judgments, factors such as the intent to commit genocide, if not admitted by the accused, the widespread and systematic nature of the killing⁶⁰, whether it was directed against a particular group⁶¹, the means used, how the persons killed were treated and whether the attacked persons were defenseless⁶² were taken into account.

In its decision, the ICTY adopted a narrower approach to genocidal intent. When trying to establish that a perpetrator's intention to destroy a group in whole or in part is 'beyond reasonable doubt', this can lead to problems in terms of proof. This is because intent refers to a person's state of mind and is very difficult to prove, unless that person clearly expresses his or her thoughts or admits to genocidal intent. However, the prolonged commission of acts falling within the scope of the Genocide Convention and their consequences are evidence of intent.

VII. ACTS OF GENOCIDE COMMITTED BY ISRAEL AGAINST PALESTINIANS SINCE OCTOBER 7, 2023

Looking at the historical process of Israel-Palestine relations and the decisions of the Courts, Israel's attacks on Gaza include many acts that are specified in the Genocide Convention and can be characterized as genocide crimes.

The subject of our study is Israel's attacks on Gaza after October 7, 2023. Today, these attacks continue to intensify. As a result of the Israeli attacks, Gaza has been cut off from communication and access to international media. At the same time, many Palestinian and foreign journalists have been killed by Israel. Israel has carried out many attacks on Palestinians in Gaza, including inflicting serious physical and mental harm and imposing living conditions aimed at their destruction as a group. These attacks include expulsion and mass displacement, large-scale destruction of homes and residential areas, deprivation of access to adequate food and water, deprivation of access to adequate medical care,

⁶⁰ ICTR, The Prosecutor v. Jean Paul Akayesu, Judgement, para. 173.

⁶¹ ICTR, The Prosecutor V. Eliezer Niyitegeka, Judgement, par. 440.

⁶² ICTR, The Prosecutor V. Georges Anderson Nderubumwe Rutaganda, Judgement, para. 390.

deprivation of access to adequate shelter, clothing, hygiene and sanitation, and measures and practices aimed at destroying the life of the Palestinian population in Gaza and preventing Palestinian births⁶³. To make this more concrete, the following attacks, actions and practices of Israel fall within the scope of the violations set out in the Genocide Convention, taking into account the decisions in the ICTY, ICTR and ICC proceedings.

Article 2 of the Convention defines the following acts against all or part of the members of a racial, national, ethnic or religious group as genocide:

- Killing of group members,
- Grievous damage to the minds or bodies of group members,
- Deliberately harming the living conditions of all or some members of the group, deliberately inflicting physical harm on them,
- Forcing people to take measures to prevent birth in order to prevent the group from reproducing,

All of the violations listed in the articles of the Convention have been and are being committed by Israel. The distinguishing feature of the crime of genocide from crimes against humanity and other crimes in the ongoing genocide trials concluded in ad hoc and permanent international criminal tribunals and the International Court of Justice is 'intent'. In the cases before the international courts, it is stated that intent can be inferred from the actions and statements made by the accused.

In the light of these decisions, we will list the statements and actions made by Israeli government officials, military officials, NGOs, etc. regarding the existence of the conditions for the crime of genocide, especially 'intent'. It is important to note here that there is a general consensus in the international community that these acts fall within the scope of crimes against humanity and war crimes. Those who commit these acts should be tried before international courts for crimes against humanity and war crimes. It should be noted that in addition to these

⁶³ Hasan Aamir, Buheji Mohamed, "A World Losing Its Legitimacy - Gaza From Collective Punish Till Ethnic Cleansing & Genocide", International Journal of Management (IJM) Volume 15, Issue 1, Jan-Feb 2024, p. 192-200.

crimes, these crimes also constitute the crime of genocide by Israel against the Palestinian people.

A. Recognition of Israel's Genocidal Intent against the Palestinians

It is possible to see the intention of the Israeli State authorities to commit acts of genocide in their statements since 7 October 2023⁶⁴. Some of these statements can be found in the genocide case file filed by the Republic of South Africa against Israel before the International Court of Justice. In this respect, this case file is an important source.

There are many statements by Israeli state officials that are instructive in revealing the genocidal intent⁶⁵. On October 13, 2023, Israeli Prime Minister Benjamin Netanyahu told the press, "We strike our enemies with unprecedented force..."⁶⁶. On October 15, 2023, at a time when 2,670 Palestinians, including 724 children, were killed in Israeli airstrikes, the Prime Minister said that Israeli soldiers "understand the scope of the mission" and are ready to "defeat the bloody monsters that oppose Israel"⁶⁷. On October 16, 2023, in an official address to the Israeli Knesset, the prime minister described the situation as "a struggle between the children of light and the children of darkness, between humanity and the law of the jungle"⁶⁸.

⁶⁴ Raz Segal and Penny Green, Intent in the genocide case against Israel is not hard to prove, <https://www.aljazeera.com/opinions/2024/1/14/intent-in-the-genocide-case-against-israel-is-not-hard-to-prove>, (10.07. 2024)

⁶⁵ Segal, Raz, and Luigi Daniele. 2024. "Gaza as Twilight of Israel Exceptionalism: Holocaust and Genocide Studies from Unprecedented Crisis to Unprecedented Change." *Journal of Genocide Research*, March, 1-10.

⁶⁶ See for detailed information. <https://www.reuters.com/world/middle-east/now-is-time-war-says-israels-military-chief-2023-10-12/> (15. 05. 2024)

⁶⁷ Israel Prime Minister's Office, PM Netanyahu asks Ministers to Rise for a Moment of Silence (15 October 2023), <https://www.gov.il/en/departments/news/spoke-start151023> (15.05. 2024)

⁶⁸ Israel Ministry of Foreign Affairs, Press Release: Excerpt from PM Netanyahu's remarks at the opening of the Winter Assembly of the 25th

On October 28, 2023, as Israel was preparing for a ground attack on Gaza, the Prime Minister recalled the biblical story of the complete destruction of Amalek by the Israelites and said, "Remember what Amalek did to you, our Bible says. And we remember."⁶⁹ The Prime Minister referred again to Amalek in a letter sent to Israeli soldiers and officers on November 3, 2023⁷⁰. The relevant Bible passage reads as follows: "Go now, attack Amalek and destroy everything that belongs to him. Spare no one, but kill men and women, babies and nursing mothers, oxen and sheep, camels and donkeys"⁷¹.

On October 12, 2023, Israeli President Isaac Herzog made it clear that Israel does not distinguish between militants and civilians in Gaza, in a press conference with foreign media, referring to the Palestinians in Gaza: "There is a whole nation there. This means that this rhetoric about civilians not being informed or not being involved is absolutely false. ... and we will continue to fight until we break their backbone"⁷². On October 15, 2023, the President of Israel told foreign media that "we will root out evil so that something good will happen for the entire region and

Knesset's Second Session, 16 October 2023, <https://www.gov.il/en/departments/news/excerpt-from-pm-netanyahu-s-remarks-at-the-opening-of-the-knesset-s-winter-assembly-16-oct-2023>. (11.05.2024).

⁶⁹ Address by the Prime Minister of Israel, 28 October 2023, <https://www.youtube.com/watch?v=IIPkoDk6isc>. Translation in, "Israel-Hamas war: 'We will fight and we will win', says Benjamin Netanyahu", Sky News (28 October 2023), <https://news.sky.com/video/israel-hamas-war-we-will-fight-and-we-will-win-says-benjamin-netanyahu-12995212>. (12. 05. 2024)

⁷⁰ Prime Minister's Office in Hebrew, @IsraeliPM_heb, Tweet (11:43 am November 3, 2023), https://twitter.com/IsraeliPM_heb/status/1720406463972004198. (05. 11. 2023)

⁷¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>. p.60 (16.02. 2024).

⁷² Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip,p.60.

the world”⁷³. On 9 October 2023, Defense Minister Yoav Gallant stated that Israel “imposed a complete siege on Gaza, there is no electricity, food, water, fuel, everything is closed.”⁷⁴. Gallant went on to say that “we are fighting human animals and we are acting accordingly”⁷⁵. Gallant also said that he had “lifted all restrictions” on soldiers on the Gaza border, adding that “Gaza will never be the same. We will destroy everything. If not in a day, it will take a week. It will take weeks or months, we will reach everywhere.”⁷⁶. Gallant then announced that Israel had switched to a “full-scale response” and “lifted all restrictions” on Israeli forces⁷⁷.

On November 10, 2023, Israel’s Minister of National Security Itamar Ben-Gvir said in a televised speech: “To put it bluntly, Hamas are all terrorists and they must be destroyed”⁷⁸. On October 13, 2023, the Israeli Minister of Energy and Infrastructure ‘tweeted’ the following: “All civilian population in Gaza must leave immediately. We will win. They

⁷³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.60.

⁷⁴ Statement by Yoav Gallant, 9 October 2023, 9 October 2023, <https://www.youtube.com/watch?v=1nxvS9VY-t0>. Translation in Emanuel Fabian, “Defense minister announces ‘complete siege’ of Gaza: No power, food or fuel”, The Times of Israel (9 October 2023), https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/. (12.10. 2023)

⁷⁵ Statement by Yoav Gallant, 9 October 2023, 9 October 2023, <https://www.youtube.com/watch?v=1nxvS9VY-t0>. Translation in Emanuel Fabian, “Defense minister announces ‘complete siege’ of Gaza: No power, food or fuel”, The Times of Israel (9 October 2023), https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/. (12.10.2024).

⁷⁶ Filmography: Ariel Harmoni, Ministry of Defense, Kipa News, 10 October 2023, <https://www.youtube.com/watch?v=I9wx7e4u-xM>. Translation in Emanuel Fabian, “Gallant: Israel moving to full offense, Gaza will never return to what it was”, The Times of Israel (10 October 2023), https://www.timesofisrael.com/liveblog_entry/gallant-israel-moving-to-full-offense-gaza-will-never-return-to-what-it-was/. (12.10.2023).

⁷⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 60.

⁷⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 60.

will not get a drop of water or a single battery unless they leave”⁷⁹. On October 12, 2023, he wrote the following in a tweet: “Humanitarian aid to Gaza? Electricity switches will not be turned on, water hydrants will not be turned on and no fuel trucks will enter until those kidnapped in Israel return home. Humanity for humanity. And no one can lecture us on morality”⁸⁰. On October 8, 2023, at a meeting of the Israeli Cabinet, Israel's Finance Minister said, “We must strike a blow unprecedented in 50 years and destroy Gaza”⁸¹. On November 1, 2023, Israeli Minister of Heritage Amichai Eliyahu wrote on Facebook: “The north of the Gaza Strip is more beautiful than ever. Everything blown up and leveled, a real treat for the eyes. We should talk about the days to come. I think we should distribute plots to those who fought for Gaza for years and those who were expelled from Gush Katif”⁸². He later opposed humanitarian aid, saying “we would not have given humanitarian aid to the Nazis” and “there is no such thing as neutral civilians in Gaza”⁸³. Eliyahu also proposed a nuclear strike on the Gaza Strip⁸⁴.

On November 11, 2023, Israeli Agriculture Minister Avi Dichter, in a television interview, recalling the Nakba of 1948, stated that, in the new State of Israel, 80 percent of the Palestinian population has been forced out of their homes or fled, and that “we are actually carrying out the Nakba of Gaza right now.”⁸⁵. Knesset Deputy Speaker and Foreign Affairs and Security Committee Member Nissim Vaturi tweeted on

⁷⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 60.

⁸⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 60.

⁸¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 60.

⁸² Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 60.

⁸³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 62.

⁸⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 62.

⁸⁵ See for detailed information <https://www.aa.com.tr/en/middle-east/israeli-minister-describes-situation-in-gaza-as-nakba-2023/3051784> (19.05.2024).

October 7, 2023: “Now we all have a common goal: to wipe the Gaza Strip off the face of the earth”⁸⁶.

Similar statements were made by Israeli soldiers deployed in Gaza and by Israeli army officials, advisors and spokespersons: On October 9, 2023, in a video statement broadcast by the official channel of the Israeli Army’s Coordinator of Government Activities (COGAT), Major General Ghassan Alian warned: “ Hamas has become ISIS and the people of Gaza are celebrating instead of being terrified. This is how human animals are treated. Israel has imposed a complete blockade on Gaza, no electricity, no water, only damage. You asked for hell, you will get hell.”⁸⁷.

Israeli Army Reserve Major General, former head of the Israeli National Security Council and advisor to the Minister of Defense, Giora Eiland, wrote in an online magazine on October 7, 2023, describing the Israeli order to cut off water and electricity to Gaza: “Israel has cut off the supply of energy, water and diesel to the Strip. But this is not enough. To make the siege effective, we must prevent others from helping Gaza. ... We need to tell people that they have two choices: stay to starve or leave. If Egypt and other countries choose to let these people die in Gaza, that is their choice.”⁸⁸.

The above statements by Israeli decision-makers and military officials clearly indicate an intention to destroy the Palestinians in Gaza as a group. Moreover, these statements constitute open, direct and public incitement to genocide. This is not only unchecked but also left unpunished. Considering the deaths, injuries, destruction and devastation caused by the Israeli army’s attacks, we see that the genocidal statements and orders of the Israeli authorities are being carried out.

⁸⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, s. 62.

⁸⁷ See for detailed information. <https://www.telegraph.co.uk/global-health/terror-and-security/gaza-genocide-international-court-of-justice-the-hague/> (15.05. 2024).

⁸⁸ Seefordetailedinformation. https://intent.law4palestine.org/?gl=1*3id06y*ga*NjI1NTc5NDQwLjE3MzA0NDczODI.*ga_K4BDBZ9CD5*MTczMDQ0NzM4Mi4xLjEuMTczMDQ0NzU0Ny4wLjAuMA (15.05. 2024)

Genocide rhetoric by senior Israeli state officials is also widespread in Israeli civil society. Genocidal messages are routinely broadcast in the Israeli media. Media reports repeatedly call for Gaza to be 'wiped out'⁸⁹, turned into a 'slaughterhouse'⁹⁰, that ' Hamas should not be destroyed but Gaza should be razed to the ground'⁹¹, that 'there are no innocents... There is no population. There are 2.5 million terrorists'⁹². One local official called for Gaza to be rendered 'desolate and destroyed' like the Auschwitz Museum⁹³.

Many states have recognized Israel's statements on Gaza as demonstrating genocidal intent⁹⁴. This recognition is shared by a significant number of United Nations experts who, at least since October 2023, have repeatedly warned that the Palestinian people are at risk of genocide by Israel. For example, on October 19, 2023, the nine United Nations Special Rapporteurs issued an "urgent warning", stating that "there is an ongoing offensive by Israel in Gaza resulting in crimes against humanity. Given the statements by Israeli political leaders and their allies and the military offensive in Gaza and the increasing arrests and killings in the West Bank, there is also a risk of genocide against the Palestinian people," they warned⁹⁵.

⁸⁹ Interview with Eyal Golan on Now 14, 15 October 2023: Now 14, @Now14Israel, Tweet (1:24 pm, October 15, 2023), <https://twitter.com/Now14Israel/status/1713531211300167928>. (22.10.2023).

⁹⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.66.

⁹¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.66.

⁹² Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.66.

⁹³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.67.

⁹⁴ Republic of South Africa, Chile, Ireland, Belgium, Turkey, Palestine, Spain, Nicaragua, Colombia, Libya, Egypt, Maldives, etc. <https://www.aljazeera.com/news/2024/6/6/which-countries-have-joined-south-africas-case-against-israel-at-the-icj> (16.08. 2024).

⁹⁵ <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>. S.67., (11.07.2024). For details of the statement see. <https://www.ohchr.org/en/press-releases/2023/10/gaza-un-experts-decry-bombing-hospitals-and-schools-crimes-against-human> (11.07.2024).

On 27 October 2023, the Committee on the Elimination of Racism stressed that it was “very concerned at the sharp increase in racist hate speech against Palestinians since 7 October, particularly on the internet and social media”. In particular, the Committee criticized the October 9 statement by Israeli Defense Minister Yoav Gallant, in which he described Palestinians as ‘human animals’ as language that could lead to genocide⁹⁶. On October 28, 2023, the Director of the Office of the High Commissioner for Human Rights in New York resigned after writing a resignation statement describing the situation in Gaza as a “textbook example of genocide”⁹⁷. On 2 November 2023, the eight Special Rapporteurs stated that they “remain convinced that the Palestinian people are at serious risk of genocide”, adding that “the time to act is now” and emphasizing that “Israel’s allies also bear responsibility and must act now to avert catastrophe”⁹⁸.

On 16 November 2023, 15 United Nations Special Rapporteurs and 21 members of the United Nations Working Group issued a statement that the serious violations committed by Israel against Palestinians since 7 October, particularly in Gaza, amount to genocide. The statement noted the increasing incitement to genocide, the intention to ‘exterminate the occupied Palestinian people’, calls for a ‘second Nakba’ in Gaza and other occupied Palestinian territories, and the use of lethal weapons. The experts expressed deep concern about the “failure of the international system to act to prevent genocide”. They warned that “the failure to implement an immediate ceasefire increases the risk of the situation escalating into a genocide carried out with 21st century methods and means of warfare.” They called on “the international community,

⁹⁶ CERD, Statement 5 (2023) Israel and the State of Palestine (27 October 2023), [https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?) (11.05.2024).

⁹⁷ Letter from Craig Mokhiber to Volker Türk, High Commissioner for Human Rights (28 October 2023), <https://s3.documentcloud.org/documents/24103463/craig-mokhiber-resignation-letter.pdf> (11.05.2024).

⁹⁸ UN OHCHR, Gaza is ‘running out of time’ UN experts warn, demanding a ceasefire to prevent genocide (2 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-running-out-time-un-experts-warn-demanding-ceasefireprevent-genocide> (11.05. 2024).

including not only states but also non-state actors, to do everything to immediately end the risk of genocide against the Palestinian people.”⁹⁹.

On 20 November 2023, the United Nations Special Rapporteur on violence against women and girls, its causes and consequences, issued a statement stating that “since 7 October, the attack on the dignity and rights of Palestinian women has taken on new and frightening dimensions, with thousands falling victim to war crimes, crimes against humanity and an unfolding genocide”¹⁰⁰. The Special Rapporteur “warned” about genocidal and inhumane rhetoric by senior Israeli Government officials and public officials, such as calling the Palestinian people, including women and children, “children of darkness”. Referring to the description of Palestinians as ‘human animals’ and calls for a ‘second Nakba’ by Israeli officials, the Special Rapporteur warned that “such statements absolutely and consistently make clear the intention of the Government of Israel to exterminate the Palestinian people, in whole or in part”¹⁰¹.

On December 8, 2023, prior to the United Nations Security Council vote on the ceasefire resolution, which was vetoed by the United States, the 22 Special Rapporteurs of the United Nations and the 28 members of the United Nations Working Group reiterated their previous statements “warning against the commission of genocide”¹⁰². On December 21, 2023, the Committee on the Elimination of Racism, acting under the early warning and urgent action procedure, expressed serious concern about hate speech and inhumanity directed against Palestinians, in particular with regard to the obligations of Israel and other state parties to prevent genocide. The Committee called on “all state parties to fully respect their international obligations, in particular those arising from the

⁹⁹ UN OHCHR, Gaza is ‘running out of time’ UN experts warn, demanding a ceasefire to prevent genocide (2 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-running-out-time-un-experts-warn-demanding-ceasefireprevent-genocide> (11.05. 2024).

¹⁰⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 69.

¹⁰¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 69.

¹⁰² Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 70.

Convention on the Prevention and Punishment of the Crime of Genocide, and to cooperate to end the violations that have occurred and to prevent genocide. Referring in detail to the ongoing situation in Gaza, the Committee expressed “grave concern at the racist hate speech, incitement to violence and genocidal acts, as well as inhumanity directed against Palestinians by senior Israeli government officials, members of Parliament, politicians and public officials since 7 October 2023”¹⁰³.

The Organization of Islamic Cooperation has repeatedly condemned Israel’s military actions in Gaza as “genocide”¹⁰⁴. Arab states at the United Nations have issued similar statements¹⁰⁵. The International Federation for Human Rights has called for an end to the “genocide” and the International Commission of Jurists has called on third states to “take reasonable measures within their power to prevent genocide in Gaza”¹⁰⁶. Palestinian civil society organizations have also strongly condemned the genocide and called on the International Criminal Court to investigate the crime¹⁰⁷. On 14 November 2023, the Palestinian Council of Human Rights Organizations issued a detailed statement calling on the State of Palestine and third states to take concrete measures and legal action to prevent the genocide in Gaza. The statement notes that “significant warnings by United Nations independent human rights experts and actions by third states, including the withdrawal of diplomatic missions from Israel in response to Israel’s continued genocidal statements and actions, have alerted the international community of states that genocide may be or may be being committed against Palestinians in Gaza.”¹⁰⁸.

¹⁰³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 70.

¹⁰⁴ See for detailed information. https://www.oic-oci.org/topic/?t_id=40431&t_ref=26939&lan=en (11.05.2024).

¹⁰⁵ See for detailed information. <https://reliefweb.int/report/occupied-palestinian-territory/international-and-arab-failure-prevent-annihilation-palestinian-people-must-end-joint-statement-48-human-rights-organizations-eight-arab-countries-enar> (11.05.2024).

¹⁰⁶ See for detailed information. <https://www.icj.org/resource/gaza-occupied-palestinian-territory-states-have-a-duty-to-prevent-genocide/> (11.05.2024).

¹⁰⁷ See for detailed information. <https://www.alhaq.org/advocacy/22063.html> (11.05.2024).

See for detailed information.¹⁰⁸ <https://reliefweb.int/report/occupied-palestinian-territory/phroc-calls-state-palestine-and-third-states-intervene->

All these statements are proof that Israel's genocidal intentions have been recognized by the international community.

Israeli attacks on Palestine violate the following articles of the Genocide Convention;

- Killing of group members,
- Grievous damage to the minds or bodies of group members,
- Deliberately harming the living conditions of all or some members of the group, deliberately inflicting physical harm on them,
- Forcing people to take measures to prevent birth in order to prevent the group from reproducing.

B. Killing of Palestinians in Gaza

After October 7, 2023, Israel's attacks constitute genocide within the meaning of Article 2 of the Genocide Convention, which provides for the killing of all or part of the members of a race, nation, ethnic group or religious group. Israel is committing these acts of killing with the above-mentioned intent and willfulness.

According to the Palestinian Ministry of Health, more than 44,000 Palestinians have been killed since the start of the Israeli military offensive on Gaza¹⁰⁹. At least 70% of them are believed to be women and children. It is also estimated that thousands of people, mostly women and children, are missing, many of them languishing in the rubble of destroyed buildings where they died. Rescue attempts have been severely hampered by Israel's blocking of fuel imports, destruction of infrastructure and communications blackouts.

As the United Nations Secretary-General and many UN officials have made clear to the international community, "nowhere in Gaza is safe, Palestinians in Gaza have been killed in their homes, in places of refuge, in hospitals, UNRWA schools, mosques, churches and while

[taking-concrete-measures-and-legal-action-prevent-genocide-gaza](#)
(11.05.2024)

¹⁰⁹ See for detailed information, <https://apnews.com/article/israel-palestinians-amas-war-lebanon-hezbollah-iran-news-11-20-2024-5da3ce43df8662fe9eeab4ad804bdc0f> (20.11.2024).

searching for food and water for their families. They were killed because they could not evacuate, they were killed in places where they fled and even when they tried to flee to safe areas designated by Israel.

Israel has been dropping unguided bombs on Gaza. It also uses heavy bombs weighing up to 900 kg. The scale of Palestinian child mortality in Gaza has been described by United Nations officials as “a graveyard for children”¹¹⁰. Indeed, the unprecedented high mortality rate of Palestinian children has led a UNICEF spokesperson to characterize Israel’s attacks on Gaza as a “war on children”¹¹¹.

Israeli attacks have killed thousands of people, including doctors, journalists, teachers, academics and other professionals. 190 United Nations employees have also been killed.

In addition to being killed as a result of Israeli attacks, Palestinians in Gaza struggle with hunger, thirst and disease due to the ongoing Israeli siege, inadequate aid to the Palestinian population and the massive destruction of Gaza’s infrastructure as a result of Israeli military attacks¹¹².

C. Serious Physical and Mental Harm to Palestinians in Gaza

The grave injury to the minds or bodies of members of the group, as defined in Article 2 of the Genocide Convention, is the most prominent feature of Israel’s attacks on Gaza. As a result of these attacks, the Palestinian people suffer severe physical and mental harm.

Since October 7, 2023, more than 100,000 Palestinians have been injured in Israeli military attacks on Gaza, most of them women and children¹¹³. Burns and amputations are typical injuries. It is estimated that

¹¹⁰ See for detailed information. <https://www.un.org/unispal/document/palestine-letter-08oct24/> (02.10.2024).

¹¹¹ See for detailed information. <https://www.unicef.org/press-releases/war-children-resumes-geneva-palais-briefing-note> (02.10.2024).

¹¹² Giroux, Henry A. "Genocide in Gaza and the Politics of False Equivalencies." Policy and Practice: A Development Education Review, Vol. 38 ,2024, p. 120-125.

¹¹³ <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker> (14.10.2024).

thousands of children have lost one or both legs. There are reports of Israeli forces using white phosphorus in densely populated areas in Gaza¹¹⁴. The World Health Organization has warned that even small amounts of white phosphorus can cause deep and severe burns that can penetrate bone tissue and can relapse after initial treatment. There are no operating hospitals in Gaza. In particular, injured people are condemned to a slow and agonizing death from their wounds or resulting infections, unable to seek surgical or medical treatment beyond first aid.

The intensity of the bombardment and the lack of safe spaces cause severe psychological trauma to the Palestinian population in Gaza¹¹⁵. Even before the most recent attack, Palestinians in Gaza have experienced severe trauma from previous attacks. 80% of Palestinian children have experienced higher levels of emotional distress, exhibiting bedwetting (79%) and reactive mute (59%), and self-harm (59%) and suicidal thoughts (55%). For tens of thousands of Palestinian children, especially those who have lost at least one parent and are the only surviving members of their families, these psychological traumas are unbearable after more than a year of continuous shelling¹¹⁶.

Israel has subjected Palestinians in Gaza to inhuman, cruel and degrading treatment. Large numbers of Palestinian civilians, including children, have been detained, blindfolded, forced to undress and made to wait outside in cold weather before being loaded onto trucks and taken to unknown locations. In particular, medics and first responders have been repeatedly detained by Israeli forces, many of whom are being held incommunicado in unknown locations.

¹¹⁴ See for detailed information, <https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon> (14.10.2024).

¹¹⁵ Mohamed Buheji , Budoor Buheji, “Mitigating Risks of Slow Children Development Due to War on Gaza” 2023, International Journal of Psychology and Behavioral Sciences 2024, Vol.14, No.1 p.11.

¹¹⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 35.

D. Intentionally Harming the Living Conditions of All or Some of the Palestinians in Gaza, and Intentionally Inflicting Physical Destruction on Them

The condition of deliberately harming the living conditions of all or some of the members of the group and inflicting physical destruction on them, as specified in Article 2 of the Genocide Convention, can be clearly seen in the case of the Palestinian people¹¹⁷.

E. Mass Expulsion from their Homes and Displacement of Palestinians in Gaza

It is estimated that more than 1.9 million Palestinians, about 85% of Gaza's population of 2.3 million, have been forcibly removed from their homes¹¹⁸. For them, there is no safe place to flee, and those who cannot flee or refuse to be displaced have been killed in their homes or are at risk of being killed in their homes¹¹⁹.

Palestinians fleeing the North in compliance with Israeli evacuation orders have been encouraged to move south along the Salah al-Din Road, Gaza's main traffic route, on certain days and at certain times. However, there have been many reported incidents along the routes, including shelling and other acts of violence by Israeli forces against evacuated Palestinian civilians, inhuman and degrading treatment, arbitrary arrest, illegal detention and killings. During this time, Israel continued its bombardment of southern Gaza, killing many evacuated Palestinians. This led many Palestinian families to return to their homes, preferring to at least risk being bombed in their familiar neighborhoods¹²⁰.

On December 1, 2023, when the eight-day temporary ceasefire between Israel and Hamas expired, Israel began dropping notices to

¹¹⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 35

¹¹⁸ See for detailed information. <https://www.hrw.org/news/2023/12/20/most-gazas-population-remains-displaced-and-harms-way> (13.05.2024).

¹¹⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.37.

¹²⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 37-38.

Palestinians living in the Southern areas, who had previously been instructed to flee, to leave. The United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons stated that “Israel has reneged on its promise of security to those who complied with the evacuation order from northern Gaza and is now displacing them again, along with the population of southern Gaza”¹²¹.

F. Denying Palestinians in Gaza Access to Sufficient Food and Water

On October 9, 2023, Israel declared a “total siege” on Gaza. It prevented the entry of electricity, food, water and fuel into the territory. Israel has now pushed the Palestinian population of Gaza to the brink of starvation. The Integrated Food Security Phase Classification (IPC) warns that “the risk of hunger in Gaza is real” and “increasing every day”. Most Palestinians in Gaza are currently starving and hunger levels are increasing daily. The World Health Organization has warned that “hunger is looming in Gaza”. The United Nations Secretary-General has stated that “three quarters of the world’s hungriest people are in Gaza”. It is Palestinians in Gaza who face the highest level of acute food insecurity classified by the IPC. The UNRWA Commissioner-General stated that “desperate, hungry and frightened” Palestinians “stop aid trucks, take the food and eat it immediately”¹²².

Due to the siege, Israel’s continued attacks on Gaza have destroyed bakeries, water facilities and the last remaining working mill, as well as agricultural land, crops, orchards and greenhouses. As of November 16, 2023, the food infrastructure in Gaza is already considered “non-functional”. This is because shops and markets are closed, basic foodstuffs are absent and what little food is available is expensive. Bread is rare or unavailable. Food shortages lead to significant price increases. Animals that are not killed face starvation and crops are damaged or destroyed. Many Palestinians resort to food collection due to hunger.

¹²¹ UN OHCHR, Israel working to expel civilian population of Gaza, UN expert warns (22 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/israel-working-expel-civilian-population-gaza-un-expert-warns> (10.05.2024).

¹²² Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 40.

Palestinians collect flour spilled on the road from aid distributions or use other unsafe food practices. Water has also been severely depleted in Gaza. Israel continues to cut off the piped water supply to northern Gaza and the northern water treatment plant has become non-functional. Damage caused by Israeli attacks and bombings has rendered the water system mostly non-function¹²³.

It should be noted that Israel's previous attacks on Gaza have been against a population that is already extremely vulnerable as a result. Israel has long prevented the creation and repair of water facilities and desalination plants in Gaza. Therefore, 95% of the water from Gaza's only water basin was already unfit for consumption before October 7, 2023. Israel's 17-year blockade has also severely affected the water supply. Repeated Israeli attacks on Gaza and restrictions on repairing wastewater infrastructure have destroyed the soil, making agriculture difficult¹²⁴.

Recent reports of Israeli plans to fill Gaza's tunnels with seawater have collapsed Gaza's water and sewage infrastructure. Environmental experts have warned that the strategy "could lead to an ecological disaster". It could deplete Gaza's potable water, destroy what little agriculture is possible and "ruin the living conditions of everyone in Gaza", the experts said¹²⁵.

G. Denying Palestinians in Gaza Access to Adequate Shelter, Clothing, Hygiene and Sanitation

Most of the 1.9 million displaced Palestinians in Gaza seek shelter in UNRWA facilities, which are mostly schools and tents. To date, Israel has killed hundreds of Palestinian men, women and children

¹²³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 42.

¹²⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.44.

¹²⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.44.

and injured thousands of others seeking shelter in UNRWA facilities, despite knowing the coordinates of all United Nations facilities¹²⁶.

According to UNRWA's Commissioner-General, Palestinians who find shelter in UNRWA shelters are considered "the lucky ones". Others, without access to food, water or sanitation facilities, seek shelter in the homes of relatives or strangers, government facilities, hospital courtyards or temporary camps, or simply live and sleep on the streets, exposed to the elements. Palestinians are unable to maintain personal hygiene, with menstruating girls and women particularly affected¹²⁷. The World Health Organization estimates that "on average, there is one shower for every 4500 people"¹²⁸.

Across Gaza, there are severe shortages of warm clothes, bedding, blankets and non-critical food items, and people are heavily dependent on salvaged wood and waste for cooking and heating, increasing the risk of respiratory diseases. There is also a severe shortage of clean water, seriously affecting not only hydration but also washing, cleaning and cooking. The damage to infrastructure caused by siege and shelling continues to impede adequate water treatment and distribution as

¹²⁶ UNRWA, Gaza: UNRWA school sheltering displaced families hit (17 October 2023), <https://www.unrwa.org/newsroom/official-statements/gaza-unrwa-school-sheltering-displaced-families-hit>. 312 UNRWA Situation Report #56 On the Situation in the Gaza Strip and the West Bank, including East Jerusalem (22 December 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-56-situation-gaza-strip-and-west-bank-including-east-Jerusalem>. (11.05.2024).

¹²⁷ United Nations Population Fund (UNFPA), UNFPA Palestine Situation Report Issue 4 (11 December 2023), https://palestine.unfpa.org/sites/default/files/pub-pdf/unfpa_situation_report_4_december_11.pdf. (11.05.2024).

¹²⁸ United Nations Population Fund (UNFPA), UNFPA Palestine Situation Report Issue 4 (11 December 2023), https://palestine.unfpa.org/sites/default/files/pub-pdf/unfpa_situation_report_4_december_11.pdf. (11.05.2024).

well as sewage management, exponentially increasing the risks of the spread of infectious diseases among displaced Palestinians¹²⁹.

H. Preventing the Provision of Adequate Medical Assistance to Palestinians in Gaza

The Israeli military offensive on Gaza is an attack on the health care services that are indispensable for the life and survival of Palestinians in Gaza. According to the observations of the United Nations Special Rapporteur, Israel has declared a “brutal war” on the health system in Gaza. In a statement issued on December 7, 2023, United Nations experts stated that “the health infrastructure in the Gaza Strip has been completely destroyed” and that “we are witnessing a shameful war on health workers”¹³⁰.

Experts estimate that the number of deaths from disease and starvation “could be multiples of those caused by war and airstrikes”. With its constant attacks on the health care system in Gaza, Israel is aiming to destroy the living conditions of Palestinians, to their extinction¹³¹. In the British medical journal *The Lancet*, a group of medical experts rightly warned of “a serious risk of genocide against the Palestinian people”, noting the “health consequences of the violence resulting from the ongoing siege and attacks on Palestinians”¹³².

¹²⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip p.47-48.

¹³⁰ UN OHCHR, Gaza: UN expert condemns ‘unrelenting war’ on health system amid airstrikes on hospitals and health workers (7 December 2023) <https://www.ohchr.org/en/press-releases/2023/12/gaza-un-expert-condemns-unrelenting-war-health-system-amid-airstrikes>. (11.05. 2024).

¹³¹ Faddoul, Alix et al., “The health dimensions of violence in Palestine: a call to prevent genocide”, *The Lancet*, Volume 403, Issue 10421, p.25 – 26

¹³² Alix Faddoul, Geordan Shannon, Khudejha Ashgar, Yamina Boukari, James Smith and Amy Neilson, “The health dimensions of violence in Palestine: a call to prevent genocide”, *The Lancet* (18 December 2023), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)02751-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)02751-4/fulltext). (09.08.2024).

I. Destruction of Palestinian Life in Gaza

On November 16, 2023, 15 United Nations Special Rapporteurs and 21 members of the United Nations Working Group warned of a “genocide in progress” in Gaza. The experts noted that the attacks had reached a level of destruction that “destroyed housing units, hospitals, schools, mosques, bakeries, water pipes, sewage and electricity networks, making it impossible for Palestinians to continue living in Gaza”. Experts have noted that in its bombing campaign against Gaza, Israel has used “powerful weapons with devastating consequences, resulting in massive deaths and destruction of life-sustaining infrastructure.” Israel has destroyed not only single-family homes and entire apartment blocks, but also entire streets and neighborhoods: Shujaiyya, for example, a suburb of Gaza City, once home to some 110,000 Palestinians, is now a vast ruin flattened as far as the eye can see. Shops, schools, a vibrant marketplace, family homes, doctors’ clinics, historic streets and the Ibn Uthman Mosque - everything that once sustained Palestinian life there has been destroyed. Other areas in Gaza have suffered a similar level of destruction. These include Beit Hanoun, Beit Lahiya, Gaza Old City, Al Rimal, and the Nuseirat refugee camp in the South. Throughout Gaza, Israel has targeted the infrastructure and foundations of Palestinian life, creating living conditions calculated for the physical destruction of the Palestinian people. In addition to the previously mentioned attacks on homes, neighborhoods, hospitals, water systems, agricultural land, bakeries and mills, Israel has also targeted the basic civilian system in Gaza. Israel targeted the Palace of Justice¹³³.

Israel destroyed Gaza City’s main public library. Countless bookstores, publishing houses, libraries and hundreds of educational facilities were also damaged or destroyed. Israel destroyed four universities in Gaza. Israel has also killed many prominent Palestinian academics. These include: Professor Sufian Tayeh, Rector of the Islamic University, a physicist and holder of the UNESCO Palestinian Chair in Astronomy, Astrophysics and Space Sciences, was killed in an airstrike along with his family. Dr. Ahmed Hamdi Abo Absa, Head of the

¹³³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p.54-55.

Software Engineering Department at the Palestinian University, was shot dead by Israeli soldiers¹³⁴.

Israel has damaged and destroyed many Palestinian learning and cultural centers in Gaza. These include: Al Zafar Dmari Mosque and the Center for Manuscripts and Ancient Documents; the Orthodox Cultural Center; the Al Qarara Cultural Museum; the Gaza Cultural and Art Center; the Arab Social Cultural Center; the Hakawi Cultural and Art Association; and the Rafah Museum. Israeli attacks have destroyed Gaza's ancient history: eight sites have been damaged or destroyed. These include Gaza's ancient harbor (known as the 'Port of Anthedon' or 'Al Balakhiya') and the archaeological site of a 2,000-year-old Roman cemetery, a temporary UNESCO World Heritage Site. Israel also destroyed Gaza City's 'Old City', an area of 146-year-old historic houses, mosques, churches, markets and schools. It has also destroyed Gaza's more recent history, from more promising times. These include the Rashad al-Shawa Cultural Center, the site of a historic meeting 25 years ago between US President Bill Clinton and Palestinian President Yasser Arafat¹³⁵.

Israeli attacks have damaged or destroyed hundreds of Muslim and Christian religious sites. These include the Great Mosque of Omari, a fifth century Byzantine church that has been used for worship by Christians and Muslims for over 1,000 years and is an iconic sign of Gaza's history, architecture and cultural heritage. Israeli shelling has also damaged the Church of St. Porphyry, founded in 425 and believed to be the third oldest church in the world¹³⁶.

In addition to the destruction of physical monuments to the history and heritage of Palestinians in Gaza, Israel has sought to destroy the Palestinian people who created and built this heritage. It has killed and continues to kill Gaza's renowned journalists, teachers, intellectuals and public officials, doctors and nurses, filmmakers, writers and singers, university administrators, hospital heads, leading scientists, linguists,

¹³⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip,, p.55.

¹³⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 55.

¹³⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 56.

playwrights, novelists, artists, musicians, storytellers and poets, farmers and fishermen¹³⁷.

The Israeli army is destroying the foundation and structure of Palestinian life in Gaza, while encouraged by calls to rebuild Israeli settlements on the ruins of destroyed Palestinian homes, towns and cities. Israel is thus imposing on the Palestinian group in Gaza living conditions calculated to ensure its destruction¹³⁸.

J. Implementing Measures to Prevent Births among Palestinian Women in Gaza

The severe destruction of living conditions in Gaza and the rendering of the territory uninhabitable has been and is being accompanied by gross violations of the Genocide Convention's provision on compelling persons to take measures to prevent childbirth in order to prevent the reproduction of the group.

Israeli attacks have had a particularly severe impact on Palestinian women and children in Gaza. It is estimated that approximately 70% of those killed in Israeli attacks are women and children. According to the Palestinian Media Office, 17,492 children and 11,979 women have been killed in Gaza as a result of Israeli attacks since October 7, 2023¹³⁹. In addition, at least 4,700 women and children have been reported missing, believed to be trapped under the rubble. There are numerous eyewitness accounts of pregnant women being killed by Israeli soldiers, including those killed while trying to access health care¹⁴⁰.

Pregnant women and children are particularly affected by displacement, lack of access to food and water, shelter, clothing, hygiene

¹³⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 56.

¹³⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, p. 57.

¹³⁹ See for detailed information. <https://www.mofa.pna.ps/en-us/mediaoffice/ministrynews/foreign-ministry-says-gazan-women-and-children-bear-unimageable-suffer-due-to-israels-ongoing-aggression-on-gaza> (25.11.2024).

¹⁴⁰ <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>, p. 58 (14.08.2024).

and sanitation, and health care¹⁴¹. These impacts are serious and significant. Of the estimated 52,000 pregnant Palestinian women in Gaza who give birth each month, an estimated 5,500 give birth in unsafe conditions. Many of these pregnant women give birth without clean water, without medical assistance, “in shelters, in their homes, on the streets among rubble, or in overcrowded facilities where hygiene deteriorates and the risk of infection and medical complications increases”¹⁴².

Due to lack of access to critical medical supplies, especially blood, doctors are forced to perform unnecessary hysterectomies on young women in an attempt to save their lives, affecting their ability to have more children. On November 3, 2023, the World Health Organization warned that “maternal mortality will increase” due to lack of access to adequate care. This has deadly consequences on reproductive health, such as an increase in stress-induced miscarriages, stillbirths and premature births. these conditions will have long-term and serious impacts on Palestinians.

VIII. CONCLUSION

The history of the Israeli-Palestinian conflict dates back to the First World War. This conflict turned into a conflict with the establishment of the State of Israel. In these conflicts, the rules of international law are constantly violated. Despite many UN resolutions, Israel does not comply with these resolutions. This unlawful behaviour of Israel continues today.

Today, Israel’s attacks on Gaza are the result of its lawless behaviour. Israeli attacks violate the most fundamental principles of International Humanitarian Law. These attacks have elements of war crimes, crimes against humanity, ethnic cleansing and genocide. Israel’s attacks, especially those targeting civilians and civilian infrastructure, constitute both war crimes and genocide.

All these offences give rise to personal criminal liability. Those who commit these offences must first be tried in their own national

¹⁴¹ Faddoul, p. 25.

¹⁴² WHO, Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn (3 November 2023).

judicial system. In case the national judicial system fails, the jurisdiction of the ICC comes into play. The ICC, which has complementary jurisdiction, has the authority to prosecute persons who are not prosecuted or who are not prosecuted properly.

Since 2015, the State of Palestine has been a State Party to the ICC Statute. Therefore, the ICC has the authority to investigate and prosecute the attacks that started on 7 October. Indeed, the ICC Prosecutor has clearly stated that Israel's actions fall within the jurisdiction of the ICC.

The ICC deals with crimes against humanity, war crimes and genocide. The elements of the crime of genocide, which constitute the subject of our study, have been determined in the cases handled by the ICTY, ICTR and ICC. When these cases are analysed, it will be seen that Israel's administrative and military leaders committed these crimes. It is possible to see the acts committed by Israeli military forces and officials that fall within the scope of the crime of genocide in the reports published by UN officials and specialised organisations and international non-governmental organisations. In these reports, it is stated that Israeli forces have killed a large number of Palestinian and foreign journalists. In addition, Israeli forces have so far killed 44,000 Palestinians, mostly women and children, and injured more than 100,000. Israel has carried out numerous attacks on Palestinians in Gaza, including inflicting serious physical and mental harm on Palestinians, including children, and imposing living conditions aimed at destroying them as a group. These attacks include expulsion and mass displacement from their homes, large-scale destruction of homes and residential areas; deprivation of access to adequate food and water; deprivation of access to adequate medical care; deprivation of access to adequate shelter, clothing, hygiene and sanitation; destruction of the life of the Palestinian population in Gaza; and measures and practices aimed at preventing Palestinian births. All these offences are specified by the Genocide Convention and international criminal tribunals as characteristics of the crime of genocide. As a matter of fact, the ICC has issued an arrest warrant for Israeli Prime Minister Netanyahu and former Defence Minister Gallant. It is certain that the crime of genocide will also come to the agenda if this case is heard.

The law dictates that crime must not go unpunished. Where there is no law, there is no justice. Where there is no justice, there is no peace.

Ezeli AZARKAN

The international community must fight against genocide, crimes against humanity and war crimes and protect the victims. Justice requires this.

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