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The Israeli War on the Gaza Strip: From Crimes Against Humanity to Genocide

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ABSTRACT

This paper argues that the Israeli occupation authorities in the Gaza strip committed several crimes that exceeded the level of genocide and the Palestinian people's right to existence, according to many international law experts and international human rights organizations. Articles 2, 3, and 4 of Resolution No. 260 A (III) issued on December 9, 1948, which prohibits and punishes genocide, were violated. However, among others, the researcher concluded that, the Palestinian Authority should focus on now is the urgent collection of all evidence and documents and anything that can help the ICJ uncover Israel's crimes against Palestinian civilians in Gaza as a prelude to initiating an international criminal investigation to hold Israel accountable for committing complete genocide under the UN Convention on the Prevention and Punishment of the Crime of Genocide in Resolution (A/RES/96-I) 194.

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Introduction

The brutal Israeli aggression toward Gaza and the large scale of destruction of infrastructure since 7th Oct 2023. events, As well as the high number of martyrs and wounded, reaching more than one hundred thousand civilians, especially children and women, these criminal activities sparked great controversy in legal and popular circles and international organizations concerned with human rights [1]. Based on this, the International Court of Justice (ICJ) received a request from the state of South Africa on 29 Dec. 2023, to investigate war crimes and genocide committed by Israel in Gaza [2]. A senior UN official, Craig Mokhiber, has resigned from his post as head of the New York Office of the High Commissioner for Human Rights, citing the UN's failure to stop genocide in the Gaza Strip [3]. However, among these issues, the efforts of the relevant authorities in the Palestinian Authority and South Africa to collect criminal evidence have sparked a major debate among international law experts worldwide.

On the one hand, A team of legal experts argues that Israel's crimes against Palestinian civilians in the Gaza strip have exceeded the threshold of genocide and the Palestinian people's right to existence [4]. On the other hand, another team argues that despite the significant civilian casualties caused by the indiscriminate and destructive bombing of civilians and the Israeli occupation forces' incursion into residential areas in the Gaza strip, resulting in the deaths and injuries of thousands and extensive destruction, but these crimes do not meet the very high threshold required to fulfill the legal definition of genocide [5].

In this paper however, the researcher attempts to highlight the ongoing legal discussions surrounding the crimes committed by the Israeli occupation government in Gaza as complete acts of genocide that violate the provisions of international law and the UN Convention on the Prevention and Punishment of the Crime of Genocide in its Resolution 260 A (III) dated 9 Dec. 1948. In addition to this, the Palestinian Minister of Justice, Dr. Mohammed Al-Shalaldeh, intervened in the seminar organized by the Palestine Institute for National Security of Research on 22 Nov. 2023, titled "The Legal Dimensions of the Aggression Launched by the Occupation against Our People," which the researcher attended as a guideline.

The UN Convention on Preventing Genocide

Raphael Lemkin, a Polish lawyer, created the word "genocide" in his 1944 book "Axis Rule in Occupied Europe." However, Lemkin described genocide as "the destruction of a nation or an ethnic group"; this phrase comprises two words: the Greek prefix "genos," which means race or tribe, and the Latin suffix "cide," which implies murdering [6]. Later, Lemkin used this word in response to Nazi procedures of methodically murdering Jews during the Holocaust, as well as past examples of targeted atrocities aimed at eradicating certain groups of people. Lemkin led the fight to designate genocide as an international crime [7].

The 1948 Genocide Convention established genocide as an independent crime. Historically, genocide was first recognized as a crime by the UN General Assembly in 1946 in resolution (A/RES/96-I), which took effect in 1951. 153 countries have ratified the Convention as of April 2022 [8]. In this context, the International Court of Justice (ICJ) has consistently acknowledged that the Convention includes principles that are considered customary international law (as stated in the Advisory Opinion of

28 May 1951). This indicates that all states, regardless of whether they have officially accepted the Genocide Convention or not, are obligated to abide by its rules according to the concept that genocide is considered a forbidden offense in global legislation [9].

According to the UN's official website, the Genocide Convention, titled "Ratification of the Genocide Convention," was the initial human rights treaty ratified by the UN General Assembly on 9 Dec. 1948; this ratification showcased the international community's dedication to preventing the recurrence of the heinous acts that occurred during World War II [10]. However, The Genocide Convention is an international legal document that introduced the concept of genocide as a criminal offense, its preamble recognizes that acknowledges that throughout history, genocide has caused significant harm to humans; It also call the necessity of global collaboration to free humanity from this abhorrent affliction. As per the Convention, genocide is a criminal act that can occur during both periods of warfare and periods of peace [11].

The UN General Assembly's resolution 96 (I) on 11 Dec.1946, states that genocide is against the principles and objectives of the UN and is condemned by the international community. As a result, the agreement was endorsed and recommended for signing, ratification, or adherence through the General Assembly's resolution 260 A (III) on 9 Dec. the text came into effect on January 12, 1948. In 1951, according to Article XIII [12]. Meanwhile, the ICJ has recognized that the ban on genocide is an absolute and non-negotiable principle in the field of international law (jus cogens), this means that no exceptions or modifications can be made to this prohibition, as stated in Article 33 of the ICJ's statute [13].

Under the UN Convention, the offense of genocide pertains to actions (among other acts), outlined in the subsequent sections of the Convention [14].

Article II

This Convention defines genocide as the deliberate commission of any of the following acts to annihilate, either wholly or partially, a national, ethnic, racial, or religious group:

(a) Killing members of the group
(b) Causing serious bodily or mental harm to members of the group
(c) Deliberately imposing living conditions on the group to bring about its total or partial physical destruction
(d) Imposing measures intended to prevent births within the group, and
(e) forcibly transferring children of the group to another group.

Article III

The following acts are punishable:

(a) Genocide
(b) Conspiracy to commit genocide
(c) Direct and public incitement to commit genocide
(d) Attempt to commit genocide; and
(e) Complicity in genocide. International law and the Israeli War on Gaza

The evidence and reports of deadly unlawful attacks in the occupied Gaza Strip, gathered by international organisations, demonstrates how Israeli forces continue to flout international law and humanitarian rights, obliterating entire families with total impunity. In this regard, Erika Guevara-Rosas, Amnesty International's Senior Director of Research, Advocacy, Policy and Campaigns, said that, "Entire families were wiped out in Israeli attacks even after they sought refuge in areas promoted as safe and with no prior warning from Israeli authorities. These attacks illustrate an ongoing pattern of Israeli forces brazenly flouting international law, contradicting claims by Israeli authorities that their forces are taking heightened precautions to minimize harm to civilian" [15]. At the same time, manner, the secretary of UN Antonio Guterres has renewed his demand for a ceasefire in Gaza and said international law was being violated in the war, "I am deeply concerned about the clear violations of international humanitarian law that we are witnessing in Gaza" [16].

According to Wilde - *a member of the Faculty of Laws, University College London*, Israel's use of force through its actions since 1967 has violated two areas of international law: the prohibition of aggression under international law and the law of self-determination non-derogable, jus cogens status. This means that there will be more than neutral laws in other areas of international law [17]. For current purposes, Israel's obligation to cease the use of force as a result of its existence is legally more important than any other obligation related to the protection of culture and the protection of human rights. Therefore, this latter obligation will not be a reason to change the earlier obligation to provide Israel with a legal basis for the use of force in Gaza or the West Bank.

However, The Israeli crimes in Gaza do not meet the very low threshold required by international law; Israel is destructive to international law. In this viewpoint, the UK foreign secretary, Lord Cameron, said, "Israel is in breach of international law as the occupying power if it fails to provide food and water to the people of Gaza," in his clearest warning yet over Israel's conduct. Cameron also added, "It was simply not possible for people in Rafah to leave as proposed by the Israeli forces" [18].

On a related issue, the Palestinian Minister considered the current legal status of the Gaza Strip, from the perspective of international law and international humanitarian law, to still be an occupied territory by Israel. He added that this is evident as Israel withdrew unilaterally in 2005 without agreeing on any arrangements with the Palestinian Authority. Since then, Israel has continued to exercise control over the Gaza Strip on land, sea, and sky; a clear example of this is that Israel kept the civil registry of the residents in Gaza under its responsibility as an occupying power. Therefore, the best description of what Israel did in 2005 is redeployment or repositioning, but it cannot be called an end to the occupation under any circumstances.

Shalaldeh believes that what applies to the current legal situation in the Gaza Strip is:

1 The Hague Convention of 1907, and
2 The Fourth Geneva Convention of 1949

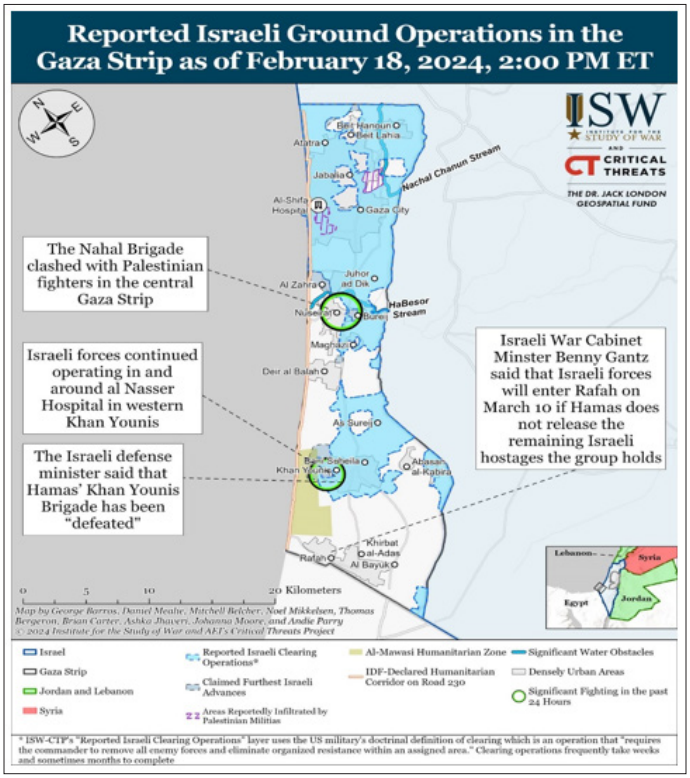
This is evidenced by the advisory opinion of the (ICJ) in 2004, which confirmed the applicability of Fourth Geneva Convention of 1949 to the occupied Palestinian territory (the West Bank and the Gaza Strip, including East Jerusalem) [19]. In other legal words, the Gaza Strip is still an occupied land. The minister also pointed out that Israel's unilateral withdrawal from Gaza and considering it a hostile territory is due to an underlying intention and a deliberate plan by Israel to disclaim its future legal obligations towards international protection agreements for the civilian population in the Strip. After seven October. events, Israel, as the occupying state according to international law, declared war on the Gaza Strip. Wondering, how can an occupied state declare war on its occupied territory? This is completely contrary to the provisions of international law.

False Pretexts

The Minister revealed that when Israel declared its war on the Gaz, it invoked what it calls the legitimate right of self-defense. Unfortunately, Washington and several European countries still support this argument. while Article 51 of the UN Charter states that the right of self-defense is limited to fully sovereign states, granting them the right to defend themselves in the event of an attack by another state. But this article does not, by any means, grant countries permission to burn land, people, trees, and infrastructure, as the Israeli military is currently doing in Gaza.

He explains that according to international law, the right of self-defense does not apply to the occupying authority, which is Israel in this case. Therefore, the minister states Protocol (I), in addition to the Geneva Conventions of 1977 Article (1) paragraph (4), explicitly states: "Armed movements that struggle for the right of self-determination against foreign occupation, colonial domination, and racist regimes, in the armed conflict they are engaged in, in exercising their right to self-determination as enshrined in the Charter of the UN and the relevant declaration, are considered armed conflicts." Palestine is considered a party to Protocol I as an international treaty, while Israel is not a member. However, the rules of Protocol I in international law are binding rules, regardless of whether a state is a party to the international treaty or not.

The Minister emphasizes that international law clearly defines the legitimate resistance right, linked to the right of self-determination and led by the Palestine Liberation Organization (PLO). and Palestinian resistance movements as a guaranteed right for resistance through peaceful and non-peaceful means according to the UN General Assembly resolution of 1973; This is also stated in Article (1) paragraph 4 of Protocol (I) in addition to numerous resolutions issued by the UN General Assembly, which affirmed after recognizing the PLO in 1974, the right to self-determination for the Palestinian people.



Shape: Map of Gaza Strip – Palestine
Resource: Institute for the Study of War ISW

Threshold the Crime of Genocide

Under Article 25(3)(e) of the Rome Statute of the International Criminal Court (ICC), a person who "directly and publicly incites others to commit genocide" has committed a crime against international law [20]. The Minister affirms that what is currently happening in the Gaza Strip constitutes complete genocide crimes from a legal perspective. He adds that all types of crimes, including war crimes, crimes against humanity, and genocide crimes, have been committed by Israel and continue to be committed on Palestinian land in general and in the Gaza Strip in particular. He describes the Israeli aggression on Gaza as the "crime of crimes," which is a full genocide crime.

However, Shalaldeh highlighted the concept of genocide from the lens of Article (9) of the Convention on the Prevention and Punishment of the Crime of Genocide, which states that if there is any dispute between two states regarding the interpretation or application of the provisions of the Convention, or if genocide is committed on the territory of any state party to the Convention, that state has the right to file a complaint and sue the other state before the ICJ.

In this context, the Minister pointed out that the intention to commit the crime of genocide against the citizens in Gaza can be easily proven and monitored through the statements issued by Israeli ministers and military leaders, including the Israeli Minister of Heritage who called for "dropping a nuclear bomb on Gaza", and other statements calling for the "extermination and displacement of the Palestinian people from their land", indicating premeditation and intention [21, 22]. However, direct incitement refers to when someone directly and publicly encourages others to commit genocide. Even if the incitement is not obvious to outsiders, it can still be considered direct as long as the intended audience immediately understands the message [23]. Since 7th Oct. 2023 events, the Law for Palestine website has meticulously amassed a compelling body of evidence exposing the proliferation of incitement to violence and genocidal intent perpetrated by Israeli officials and public figures against Palestinians. The documentation encompasses over 500 incitements of violence, genocidal incitement, forced displacement, and collective punishment. What makes this evidence all the more disconcerting is its origin, emanating from the upper echelons of the Israeli government, including the President, Prime Minister, Knesset members, military personnel, and law enforcement [24].

The Palestinian Minister indicates that it is necessary to clarify the legal distinctions between the three types of crimes committed by the occupying authorities, which are war crimes, crimes against humanity, and genocide,

Firstly, the damages resulting from the crimes committed in all three levels (war crimes, crimes against humanity, and genocide) do not fall under the statute of limitations, which is the common denominator between them according to the General Assembly resolution of 1968
Secondly, war crimes can only be prosecuted in armed conflicts and are not used in times of peace
Thirdly, genocide and crimes against humanity can be used in both times of peace and war
Fourthly, both genocide and crimes against humanity require proving the existence of specific intent to commit them.

Minister Shalaldeh states that these three levels of crimes and their defined boundaries apply collectively or individually to the

practices of the occupying authorities in the territories of the State of Palestine, especially in the Gaza Strip. In other words, Israel, as the occupying state, has committed all three types of crimes against the Palestinian people.

Furthermore, in the case of genocide, it is essential to focus on two fundamental issues:

Firstly. The criminal aspect includes prosecution and pursuit before the International Criminal Court, where the competent authorities in the Palestinian Authority prepare a condemnation file against Israel as the occupying power to hold it accountable for its crimes against the Palestinian people. Here, the minister says, a distinction must be made between two types of international courts

- International Criminal Court (ICC): It is a court specialized in holding individuals accountable regardless of their positions, political roles, and military ranks
- International Court of Justice (ICJ): It is a court specialized in holding states accountable for their committed crimes.

Secondly. The stage of preparing the criminal file aims to present it before the International Court of Justice based on Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide.

That means, suing Israel as an occupying state before the ICJ through the filing civil lawsuits and the resulting compensation for the Palestinians affected by the occupation and its policies. The request includes holding Israel legally responsible, compensating for damages, and compensating for the losses suffered by the Palestinian people, especially in the Gaza Strip, the minister says.

Available Legal Avenues for the State of Palestine

The Palestinian Minister of Justice emphasized the availability of several international and national paths (special courts) that can be resorted to for holding the occupation leaders accountable and prosecuting Israel as an occupying state for its crimes, including:

1. International Criminal Court (ICC): There are several files on the table of the ICC, including a file specifically related to settlements, prisoners, and the war on the Gaza Strip in 2014. In addition to supplementary files specifically related to Israel's successive crimes against the Palestinian people.

At present, both the Palestinian Ministry of Foreign Affairs and the Ministry of Justice are collecting all necessary documents, records, photos, and videos—and anything that can document and condemn Israel for committing the crime of genocide against civilians, whether in the Gaza Strip or the West Bank. They will be handed over to the office of the Prosecutor of the ICC, Mr. Karim Khan, to initiate the necessary legal investigations and open a criminal file for the crime. He also points out that Palestine is a member of the International Criminal Court's Statute, along with 123 ratifying and joining states. However, so far, the Prosecutor of the Court has not opened a file for the new crimes committed by Israel in its ongoing aggression since the events of October 7. It's worth mentioning that several parties have the right to refer cases to the ICC, and these parties are:

- The contracting parties, including Palestine as a member
- The Security Council, based on Chapter VII
- The Prosecutor of the International Criminal Court, on his own initiative, in addition to
- The victims themselves

Furthermore, Palestinians can exert pressure on the Prosecutor of the ICC to open a prompt investigation into the crimes committed by Israel and ongoing in Gaza since October 7th, through the member states, which currently number 123, including Palestine. Several countries, including South Africa, Bolivia, and Comoros, have filed lawsuits with the Prosecutor General to hold Israel accountable. (This strategy has been used by Washington and its allies to condemn Vladimir Putin for committing war crimes in Ukraine.) The invitation of Arab and Islamic countries to join the Statute of the International Criminal Court to create a compelling consensus on the Prosecutor General, rather than merely demanding a criminal investigation.

2. Local and Regional Courts: instead of Arab countries demanding European countries to prosecute Israeli leaders in their local courts, it is preferable for Arab and Islamic countries, based on the principle of universal jurisdiction or what is known as universal criminal jurisdiction under Article 146 of the Fourth Geneva Convention (a binding rule that all countries have ratified), to enact their own criminal legislation to prosecute those who commit war crimes, genocide, and crimes against humanity, regardless of the location of the crime. In other words, the Arab League should invite member states to enact criminal legislation based on the principle of universal jurisdiction. (With the exception of Jordan and Yemen, no Arab country includes international criminal accountability in its legislation.

3. UN General Assembly: the UN should call to make a decision that what is happening in Gaza is a genocide, similar to what happened in the Sabra and Shatila massacres committed by Israel against the Palestinian refugee camp in Lebanon 1982, where the UN resolution confirmed the occurrence of a genocide.

4. International Justice: To hold global leaders accountable for supplying Israel with weapons and providing it with protection on the international stage. This applies to the US administration as a partner to Israel in its aggression against Palestinian people, inciting genocide, and preventing the cessation of aggression, as well as exporting weapons, including internationally banned white phosphorus, which was heavily used against civilians in Gaza, in addition to numerous other types of weapons that may be internationally prohibited and require verification of their nature by military experts.

5. Local Courts of States: Israel can be sued for its crimes in the local courts of the country granting foreign citizenship to Palestinian citizens by filing individual lawsuits against Israeli individuals and figures who have caused material or moral harm to them.

6. International Courts: Lawsuits can be filed against the occupation leaders in the European Court of Human Rights, the American Court of Human Rights, and the African Court of Human Rights.

In a related context, South Africa, Bangladesh, Bolivia, Comoros, and Djibouti consider Israel to be committing war crimes and genocide against Palestinians, prompting these countries collectively to file a lawsuit with the International Criminal Court to investigate Israel's crimes [25]. On same issue, South Africa's application to the ICJ on 29 Dec. 2023, included more than seven pages listing "expressions of genocidal intent" made by Israelis, including senior government and military officials such as Defense Minister Gallant's reference to "fighting human animals" when he imposed a total siege on Gaza and PM Netanyahu's repeated reference to the Biblical slaughter of the Amalek, a people whom the Lord instructs the Israelites to kill, "men and women, infants and sucklings [26]. While The Hague's judges stopped short of directing Israel to stop its operations in Gaza, as South Africa had requested, they did require Israel to prevent any acts of genocide

and to punish incitement to commit them [27].

In a parallel scene, according to a report by the Euro-Med Human Rights Monitor on October 15, UN experts and international law scholars have deemed Israeli actions in Gaza as genocide. This should be seen as a significant moment that necessitates holding Israel responsible for its crimes. The joint statement, endorsed by 880 scholars on October 15, provided evidence that strongly suggests Israel has engaged in genocide against the population in the Gaza Strip. These actions include using excessive force and indiscriminate bombings, leading to the deaths of Palestinian civilians and the destruction of their homes and neighborhoods. The assault also involves employing starvation as a tool and blocking humanitarian aid from reaching the affected population.

According to Euro-Med Monitor, around 35,096 Palestinians living in the Gaza Strip have lost their lives until February 4, 2024. Among those casualties, approximately 32,220 were civilians, including 12,345 children, 7,656 women, 309 healthcare workers, 41 civil defense personnel, and 121 journalists, as a result of Israeli airstrikes and artillery attacks [28]. In the meantime, a total of 67,240 people has sustained injuries, with hundreds of them in critical condition. Within seven days of the verdict from the International Court of Justice, the Israeli military caused the deaths of more than 1,048 Palestinians, primarily civilians. Additionally, they harmed over 1,800 individuals and conducted 108 acts of mass killings.

This is the concern raised by numerous global non-governmental organizations in their messages to the authorities responsible for enforcing international law; they urge urgent intervention to end the genocide against the Palestinians, to stop the violent assaults and racial bias experienced by advocates of Palestinian rights in the US and Europe, and to put an end to the media propaganda campaigns aimed at misrepresenting Palestinians [29].

The minister concluded his speech by saying that the Palestinian leadership is determined to hold Israel accountable, as an occupying state, for its crimes against the Palestinian people and will not give up this right under any circumstances, and that it is in contact with the legal authorities in the criminal court to provide it with evidence, documents, and everything necessary to confirm the existence of an intention to attack the occupation army and its leaders. Israel, politically and militarily, is planning to commit genocide crimes against Palestinian civilians in the Gaza Strip and is submitting them to the International Criminal Court through a legal and diplomatic work team. With continuous communication with other international entities and bodies that have filed lawsuits against Israel to hold it accountable for the crimes of genocide it commits.

Conclusions

- Experts and scholars of international law agree that the Israeli occupation authorities are committing genocide crimes against Palestinian civilians and that they violate Articles 2 and 3 contained in the Convention on the Prevention of Genocide approved by the UN. Henceforth, these crimes must be a historic turning point to hold Israel accountable for its crimes.
- The ongoing Israeli blockade on Gaza, which began in 2006, serves as a precursor to the slow genocide, albeit enhanced in recent years through calls for committing unlawful and horrifying crimes under international law, international humanitarian law, and the UN Convention on the Prevention and Punishment of the Crime of Genocide.
- The claim of self-defense made by Israel is not compatible with the existing legal situation in the Gaza strip, which is still under occupation from a legal perspective. Therefore, Israel's arguments, which it uses to justify its aggression as an occupying power, do not apply while the Gaza Strip is still subject to Israeli occupation laws.
- Although Washington is working hard to prevent the opening of a criminal investigation file in the ICC and/or the ICJ, or at least working to obstruct the investigations and prolong their duration for decades to come, despite this, there are many legal avenues that open up more opportunities to prosecute Israeli leaders and hold them accountable for their crimes.
- Mobilizing the member states of the court to push for an investigation into the crimes of genocide constitutes a pressure belt on the Prosecutor of the ICC, Mr. Karim Khan, to open his criminal investigation.

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