



# ISRAEL'S ATTACKS ON GAZA SINCE OCTOBER 7, 2023 AND INTERNATIONAL LAW

YÜCEL ACER, FETHULLAH BAYRAKTAR

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## YÜCEL ACER

He received his undergraduate degree in international relations from Ankara University, the Faculty of Political Sciences, LL.M. in International Law from the University of Sheffield (the UK), and PhD in International Law from the University of Bristol (the UK). He did post-doctoral studies at the Faculty of Law at the University of Hawaii in the USA, and gave lectures also at the Çanakkale Onsekiz Mart University, (Turkey) Izmir University of Economics (Turkey), Eskişehir Osmangazi University (Turkey), Turkish Military Academy (Turkey), and Atılım University (Turkey). His studies focus on international law of the sea, international law of armed conflicts and international human rights law. He is the author many academic articles as well as the author of the books: “The Aegean Maritime Disputes and International Law”, “The Crime of Aggression in International Law”, (in Turkish) “The Boundary Disputes in the Aegean and Eastern Mediterranean on the Basis of the International Jurisprudence” (in Turkish) and co-author of “The Asylum Strategy of Turkey from the Global and Regional Perspectives” (in Turkish) and “Basic Textbook on International Law” (in Turkish with summaries in English). He is currently a faculty member at the Faculty of Law, Ankara Yıldırım Beyazıt University. He also works as senior researcher in SETA.

## FETHULLAH BAYRAKTAR

He received his undergraduate education at Istanbul University Faculty of Law between 1999-2003. He continued his education abroad with a scholarship from the Ministry of National Education between 2004-2012. He completed his Master of International Law at Robert Schuman University, Faculty of Law in 2006. He received his Doctor of International Law degree at Strasbourg University, Faculty of Law in 2012. He worked at Atatürk University, Faculty of Law between 2012-2019. He has been a faculty member at the Department of International Law, Faculty of Law, Social Sciences University of Ankara between 2019-2024. Now, he is a member of academic staff of the National Intelligence Academy.

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### **SETA | FOUNDATION FOR POLITICAL, ECONOMIC AND SOCIAL RESEARCH**

Nenehatun Cd. No: 66 GOP Çankaya 06700 Ankara TÜRKİYE  
Tel: +90 312.551 21 00 | Fax :+90 312.551 21 90  
www.setav.org | info@setav.org | @setavakfi

#### **SETA | İstanbul**

Defterdar Mh. Savaklar Cd. Ayvansaray Kavşağı No: 41-43  
Eyüp İstanbul TÜRKİYE  
Tel: +90 212 395 11 00 | Fax: +90 212 395 11 11

#### **SETA | Washington D.C. Office**

1025 Connecticut Avenue, N.W., Suite 1106  
Washington, D.C., 20036 USA  
Tel: 202-223-9885 | Fax: 202-223-6099  
www.setadc.org | info@setadc.org | @setadc

#### **SETA | Berlin**

Kronenstraße 1, 10117 Berlin GERMANY  
berlin@setav.org

#### **SETA | Bruxelles**

Avenue des Arts 6, 1000 Bruxelles BELGIUM  
Tel: +32 2 313 39 41

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# CONTENT

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## PRESENTATION | 7

## SUMMARY | 9

Israel's Actions before October 7 and International Law | 9

Evaluation of Israel's Actions on and after October 7 in Terms of Jus ad Bellum | 10

Evaluation of Israel's Actions on and after October 7 in Terms of Jus in Bello | 13

Israeli Actions and International Judicial Mechanisms | 16

## A BRIEF ACCOUNT OF ISRAEL'S ACTS BEFORE OCTOBER 7<sup>TH</sup> AND INTERNATIONAL LAW | 21

The Country of Palestine under International Law | 21

Status of Palestine as a State According to International Law | 25

Judicial Opinions on Israel's Acts in Palestine | 27

## ISRAEL'S ACTS ON AND AFTER OCTOBER 7<sup>TH</sup> IN TERMS OF *JUS AD BELLUM* | 33

Rules on Use of Armed Force | 33

Assessments on the Use of Armed Force on and after October 7th | 36

## ISRAEL'S ACTS ON AND AFTER OCTOBER 7<sup>TH</sup> IN TERMS OF *JUS IN BELLO* | 51

Rules to be Observed During Armed Conflicts and Consequences Of Violations | 51

Assessment of Israel's Acts with Reference to International Criminal Law | 60

## ISRAEL'S ACTS AND INTERNATIONAL JUDICIAL MECHANISMS | 89

Ongoing Judicial Process in the ICC | 89

Ongoing Judicial Proceedings in the ICJ | 94

## BIBLIOGRAPHY | 105



# PRESENTATION

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Following the military acts carried out by the Izzad-Din al-Qassam Brigades, the military wing of Hamas, against the occupying state of Israel on October 7, 2023, Israel launched large-scale military attacks on Gaza. The attacks were initially carried out from the air and then from both the air and the land, still ongoing and approaching to complete one year.

The international political mechanisms resorted to against Israel throughout the attacks have not produced a result. Even if the ongoing ceasefire negotiations produced a result now, there would still be no near prospect for a permanent political solution to prevent a similar aggression by Israel.

While the political mechanisms have failed, legal mechanisms have produced ways in which Israel's violations of international law are being brought to justice. Based on the relevant principles and rules of international law, two important judicial processes have been initiated against Israel.

Contribution to identifying Israel's violations of international law through judicial mechanisms is significant for several reasons. Identifying the violated fundamental rights of Palestinians through judicial processes will form the basis for the restoration of their rights and compensation for damages in an appropriate future occasion. Secondly and no less significantly, Israeli officials are and will be brought to justice to punish them for their crimes against Palestinians. That is of course the ultimate aim of the idea of justice.

The present Report examines Israel's attacks from legal perspective depending on the relevant rules of international law. In this sense, the Report handles



three main issues. The first is whether Israel's attacks can be justified on the basis of the right to self-defense. The second concerns the violations of international humanitarian law and the related crimes resulting from the violations. Finally, the Report evaluates the ongoing judicial processes initiated against or related to Israel.

# SUMMARY

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## ISRAEL'S ACTIONS BEFORE OCTOBER 7 AND INTERNATIONAL LAW

According to the UN General Assembly's resolution 181 of November 29, 1947, a Jewish and an Arab state would be established in the Palestinian territories that were under the administration of Great Britain from September 1918 to May 1948. Jerusalem would have an international status. The Jews declared a state called Israel on May 15, 1948, but there was no declaration of an Arab state at that time. The Palestinian Arabs declared the establishment of the state called Palestine quite later on November 15, 1988.

Although a decision has not yet been adopted regarding the full membership of the State of Palestine in the UN, the Security Council has had a consistent stance regarding the existence of a Palestinian state. With its resolution 1397 on March 12, 2002, the Security Council set forth the goal of a two-state solution with defined borders. It confirmed this goal with its resolution 1515 on November 19, 2003. It continued its approaches towards this goal in its resolution 1850 of December 16, 2008 and its resolution 2334 of December 23, 2016. Finally, in its resolution 2735 of June 10, 2024 approving a ceasefire plan, it expressed its commitment to the goal of two democratic states that will co-exist. As of August 2024, 147 of the UN member 193 states recognize Palestine as a state.

From the day of declaration to the present day, Israel has gradually occupied the lands intended for the Arab state. The first legal assessment of Israel's acts in

the occupied Palestinian territories was the advisory opinion given by the ICJ in 2004 regarding the wall Israel built in the West Bank. In its opinion, the Court determined that the wall would prevent Palestinians from exercising their right to self-determination. It also stated that all states are under the obligation not to recognize the unlawful situation arising from the construction of the wall, not to assist in the continuation of this situation, and to ensure that all violations that prevent the Palestinian people from exercising their right to self-determination come to an end.

In the advisory opinion of the ICJ on July 19, 2024, regarding the “Legal Consequences of Israel’s Policies and Practices in the Occupied Palestinian Territory, Including East Jerusalem”, the Court once again approved the borders of Palestine, confirmed the Palestinians’ right to self-determination, described Israel as an occupying power, and stated that it must immediately end this occupation. The Court also emphasized that Israel is responsible for all damages resulting from the prolonged occupation. Regarding other states, it reminded them of their obligation not to recognize or support Israeli actions that are contrary to international law, but rather to assist in the implementation of the law.

## EVALUATION OF ISRAEL’S ACTIONS ON AND AFTER OCTOBER 7 IN TERMS OF JUS AD BELLUM

International law provides rules that regulate the legitimate conditions for the use of armed force in international relations and the actions and behaviors that parties to the conflict should not engage in during armed conflicts. These rules essentially set forth the use of armed force between states and the obligations to be fulfilled during armed conflicts between states and between states and regular non-state armed groups, excluding terrorist organizations.

The fourth paragraph of Article 2 of the UN Charter stipulates that “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*”. The provision thus generally prohibits the use of armed force and even the threat or use of force. However the UN Charter also regulates the situations in which armed force will exceptionally be used.

The first of these exceptions is the use of armed force against a peace-threatening or aggressor state, as required by the decision of the UN Security Council to use air, sea and land forces, as specified in Article 42, in order to maintain or

restore international peace and security. The second exception is the use of armed force against an aggressor state, as regulated in Article 51, in the face of an armed attack, where a state under attack, either alone or together with other states, exercises its right to self defense, “until the UN Security Council takes the necessary measures to maintain international peace and security.”

After October 7, 2023, Israel claims that its attacks on Gaza, initially from the air and later from both the air and the land, are based on the right to self-defense. However, the legal validity of this claim needs to be evaluated. Israel also claims that it is fighting against terrorism and that the use of armed force is legitimate on this basis.

The first issue regarding Israel’s claim of the right of self-defense is whether Hamas’ actions on and after October 7, 2023 can be characterized as an aggression. Since Israel has the status of an occupier in Palestinian territory, the actions taken against Israel must be considered as an exercise of the right of self-defense on behalf of the Palestinians rather than an aggression. In order for the armed actions carried out by Hamas to give rise to the right of self-defense, they must be actions against the “sovereignty,” “territorial integrity,” or “political independence” of another state. However, Hamas is exercising its right of self-defense through the resistance it carries out on the basis of its right to self-determination confirmed by judicial decisions. Leaving aside the evaluations on whether the armed actions carried out by Hamas on and before October 7, 2023 are in compliance with the Geneva Conventions, it is clear that they are in compliance with the *jus ad bellum* rules of international law and therefore cannot be characterized as an aggression. For this reason, it is clear that Israel, which has the status of an occupier, cannot be considered as exercising its right of self-defense in its military acts aimed at resisting the occupation.

Even if it is accepted that Israel is faced with an act of aggression, its counter-actions must meet the criterion of “necessity”. When evaluated in terms of the criterion of necessity, which means that there is no other solution than resorting to armed force to stop the attacks, the necessity for Israel to continue resorting to armed force has been eliminated as of October 8. Hamas’ armed actions ended as of October 7, and continued in the form of rocket fire that was almost completely prevented from reaching its target. In addition, Israel announced that control over Israeli territory had been fully established on October 8, 2023, and that the attack had relatively ended. Therefore, even if the actions that took place on October 7, 2023 are considered as aggression, it is clear that Israel’s attacks cannot be consid-

ered as actions that would meet the criterion of necessity for self-defense, since there was no ongoing attack.

Another criterion that must be followed in the exercise of the right of self-defense is “proportionality”. Even if we accept for a moment that Israel is exercising its right of self-defense, it is another condition for the exercise of the right that it should continue its counter-military actions only until the attack is stopped, until it liberates its occupied territories, if any, and without harming civilians. While the number of people harmed by the incident, including those taken hostage or captive by Hamas on October 7, 2023, was around 7,000, the number of people killed and injured in Israel’s ongoing operation has reached a figure far beyond 41,000 in the ongoing attacks. This situation clearly shows that Israel has inflicted at least 30 times more harm on Palestinians after Hamas’ actions, and therefore the proportionality criterion has been exceeded by far. When Israel launched the “Iron Swords Operation”, it revealed its aim with statements such as “depopulating Gaza”, and therefore officially declared that its aim was not self-defense.

Israel’s claim that it used force to defend itself against terrorism is also far from being legitimate. Many states, including Turkey, see Hamas as a political party that won democratic elections and/or a liberation movement similar to Fatah. In essence, Hamas is a government or political authority rather than an organization. Hamas secured the most popular vote in the Palestinian National Authority Legislative Council elections in Gaza, where it participated under the name of the ‘Change and Reform List’, and became the political representative of a section of the Palestinian people (those living in the Gaza Strip), whose right to self-determination has been repeatedly stated, and became a part of the Palestinian National Authority. In fact, it was announced in a statement made on July 23, 2024 that an agreement had been reached between Fatah and Hamas on the establishment of a “national unity government”. It should also be underlined that Hamas is not on the UN Security Council’s list of terrorist organizations.

Indeed, the ICC Prosecutor’s statement on May 20, 2024, requesting an arrest warrant for the then Hamas Political Bureau Chief Ismail Haniyeh, Hamas Gaza Officer Yahya Sinwar (now Hamas Political Bureau Chief) and Izzedin al-Qassam Brigades Commander Muhammed Deif, due to the actions that took place on October 7, 2023, is evidence that the ICC Prosecutor does not consider Hamas’ actions as acts of terrorism, simply because the ICC does not have the authority to try acts of terrorism. Contrary to what Israel claims, therefore, Israel is not using armed force against a terrorist organization.

## EVALUATION OF ISRAEL'S ACTIONS ON AND AFTER OCTOBER 7 IN TERMS OF *JUS IN BELLO*

The rules to be followed during war (*jus in bello*) consist of two subgroups: “rules regarding weapons and methods of war” and “rules regarding the protection of civilians, wounded, sick and prisoners of war who can be considered victims of war”. Because of the inseparable relationship between all these rules, the conventions that contain the legal rules regulating the weaponry to be used in war and the war techniques also include rules regarding the protection of civilians and other non-combatant groups.

As it has been clearly stated as a result of both the international regulations in question and international jurisprudence, violations of the rules to be followed during armed conflicts constitute “crimes against peace (crime of aggression), “war crimes,” “crimes against humanity,” and/or “crime of genocide,” which give rise to personal criminal liability.

Israeli operations that began after October 7, 2023 can be defined as the continuation of an occupation that has been ongoing since 1967, and can also be characterized as an invasion. The annexation, occupation, invasion, and blockade of Palestinian territories by Israel after October 7, 2023 constitute an ongoing crime of aggression within the scope of Article 8bis of the Rome Statute. The crime of aggression is a crime that can be committed “...by a person in a position effectively to exercise control over or to direct the political or military action of a State ...”. Considering that Palestine recognizes the jurisdiction of the ICC in terms of the occupied Palestinian territories after May 13, 2014; it is possible to state that not only those in the current administration of Israel, which carried out annexation, occupation, invasion and blockade, but also all senior civilian and military administrators who were on duty after July 17, 2018, when the ICC’s jurisdiction for the crime of aggression began, can be tried for the crime of aggression.

When Israel’s actions are evaluated in terms of war crimes, it is seen that the most prominent aspect of the actions it carried out on and after October 7, 2023 is the deliberate killing or wounding of civilians. As of August 15, 2024, it has been stated that the total number of Palestinians who have lost their lives since October 7, 2023 has exceeded 40 thousand. It is stated that almost all the deaths since October 7 have been as a direct result of Israeli air and artillery strikes. Among all these acts of killing and wounding, the situation of children has a special place with high number of death.

The method of deliberately killing civilians who are supposed to be protected from the effects of war is not only carried out in the form of direct attacks, but also by attacks on civilian infrastructure facilities and by making basic needs unmet. The widespread destruction or appropriation of property without military necessity and the targeting of civilian settlements also constitute war crimes.

In this context, another striking method of attack in humanitarian terms is the attacks on hospitals and health institutions. Another method of attack by Israel is to carry out attacks on UN institutions such as UNRWA and aid convoys that provide humanitarian aid to the Palestinian people in Gaza and support the meeting of basic needs.

Israel's actions of unlawful deportation or transfer of people from occupied territories or unlawful detention constitute another category of war crimes. Since October 7, it has been determined that the Israeli Army has systematically subjected Palestinians to sexual humiliation, including forced nudity in public, forced undressing in public, torture and abuse in acts that amount to sexual assault, sexual humiliation and harassment, and the dissemination of such images on the internet.

It has been revealed that many civilians in Gaza, the West Bank and East Jerusalem are detained and arrested by Israel without legal guarantees, and that those detained in Gaza, in particular, are held in military bases such as the Israel's Teiman Base and systematically subjected to torture and ill-treatment.

Israeli attacks also cause serious damage to historical assets and the natural environment. Israel has destroyed at least 195 historical sites, 208 mosques, 3 churches and the Central Archives of Gaza (150 years of history). As of October 12, 2023, four of the five wastewater treatment plants in the Gaza Strip were closed due to lack of electricity, resulting in 120,000 cubic meters of untreated sewage being discharged into the sea daily, while sewage and solid waste were being discharged into the streets, posing serious health and environmental hazards.

The actions of Israel, as evidenced above, overlap with many actions that constitute war crimes. The most prominent acts that constitute war crimes are the deliberate killing or injury of civilians, serious harm to body or health, torture and ill-treatment, forced displacement of civilians, inhuman treatment, destruction of civilian settlements and civilian infrastructure, destruction of health institutions, schools, refugee camps, places of worship by using them as targets of attack, extensive destruction of property, use of prohibited types of weapons, and damage to the environment.

It is seen that crimes against humanity are also widely committed during Israel's attacks. The actions we have mentioned above, which constitute war crimes, also constitute the operational elements of crimes against humanity. The existence of evidence that Israel's actions listed above were "as part of a widespread or systematic attack directed against any civilian population" shows that these actions also constitute crimes against humanity.

Israeli Defense Minister Yoav Galant's statement, "I have lifted all restrictions, we are using everything"; Israeli President Isaac Herzog's statement that "the entire nation outside... is responsible" and "we will break their backbone", referring to Palestinian civilians; Israeli Armed Forces Spokesman Daniel Hagari's statement that the focal points of a disproportionate and indiscriminate violence strategy are "maximum damage" are clear evidence that the Israeli Government is systematically targeting civilians as well.

The way Israel carries out its actions on the ground has also provided concrete reflections of these statements. It shows that Israel's bombardment strategy, known as the "Dahya doctrine," has also been applied to the Gaza Strip. The Dahya Doctrine is defined as the method of using overwhelming and disproportionate force against civilian areas and infrastructure, which Israel used during the second Lebanon war in 2006, as a "means of restraining and deterring Hezbollah." Numerous civilian targets, including aid organizations, civilian convoys, and refugee areas, have been attacked. In most of these cases, military targets were not the focus of the attacks, and the attacks were carried out indiscriminately and with disproportionate use of force, resulting in the deaths and injuries of thousands of people. Entire neighborhoods, including Jabalia, Al-Rimal, Al-Yarmouk, and Al-Maghazi, have been extensively destroyed. Israeli Army ground forces have targeted and killed or injured civilians who posed no threat, including by carrying white flags. In Gaza, local people were systematically forcibly displaced, and such crimes against humanity were also committed.

These findings show that Israel actually carried out a "widespread and systematic attack" on Palestinian civilians, and therefore Israel's actions should be evaluated in the category of crimes against humanity. There are also indications that Israel's actions go beyond crimes against humanity and require evaluations to determine whether they constitute the crime of genocide.

In order to conclude that Israel's attacks constitute genocide, it is necessary to be able to show that Israel's actions of "killing members of the group, causing serious physical or mental harm, deliberately changing the living conditions of the



group with the intention of eliminating it in whole or in part, preventing births within the group, or forcibly transferring children belonging to the group to another group” are committed with the intention of “destroying in whole or in part” the target group.

It is not expected that Israeli officials have openly declared this intention or will do so. However, both the statements of the president, prime minister, defense minister and other officials mentioned above and the nature of Israel’s attacks provide evidence that this intention is carried out.

Apart from the official statements mentioned above, which mean “targeting Palestinians in their entirety”, Israel’s actions can be taken as evidence of genocidal intent in two groups in general. The first of these is the indiscriminate killing of civilians. Israel’s actions in the Gaza Strip result in the deaths of hundreds of Palestinian civilians every day. Since October 7, Israel has killed approximately 41,000 Palestinians in Gaza, equivalent to approximately 1.5% of the population, using lethal weapons and deliberately creating life-threatening conditions. Israel also inflicts serious physical and mental harm on Palestinians.

The second group of acts that constitute evidence of genocidal intent is subjecting Palestinians to “conditions that would cause their partial or total destruction.” These include starving, depriving, forcibly displacing a protected group, destroying infrastructure essential to their survival, reducing basic medical services to minimum requirements, and depriving them of shelter, clothing, education, employment, and hygiene. In particular, given the importance of children to the future development of a society, causing them serious physical or mental harm can reasonably be interpreted as another indication of the intent to “destroy the group in whole or in part.”

## ISRAELI ACTIONS AND INTERNATIONAL JUDICIAL MECHANISMS

In addition to the crimes mentioned above, violations of the rules of international armed conflict law also require that those to have allegedly committed these crimes be tried in national or international courts, regardless of their official positions or duties.

Following the examples of international criminal courts established with temporary status in the past, the International Criminal Court with permanent status was established with the convention signed in 1998 and entered into force in 2002. The Court has jurisdiction only over real persons, regardless of their of-

ficial status, in the context of the crimes mentioned above. The persons it can investigate and must be citizens of one of the party states or persons alleged to have committed one or more of the crimes mentioned in the territory of a party state. When a “situation” in which one or more of the crimes in question may have been committed is referred to the Court’s Prosecutor by the Security Council, the related persons may be investigated by the prosecutor and tried by the court. Even if sufficient evidence is obtained to warrant a trial against a person, the person in question must be brought before the Court in person in order to proceed to the trial phase.

On January 1, 2015, the State of Palestine requested the Court to investigate and try those who committed crimes in Palestine, “including crimes committed in the occupied Palestinian territory”, without any time limit, as of June 13, 2014. After the State of Palestine became a party to the Court’s Statute in May of the same year, the Prosecutor proceeded as an investigation into the territory of a party state. The Prosecutor first sought the opinion of Pre-Trial Chamber No. 1. In its decision of February 5, 2021, the Chamber ruled that the Court’s jurisdiction also covers the occupied territories of Palestine, including East Jerusalem, the West Bank and Gaza. Following the decision, the Prosecutor announced on March 3, 2021 that an investigation had been opened into the situation in the State of Palestine. In this context, the Court’s jurisdiction also covers the attacks carried out by Israel on Gaza since October 7, 2023.

Based on the evidence obtained in the context of the attacks in Gaza, the Prosecutor applied to the Pre-Trial Chamber No. 1 on May 20, 2024, requesting an arrest warrant for Israeli Prime Minister Benjamin Netanyahu and Israeli Defense Minister Yoav Gallant. Netanyahu and Gallant were charged with “starvation of civilians as a method of warfare that constitutes a war crime,” “intentionally causing great suffering or serious injury to body or health or cruel treatment as a war crime,” “intentional killing or murder as a war crime,” and “intentionally directing attacks against civilians as a war crime”. The Prosecutor went beyond this and included among his charges acts such as “extermination and/or murder,” “persecution as a crime against humanity,” and “other inhumane acts that may be considered crimes against humanity”, including deaths from starvation as a crime against humanity.

Violations of the rules of international armed conflict are acts that also lead to the legal responsibility of the relevant state. The legal responsibility of states can be the subject of an application to the ICJ against states that recog-

nize its jurisdiction. In order for the Court to have jurisdiction over a matter, the relevant states must have recognized the Court's jurisdiction for that matter or in general. Another method for the Court's jurisdiction to become mandatory is when an international agreement to which the parties to the dispute are joint parties makes the Court's jurisdiction mandatory in the context of disputes regarding the interpretation and application of the said agreement. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide is one of these conventions.

The Republic of South Africa applied to the ICJ on 29 December 2023 against Israel in the context of the actions that took place in Gaza on and after 7 October 2023. South Africa based on Article 9 of the Genocide Convention, to which Israel is also a party. So far, Nicaragua, Colombia, Libya, Mexico, Palestine, Spain and Turkey have submitted petitions to the Court to intervene in the case.

The South Africa requested the Court to “determine that Israel has violated and continues to violate the obligations imposed on it by the Genocide Convention”, “immediately cease all actions and measures that may lead to the violation of these obligations”, “ensure that those who violate these obligations are tried in national or international courts”, “ensure that evidence regarding the acts of genocide is collected and preserved”, “ensure that the damages suffered by Palestinian victims are redressed” and “provide safeguards and guarantees to prevent the recurrence of violations of the Genocide Convention”.

The Court has so far passed decisions on January 26, 2024, March 28, 2024 and May 24, 2024, which include preventive measures that Israel should take. In its decisions, the Court ordered that attacks on civilians must be stopped, that actions that would lead to genocide should not be carried out, that humanitarian aid should not be prevented from reaching civilians and that military operations against Rafah should be stopped immediately. It appears that Israel has not complied with any of these decisions to date. The judicial process before the Court is ongoing.

There is another case pending before the ICJ regarding Israel's attacks on Gaza. Nicaragua filed a lawsuit against Germany on March 1, 2024, alleging that it supported Israel's “acts of genocide in Gaza.”

In its application, Nicaragua requested the Court to find that Germany “failed to fulfill its obligation to prevent the genocide committed and continuing against the Palestinian people, including those in the Gaza Strip, and contributed to the perpetration of genocide in violation of the Convention,” “breached its obligations

under international humanitarian law,” and “breached its obligation to comply with other peremptory norms of general international law, particularly by providing aid or assistance in the continuation of the unlawful military occupation of Palestine, including the ongoing unlawful aggression in Gaza.”

Nicaragua also requested the Court to issue measures in its application to prevent Germany from supplying Israel with weapons that could be used to commit genocide and to restart cooperation with UNRWA. Nicaragua also referred to decisions made by the Dutch and Canadian courts to prevent arms sales to Israel. It also raised the issue of whether Germany, which has joint arms programs with the US, contributed to the F-15 and F-35 warplanes for which the US has signed a sales contract to Israel. As a result, although Nicaragua has made a statement against Germany centrally, it has also recorded the arms sales of other Western states to Israel.

Germany announced that it would resume cooperation with UNRWA, which it had suspended aid to on January 27, 2024, and made a defense on April 24, 2024, declaring that it had reduced the arms sales, which were 200 million euros in October 2023, to 1 million euros as of March 2024. Germany also emphasized that the weapons provided during this process consisted of military equipment such as anti-tank missiles and submarines and were not related to the ongoing conflicts. Nicaragua’s lawsuit against Germany is still ongoing.



# A BRIEF ACCOUNT OF ISRAEL'S ACTS BEFORE OCTOBER 7<sup>TH</sup> AND INTERNATIONAL LAW

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## THE COUNTRY OF PALESTINE UNDER INTERNATIONAL LAW

The Palestine region was occupied by the British Empire in late 1918 and later placed under the British mandate by the League of Nations on 24 July 1922, which lasted until 1948.<sup>1</sup> Following the Second World War, as Britain decided to end its mandate on Palestine and handed the issue over to the UN, the UN General Assembly adopted a resolution, known as the Partition Plan on the future of the Palestine mandate<sup>2</sup> This non-binding, advisory resolution proposed the creation of an independent Arab state, a Jewish state, and a special international regime for the city of Jerusalem. Viewing this as a signal, Israel was declared by the Jews community there on 14 May 1948.<sup>3</sup>

Arab states namely Egypt, Jordan, Syria, Lebanon and Iraq did not recognize the declaration and waged a war on 15 May 1948 against the newly declared Israel. When Israel was proclaimed on 14 May 1948, Eretz Yisrael (a geographical region in Canaan (Kenan) with unclear borders) was referred to.<sup>4</sup> Consequently,

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1 "Mandate for Palestine", C. 529. M. 314, (1922), VI. <https://www.un.org/unispal/document/auto-insert-201057/>, (Access date: 10 July 2024).

2 See, A/RES/181 (II), 29 November 1947., <https://documents.un.org/doc/resolution/gen/nr0/038/88/pdf/nr003888.pdf?token=Tbs6NQz8oMTdtT9bC&fe=true>, (Access date: 10 July 2024).

3 "The Declaration of Independence" <https://catalog.archives.gov.il/en/chapter/the-declaration-of-independence/> (Access date: 24 June 2024).

4 "The Declaration of Independence".

the armed conflicts ended with the armistice treaties signed with Egypt on 24 February 1949,<sup>5</sup> Lebanon on 23 March 1949,<sup>6</sup> and Jordan on 3 April 1949.<sup>7</sup> Green borders were drawn on the map to show the areas left to Jordan and Egypt by the armistice agreements, and thus the border of the State of Israel was mutually agreed upon with lines known as the “green line”.<sup>8</sup>

Israel increased the land share from 56 percent envisaged in the Partition Plan to 78 percent after the 1948 Arab-Israeli War, occupied the West Bank, Gaza and Jerusalem, and left Gaza under Egyptian control with the ceasefire agreement that was signed later. The city of Jerusalem, for which a special international regime was envisaged in the sharing plan, was divided in two by the Green Line after the War, with Israel taking control west of the line, while the areas to the east of the line and the historic Old City were left under Jordanian control.

This was the situation until the military conflict known as “the Six-Day War” erupted in 1967. During the the Six-Day War, Israeli forces occupied all Palestinian territories. Although the Gaza-Jericho Agreement was signed in Cairo on May 4, 1994<sup>9</sup> and the Israel-Palestine Liberation Organization Interim Peace Agreement in Washington on September 28, 1995<sup>10</sup> were signed, Israel continued its occupation and annexation policies in all Palestinian territories, and still maintains its military presence in all Palestinian territories. Israel has pursued a policy of border uncertainty towards all the trusteeship lands from the very beginning.

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5 “Document Retrieval. Egyptian-Israeli General Armistice Agreement” <https://peacemaker.un.org/egyptisrael-generalarmistice49>

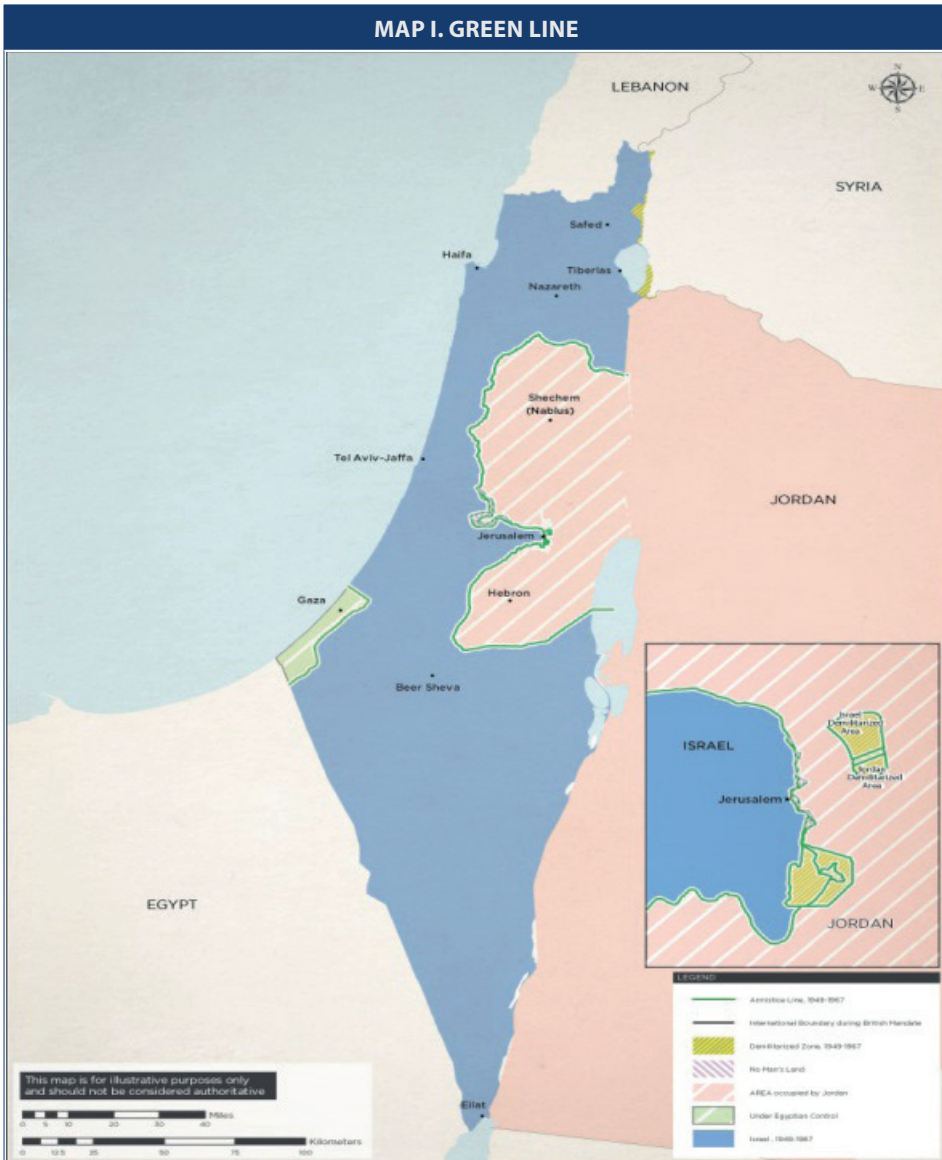
6 “Document Retrieval. Egyptian-Israeli General Armistice Agreement”.

7 “Document Retrieval. Egyptian-Israeli General Armistice Agreement”. Iraq and Saudi Arabia did not sign a ceasefire agreement, but the conflict has effectively ended.

8 There is a clause in the ceasefire agreements designed to prevent any assertion that these borders are final. According to this clause, “It is also recognized that no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military and not by political considerations.” Despite this, the Peace Agreement signed between Egypt and Israel in 1979 included a provision stating that “the status of Gaza should be kept separate,” while the Peace Agreement signed with Jordan in 1994 specified that the agreement was made “without prejudice to the status of any territories that came under Israeli military government control in 1967”. A joint interpretation of both Peace Agreements suggests that it was established that the borders recognized as belonging to the State of Israel could not extend beyond the Green Line defined in the ceasefire agreements, and that this was accepted by Israel.

9 “Document Retrieval. Agreement on the Gaza Strip and the Jericho Area (Cairo Agreement)” <https://peacemaker.un.org/israelopt-cairoagreement94> (Access date: 20 July 2024).

10 “Document Retrieval. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II)” <https://peacemaker.un.org/israelopt-osloII95> (Access date: 20 July 2024)



Source: "Armistice Lines (1949-1967)"<sup>11</sup>

However, the UN Security Council Resolution 242<sup>12</sup> defined the borders of Israel, and therefore the borders of the lands owned by Palestinian Arabs, stated that the acquisition of territory through war was unacceptable and ruled that Israel should withdraw from the lands it occupied in the Six-Day War. In other words,

11 "Armistice Lines (1949-1967)". <https://embassies.gov.il/MFA/AboutIsrael/Maps/Pages/1949-1967%20Armistice%20Lines.aspx#:~:text=In%201949%2C%20with%20UN%20mediation,had%20started%20in%20May%201948> (Access date: 18 July 2024).

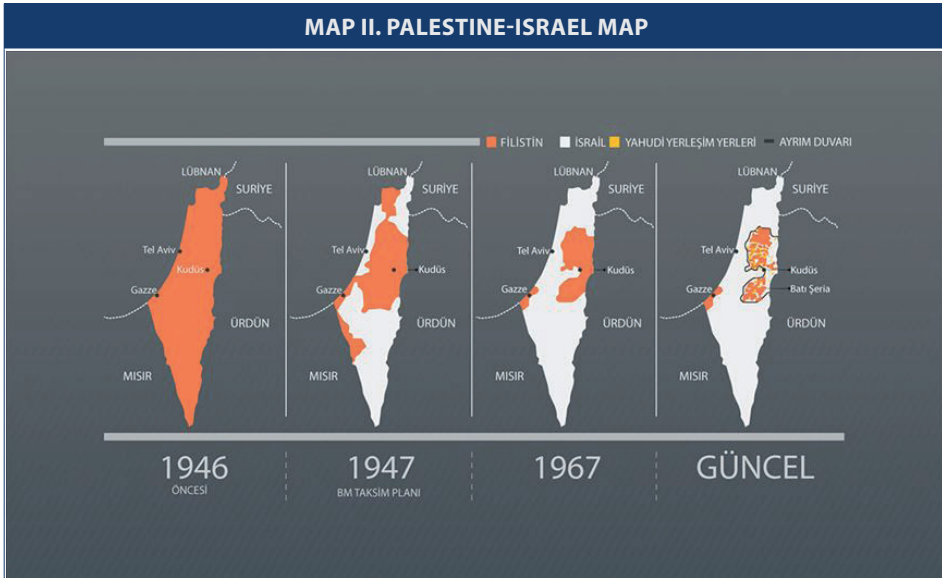
12 "Resolution 242". S/RES/242, 22 November 1967.



the Security Council asked Israel to withdraw behind the Green Line drawn by the 1949 Armistice Agreements, indirectly stating that this line was accepted as the borders of the State of Israel. Moreover, the UN Security Council called for an end to Israel's continued occupation of Arab territories, including Jerusalem in Resolution 465 of 1 March 1980 and Resolution 476 of 30 June 1980.

This dispelled Israel's claim that the Security Council's call in Resolution 242 to end the occupation applied only to the territories of Egypt, Jordan, and Syria outside the Palestinian mandate. The Security Council has consistently maintained that the territory designated for an Arab state outside of Israel within the Palestinian mandate—i.e., the pre-1967 War borders marked by the Green Line—is under Israeli occupation.

The same view is still maintained by the UNSC. In its resolution 2334 dated 23 December 2016, the UNSC did not hesitate to emphasize the Palestinian territories, including East Jerusalem, which have been occupied since 1967, and further underlined that it would not accept any changes to the borders of 4 June 1967. Therefore, Resolution 242 has been constantly referred to as the UNSC resolution referring to the borders of the Palestinian state to be established later. Similarly, the states that recognize the Palestinian state have taken the Green Line as the Palestinian lands as their basis. The borders in the Partition Plan are not mentioned by either the Palestinian state or others.



**Source:** Gülsüm İncekaya, “Uzmanlara Göre İsrail, 1967 Sınırlarına Dönerse Normalleşme Mümkün Olur”, <https://www.aa.com.tr/tr/dunya/uzmanlara-gore-israil-1967-sinirlarina-donerse-normallesme-mumkun-olur/2011279>, (Access date: 20 July 2024).

One of the most important international texts regarding the territory of the State of Palestine is the ICJ's advisory opinion of 9 July 2004.<sup>13</sup> In this opinion, the Court referred to the areas as "occupied territories," rejecting Israel's preferred terms, such as "disputed territories" or "territories administered by other states." The ICJ emphasized that these territories consisted of the West Bank, Gaza, and East Jerusalem.<sup>14</sup> Furthermore, in its Advisory Opinion of 19 July 2024 on "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem," the ICJ reiterated Israel's policy of "prolonged occupation" since 1967, urged Israel to end the occupation as swiftly as possible, and reaffirmed the Palestinian territories as the Gaza Strip, the West Bank, and East Jerusalem.<sup>15</sup>

The UN General Assembly has adopted dozens of resolutions on Palestine since the Partition Plan. All of these resolutions have placed special emphasis on the occupied territories. Recently, in its resolution supporting Palestine's full membership in the UN, it continued to use the term "occupied Palestinian territories, including East Jerusalem."<sup>16</sup>

International Criminal Court (ICC) acted in the same way. The State of Palestine submitted a declaration on January 1, 2015 accepting the jurisdiction of the ICC "including crimes committed in the occupied Palestinian territory." In its decision of February 5, 2021, Pre-Trial Chamber I ruled that its jurisdiction also covers the occupied territories of Palestine, including East Jerusalem, Gaza and the West Bank, and that the areas occupied by Israel are also part of the territory of Palestine.<sup>17</sup>

## STATUS OF PALESTINE AS A STATE ACCORDING TO INTERNATIONAL LAW

Following the 1948-1949 Arab-Israeli War, the administration of the Palestinian territories outside Israel was assumed by Jordanian and Egyptian governments, and these

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13 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. <https://www.icj-cij.org/case/131>.

14 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. <https://www.icj-cij.org/case/131>, par. 78.

15 "Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem." <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>.

16 Resolution adopted by the General Assembly on 10 May 2024 <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2FES-10%2F23&Language=E&DeviceType=Desktop&LangRequested=False> (10 May 2024)

17 "Decision on the 'Prosecution Request Pursuant to Article 19(3) for A Ruling on the Court's Territorial Jurisdiction in Palestine'" <https://www.icc-cpi.int/court-record/icc-01/18-143> (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory 10 July 2024).

lands came under Israeli occupation after the 1967 Six-Day War. The Palestine Liberation Organization (PLO), founded on June 2, 1964 with the support of the Arab states, was accepted as the sole legitimate representative of the Palestinian Arabs in 1974. Yasser Arafat, who became the chairman of the PLO in 1968, was invited to the UN General Assembly on November 13, 1974, and was allowed to attend the PLO General Assembly sessions as an observer as the representative of the Palestinian Arabs.<sup>18</sup>

After Jordan announced on August 1, 1988 that it had severed all administrative and legal ties with the West Bank and that the PLO would be the representative of the region, the establishment of an independent Palestinian state was declared on November 15, 1988.<sup>19</sup> With the Oslo Declaration of Principles on Interim Self-Government Arrangements signed on September 13, 1993, Israel accepted that Palestinians could establish their own administration in Gaza and the West Bank. Following this, the Palestinian National Authority was established on May 4, 1994, took over the administration of some parts of the West Bank, and expanded its area of control even further after Israel withdrew from Gaza in 2005. After Yasser Arafat, who was elected president in 1996, passed away in 2004, Mahmoud Abbas was elected as the new president on January 9, 2005, and has remained in office since then, as no new elections have been held.

Palestine has been accepted as a member of the Organization of Islamic Cooperation (OIC) since the beginning of the organization, founded in 1969. Palestine is a member of the Arab League and the Non-Aligned Movement since 1976 and also a member of the Conference on Interaction and Confidence-Building Measures in Asia (CICA).

Palestine was accepted as a member of UNESCO on October 31, 2011, where the precondition for membership is to be a “state”. The USA and Israel withdrew from UNESCO membership following this membership. On November 29, 2012, the UN General Assembly, after emphasizing that the Palestinian people have the right to self-determination and independence of a Palestinian state in the Palestinian territories occupied since 1967, decided to grant Palestine the status of a non-UN “permanent observer state” without prejudice to the achievements of the PLO as the representative of the Palestinian people.<sup>20</sup>

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18 “Palestine Question/ArafatStatement – GA debate – Verbatim record” <https://www.un.org/unispal/document/auto-insert-187769/> (10 July 2024).

19 “Declaration of State of Palestine – Palestine National Council” <https://www.un.org/unispal/document/auto-insert-178680/> (Access date: 12 July 2024).

20 “A/RES/67/19”, BM, 4 December 2012, <https://documents.un.org/doc/undoc/gen/n12/479/74/pdf/n1247974.pdf>, (Access date: July 10, 2024).

Particularly after this decision, the State of Palestine began to become a party to many international agreements. The State of Palestine, which acceded to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the 1966 Convention on the Elimination of All Forms of Racial Discrimination on April 2, 2014, has also become a party to the Rome Statute establishing the ICC as of April 1, 2015.

Palestine applied for full membership in the UN in 2011, but could not receive approval from the UNSC.<sup>21</sup> Its application for re-evaluation of its full membership application on April 2, 2024 was not accepted by the UNSC due to the US veto, and the General Assembly adopted a resolution supporting Palestine's full membership in the UN, and in this resolution it deemed it appropriate for the State of Palestine to participate in all activities of the UN.<sup>22</sup>

Although a decision on the state of Palestine becoming a full member of the UN could not be accepted, the UNSC has a consistent stance on the existence of a Palestinian state. With its resolution 1397 on March 12, 2002, the UNSC set forth its goal of a two-state solution with defined borders. It confirmed this goal with its resolution 1515 on November 19, 2003. It continued its approaches towards this goal in its resolutions 1850 on December 16, 2008 and numbered 2334 on December 23, 2016. Finally, in its resolution 2735 on June 10, 2024, which approved the ceasefire plan, the UNSC expressed its commitment to the goal of two democratic states that will co-exist.<sup>23</sup> As of June 2024, 147 of the 193 UN member states recognize Palestine as a state.<sup>24</sup>

## JUDICIAL OPINIONS ON ISRAEL'S ACTS IN PALESTINE

Following its establishment on May 14, 1948, Israel has pursued and continues to pursue annexation, occupation, colonization and blockade against Palestinian territories. As previously stated, Israel, which implicitly claims rights over all of the former Palestinian tutelage, has expanded its territory by establishing new

21 "Security Council Fails to Recommend Full United Nations Membership for State of Palestine, Owing to Veto Cast by United States", UN, 18 April 2024, <https://press.un.org/en/2024/sc15670.doc.htm>, (Access date: July 10, 2024).

22 "A/RES/ES-10/23", [http://a/RES/ES-10/23,%2010%20May%202024.%20https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2FES-10%2F23&Language=E&DeviceType=Desktop&LangRequested=False%20\(10%20June%202024](http://a/RES/ES-10/23,%2010%20May%202024.%20https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2FES-10%2F23&Language=E&DeviceType=Desktop&LangRequested=False%20(10%20June%202024), (Access date: 10 July 2024).

23 "S/RES/2735", BM, 10 June 2024, <https://digitallibrary.un.org/record/4051310?ln=en&v=pdf>, (Access date: July 8, 2024).

24 Beyza Binnur Donmez, "FACTBOX - Which European Countries Poised to Recognize Palestinian State?", Anadolu Agency, 23 May 2024. Finally, on June 22, 2024, Armenia also decided to recognize Palestine. See, Elena Teslova, "Armenia Recognizes State of Palestine", Anadolu Agency, June 21, 2024.

settlements, while continuing to pursue policies that will remove the settled Arab population from the region.

The establishment of Jewish settlements in occupied Palestinian territories has accelerated after the Cold War. With this colonization policy, Tel Aviv, on the one hand, justifies its military presence in the occupied territories, while on the other hand, creates a scattered and fragmented structure in Palestinian territories, making it practically difficult to establish a Palestinian state. Decisions have been taken regarding these policies in two cases by the ICJ.

i) The ICJ's 2004 Advisory Opinion

In June 2002, Israel began to build a wall "in order to protect both its own territory and the Jewish settlements" in the occupied Palestinian territories, using a security line east of the Green Line, barbed wire and steel wire, and in some places, trenches, security roads, 7-meter concrete walls, watchtowers, cameras and electronic sensors.

Although Israel has attempted to explain the construction of this wall as security reasons, it has been stated that if the wall is completed, its total length will be 650 kilometers and that half of the West Bank will be under the de facto control of Israel. According to the Palestinian Authority, the construction of the wall is an act of annexation and aims to prevent territorial sovereignty and, as a result, the Palestinians' right to self-determination.<sup>25</sup>

The Court determined that Israel's colonization policy since 1977 violated Article 49(6) of the Fourth Geneva Convention and international law,<sup>26</sup> in serious breach of Security Council resolutions (S/RES/446, 22 March 1979; S/RES/452, 20 July 1979; S/RES/465, 1 March 1980) and the Fourth Geneva Convention. According to the Court, the construction of the wall resulted in the destruction or confiscation of property, violating Articles 46 and 52 of the Hague Regulations of 1907 and Article 53 of the Fourth Geneva Convention.

This Israeli policy has also led to significant restrictions on Palestinians' freedom of movement. In addition to the destruction of agricultural lands and trees during the construction of the wall, there have also been serious reductions in agricultural production due to factors such as the most fertile lands and important water resources of Palestine remaining on the Israeli side of the wall.

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<sup>25</sup> "A/RES/ES-10/14", UN, 12 December 2003, <https://documents.un.org/doc/undoc/gen/n03/646/93/pdf/n0364693.pdf>, (Access date: July 11, 2024).

<sup>26</sup> "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." (Article 49(6)).

It has also been stated that the people in these regions are facing increasing difficulties in terms of access to health and education services and main water sources. It has been emphasized that the negative impact on trade and the difficulties mentioned in the previous paragraph, which are parallel to the construction of the wall, will force an increasing number of Palestinians to leave certain areas, and that this may cause the Palestinians (approximately 500 thousand people) living in the closed area and enclaves to migrate, thus changing the demographic structure.<sup>27</sup>

In particular, the Court found that the construction of the wall would prevent Palestinians from exercising their right to self-determination. It also stated that all States have the obligation not to recognize the unlawful situation resulting from the construction of the wall, not to assist in its continuation, and to ensure that all violations that prevent the Palestinian people from exercising their right to self-determination come to an end.

ii) The ICJ Advisory Opinion in 2024

Within the framework of the UN General Assembly resolution 77/247 dated 30 December 2022, a request for an advisory opinion titled “Legal Consequences of Israel’s Policies and Practices in the Occupied Palestinian Territory, Including East Jerusalem” was sent to the ICJ on 19 January 2023, which included the following questions:

“a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”<sup>28</sup>

These questions were asked after Israel’s ongoing acts and the violations of international law were reminded. In its resolution 77/247, the General Assembly found that the occupying power, Israel had committed acts contrary to

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27 “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf> (Access date: 9 July 2024).

28 “Legal Consequences Arising from The Policies and Practices of Israel in The Occupied Palestinian Territory, Including East Jerusalem”. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230117-REQ-01-00-EN.pdf> (Access date: 09 July 2024).

humanitarian law in the occupied territories, taken measures against the human rights of the Palestinian people and prisoners, changed the demographic structure of the occupied territories by building walls and establishing new settlements contrary to international law, and acted contrary to the decisions of UN bodies and organizations. The General Assembly also warned other states and UN bodies and specialized agencies to continue their solidarity and assistance to the Palestinian people.<sup>29</sup>

After January 19, 2023, 50 states, including Turkey, and 3 international organizations shared their written opinions on these questions.<sup>30</sup> As of February 2024, public hearings have been held. Considering the 2004 wall advisory opinion and considering the actions taken after October 7, 2023, it was expected that the ICJ would confirm the UN General Assembly's approach, find that a Palestinian state exists within the borders drawn by the 1949 ceasefire agreements, and that the occupying power Israel's annexation, occupation, colonization and blockade policies are contrary to international law, international humanitarian law and international human rights law. Again, it was expected that in response to the second question posed to the Court, it would invite all states to recognize the state of Palestine and impose sanctions against Israel as the occupying power.

The ICJ announced its opinion on July 19, 2024, as a result of its examination and evaluations that lasted approximately one and a half years, and set forth some important legal findings in this advisory opinion.<sup>31</sup>

The first of the Court's findings is that the lands occupied by Israel in 1967, some of which it has not withdrawn from, are the state of Palestine, that Israel is an occupier of these lands, that the occupation has continued for a long time, and that Israel's continued control of these lands is illegal.

There are two other issues emphasized in this context. The first is that this illegal occupation must be ended immediately. The Court stated that the UN, and in this context especially the UNSC, should carry out the necessary work and make decisions to fulfill the need to end this occupation. The second is that the occupation continuing for such a long time will not change the fact that these

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29 A/RES/77/247, 30 December 2022, <https://undocs.org/A/RES/77/247>. (Access date: 10 July 2024).

30 "Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem." <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230117-REQ-01-00-EN.pdf> (Access date: 9 July 2024).

31 "Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem".



lands are Palestinian lands and will not allow for a different status to be established here. Thus, it was emphasized that the UN should always treat these lands as Palestinian lands.

The Advisory Opinion also stated that Israel is obligated to immediately halt all new settlement activities and to evacuate all previously allowed settlers. Related to this obligation, international organizations, including the UN, are required not to legally recognize the situation resulting from the unlawful presence of the State of Israel in the occupied Palestinian territory.

In this context, it has also been established that all States are under an obligation not to legally recognize the situation resulting from the unlawful presence of the State of Israel in the occupied Palestinian territories and not to provide assistance or support in maintaining the situation created by Israel's continued occupation.

The ICJ opinion also stated that the Israeli state has an obligation to compensate all real or legal persons in the occupied Palestinian territories for the damages it has caused. Although this advisory opinion is not legally binding for states, it would still affect the attitudes of states through the UN, since states are the main actors operating the UN bodies. The advisory opinion is the opinion of an independent and impartial judicial body, it should affect the relevant attitudes of states.

Another important issue mentioned in the advisory opinion and that should be underlined is the ICJ's emphasis on the Palestinian people's right to self-determination. The Court emphasized that as a result of Israel's decades-long policies and practices, the Palestinian people have been deprived of their right to self-determination for a long time, and that any further extension of these policies and practices will continue to harm this fundamental right of the Palestinian people.

This advisory opinion of the ICJ, summarized in this section, is important also in terms of emphasizing that Israel is an occupying state and that it keeps a significant part of the country of Palestine and East Jerusalem under occupation.<sup>32</sup> It is also of particular importance in terms of legally establishing that Israel has violated many rules of international law during its long-standing occupation regime, that these violations have harmed the Palestinian people in many ways, and that the international community has responsibilities to stop these violations.

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32 Marko Milanovic, "The Occupation of Gaza in the ICJ Palestine Advisory Opinion", 23 July 2024, <https://www.ejiltalk.org/the-occupation-of-gaza-in-the-icj-palestine-advisory-opinion/> (Access date: 4 August 2024).



One of the most important issues in the advisory opinion of the ICJ is that any foreign action carried out in the territory of the State of Palestine is considered an act contrary to international law. Therefore, the right of the State of Palestine and the Palestinian people to resist actions such as annexation, occupation, colonization and blockade in these territories does not only find legitimacy in the right to self-determination, but also has a basis that includes the right of self-defense.<sup>33</sup>

As a result, with the advisory opinion reached in the shadow of the events of October 7, 2023, the ICJ once again determined the borders of the country of Palestine, underlined the right of Palestinians to self-determination, described Israel as an occupying power and emphasized that it should immediately end this occupation, and stated that it is responsible for all damages resulting from the prolonged occupation. As for other states, their obligations not to recognize or support Israeli actions contrary to international law, but rather to assist in the realization of the law, were reminded.

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<sup>33</sup> Marko Milanovic, "Does Israel Have the Right to Defend Itself?", 14 November 2023, <https://www.ejiltalk.org/does-israel-have-the-right-to-defend-itself/> (Access date: 10 July 2024).

# ISRAEL'S ACTS ON AND AFTER OCTOBER 7<sup>TH</sup> IN TERMS OF *JUS AD BELLUM*

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International law contains rules that determine the legitimate conditions for the use of armed force in relations between states. This set of rules, also known as *jus ad bellum*, regulates the prohibition of states from resorting to armed force and the situations in which they may resort to armed force on a legitimate basis.

## RULES ON USE OF ARMED FORCE

The idea that war is a method to be used only for a just cause in relations between states has a long history.<sup>34</sup> However, it is a relatively new phenomenon that this understanding has gained a legal framework and become a part of the global legal order.

The Charter of the League of Nations, adopted in 1919, established written regulations for the first time that placed restrictions on the use of armed force by states against each other.<sup>35</sup> The UN Charter goes further in this regard, completely prohibiting the threat or use of force between states.<sup>36</sup> Regarding this prohibition, the fourth paragraph of Article 2 of the UN Charter includes the following provision:

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<sup>34</sup> For an analysis of these views see: Yoram Dinstein, *War, Aggression and Self Defence*, (2012, Cambridge University Press), p. 63-65.

<sup>35</sup> See, Article 10, 11, 12, 16.

<sup>36</sup> See, Article 2(4).

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

It has been accepted that the provision in question, which expresses the prohibition of the use of force in international law, has also become a rule of customary law, in other words, it is binding on all states, whether they are members of the UN or not.<sup>37</sup> It is even stated that this prohibition is among the peremptory rules (*jus cogens*) of international law, that is, it is a prohibition for which no agreement can be made to the contrary.<sup>38</sup>

The UN Charter envisages, however, two exceptions. While resorting to armed force and even the threat of armed force is generally prohibited,<sup>39</sup> The first of these exceptions is when the UNSC takes an authorizing decision allowing other states to implement the military measures stipulated in Article 42 within the framework of Chapter VII against an aggressor state or states, and the second is when the right of self-defence stipulated in Article 51 is exercised.

i) UNSC Decision

The first exception to the ban on the use of armed force is the UNSC decision authorizing the use of armed force against an aggressor state or states that threaten or violate international peace and security. The authority to determine the situations in which “the preservation or restoration of international peace and security” is required is left to the UNSC.<sup>40</sup>

If the UNSC decides to use air, sea and land forces that may be necessary to maintain or re-establish international peace and security, as specified in Article 42,<sup>41</sup> the use of armed force against the threatening or aggressor state becomes

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37 The “Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the UN Charter” adopted by the UN General Assembly on 24 October 1970, first of all, stated that an attitude contrary to Article 2(4) of the UN Charter violates not only the UN Charter but also international law, and declared that this provision also acquired the value of a rule of custom.

38 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Reports, 1986, p. 14, par. 188-190.

39 For example, in the 1970 UN General Assembly Declaration, instead of a statement such as “States have the obligation not to use force or threat”, the expression “the duty to refrain... from the threat or use of force” is used.

40 See, UN Charter, article 39. The definition of the concept of “crime of aggression” within the jurisdiction of the ICC constitutes a separate issue.

41 “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

legitimate by other states. There have been examples of resorting to force based on such a decision.<sup>42</sup>

The UN General Assembly stated in a decision taken in 1950<sup>43</sup> that in cases where it is unable to fulfill its duties regarding the maintenance of international peace and security due to a veto in the UNSC, the General Assembly may hold an extraordinary meeting and recommend to member countries various measures, including the use of military force, to be taken to maintain or re-establish international peace and security. Similarly, this decision states that the General Assembly would use this authority in cases of “threat to the peace,” “breach of the peace,” or “aggression.”<sup>44</sup>

ii) Right to Self-Defence

The right to self-defence, which is considered to exist inherently and independently of any treaty provision, is recognized in Article 51 of the UN Charter. Accordingly, when one of the UN members is the target of an armed attack, it may exercise its individual or collective right to self-defence, which exists naturally – until the UNSC takes the necessary measures to maintain international peace and security. The state or states exercising the right to self-defence must immediately notify the UNSC of the measures they have taken.

Within this framework, in the case of an “armed attack” (*aggression armée*), the attacked state has the right to use armed force against the aggressor in self-defence, either alone or together with other states, “until the UNSC takes the necessary measures for the maintenance of international peace and security.”<sup>45</sup> The pro-

42 By resolution 660 (1990) of 2 August 1990, the UNSC expressed its concern about the invasion of Kuwait by Iraqi military forces earlier that day and determined that there was a “breach of international peace and security in connection with the Iraqi invasion of Kuwait”. Resolution 678 (1990) (29 November 1990, 2963rd meeting, adopted by 12 votes to 2, with Cuba and Yemen voting against, and China abstaining. The resolution authorised member states cooperating with the Government of Kuwait to “use all necessary means to promote and implement the resolution” in the event of Iraq’s failure to fully implement all relevant Council resolutions on or before 15 January 1991. See, paragraphs 1 and 2 of resolution 678 (1990). A similar example is UNSC resolution 814 on the situation in Somalia. See, “Consideration of the Provisions of Chapter VII of the Charter”, BM, (1993), p. 1121, [https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/en/sc/reper-toire/93-95/93-95\\_11.pdf](https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/en/sc/reper-toire/93-95/93-95_11.pdf), (Access date: June 12, 2024).

43 “Uniting For Peace Resolution”, G.A. Res. 337 (V), 3 November 1950, 5th Session Supp 20, p. 10. The decision was adopted with 52 votes in favour, 5 against and 2 abstentions.

44 The UN General Assembly convened urgently on the issues of Korea (1950), the Suez problem (1956), the Hungarian uprising (1956), Lebanon and Jordan (1958), the Congo problem (1960), the Middle East problem (1967), the Pakistan Civil War (Bangladesh problem) (1972), the Afghanistan problem (1980), the Palestine problem (1980, 1982), Namibia (1981) and the occupied Arab territories problem (1982) and determined and recommended measures on the basis of this decision.

45 Following the occupation of the Falkland (Malvinas) Islands belonging to England by Argentina in 1982, the UNSC passed resolution 502, but England took back the islands using armed force after this decision and based this action on the right of self-defense. When this example is taken into consideration, it should be evaluated that whether the decision has produced concrete results is important in this context. See, UN Doc.S/PV.2346.

vision of Article 51, however, ties the exercise of this right to the basic conditions of being subject to an existing armed attack.

There are some elements not explicitly stated in the provision. The first of these is that the armed attack in question must be a “use of armed force contrary to international law”.<sup>46</sup> The right of self-defence cannot be invoked against a legitimate use of armed force (for example, the use of force within the framework of a decision taken by the UNSC in accordance with Article 42). Secondly, the response given must be “proportionate”.<sup>47</sup> In other words, the military measures taken in the context of self-defence must be at a scale that will stop the aggressor and must not go beyond that. The use of armed force in a punitive or vengeful manner would exceed the limits of the right of self-defence.

## ASSESSMENTS ON THE USE OF ARMED FORCE ON AND AFTER OCTOBER 7TH

The Izz ad-Din Qassam Brigades launched a large-scale armed operation towards Israel, called the “Aqsa Flood” on the morning of October 7, 2023. This armed action began with approximately 5,000 rockets being fired at cities in the east of Gaza within twenty minutes, while at the same time, some Qassam Brigade members crossed into Israel by land and from the air with simple glider-like devices. Approximately 1,200 people, including approximately 350 Israeli soldiers and police officers, lost their lives, 5,500 people were injured, and 247 civilians and soldiers were taken hostage and transferred to Gaza.<sup>48</sup>

Israel launched heavy armed attacks on Gaza on and after October 7, initially from the air and later mainly from the land. The legitimacy of the operations launched by Israel after October 7, requires examining the elements regarding whether these attacks can be considered within the scope of the fight against terrorism or, on this basis, the right of self-defence.

### i) The Israel's Claims

As soon as the events began on October 7, a letter was sent by Israel to the UNSC informing them of the situation, and the following statement was used in the letter:

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46 Nicolas A. Nyiri, *The United Nations' Search for a Definition of Aggression*, (Peter Lang Inc., 1989), p. 347.

47 Chris O'Meara, *Necessity and Proportionality and the Right of Self-Defence in International Law*, (Oxford University Press, Oxford: 2021); David B. Rivkin, *Commentary on Aggression and Self-Defense*, (Routledge, Londra: 1992) p. 57, 58.

48 “*Hamas-Israel Conflict 2023: Key Legal Aspects*”, Israeli Ministry of Foreign Affairs, 3 December 2023, <https://www.gov.il/en/pages/hamas-israel-conflict2023-key-legal-aspects>, (Access date: December 14, 2023).

I write with great urgency regarding an extensive murderous terror attack against Israel perpetrated by the Palestinian terror group Hamas in the past hours against the citizens of Israel, thereby launching a murderous attack against Israel.<sup>49</sup>

In response to this action, which was described as a “terrorist attack” in the first hours, Israel launched the “Iron Swords” operation.<sup>50</sup> The statement made by Prime Minister Netanyahu regarding this operation includes the “war on terror” concept that was put forward after the terrorist attacks of September 11, 2001.<sup>51</sup> The statement made afterwards includes the following statements:

Pursuant to its right and obligation to protect itself and its citizens, Israel’s immediate goal is to take the legitimate measures necessary to rescue all the hostages and to ensure that Gaza will never again serve as a launch pad for terrorism.<sup>52</sup>

Therefore, Israel also puts forward the right to protect itself and its citizens, in other words, the right of self-defence, as the basis for the armed attacks it has carried out against and within Gaza since October 7, 2023.

The actions that took place on October 7, 2023 were carried out by Hamas, which holds the administration in the Gaza Strip. The Israeli operations launched after October 7 have also been tried to be explained by Israel as being carried out to counter the attacks of an illegal terrorist organization, in other words, to defend itself.<sup>53</sup> Some of the points put forward in Israel’s statements are as follows:

The scope of the attack launched by Hamas on October 7 is large, it resembles the attacks of September 11, it must protect its citizens and its country by taking all legitimate measures to secure the release of the hostages and neutralize the threat it faces, the threat is both serious and urgent, some Israeli communities are located just meters from the border, hundreds of thousands live in areas close to the border, Israeli territory has been entered, including Sderot, which has a population of over

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49 “Identical Letters Dated 7 October 2023 from the Permanent Representative of Israel to the United Nations Addressed to the Secretary-General and the President of the Security Council”, UN, 9 October 2023, <https://www.un.org/unispal/wp-content/uploads/2023/10/N2329234.pdf>, (Access date: July, 20 2024).

50 “Swords of Iron War”, <https://main.knesset.gov.il/EN/About/Lexicon/Pages/SwordsIron.aspx>, (Access date: July 20, 2024).

51 Toi Staff, “Promising Merciless War on Hamas, Netanyahu Says Israel will ‘Avenge This Black Day’”, *The Times of Israel*, 8 October 2023.

52 “Hamas-Israel Conflict 2023: Frequently Asked Questions”, Gov.il, 6 December 2023, [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English\\_Documents\\_Israel-Hamas%20Conflict%202023%20-%20FAQs%20\(Israel%20MFA,%206.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas%20Conflict%202023%20-%20FAQs%20(Israel%20MFA,%206.12.23).pdf), (Access date: December 14, 2023).

53 “Israel is lawfully defending itself against an avowedly genocidal terrorist organization...” See, “Hamas-Israel Conflict 2023: Frequently Asked Questions”, State of Israel, Ministry of Foreign Affairs, 8 December 2023, [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English\\_Documents\\_Israel-Hamas-Conflict-2023-FAQs-Israel-MFA-8-12-23.pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas-Conflict-2023-FAQs-Israel-MFA-8-12-23.pdf), (Access date: December 14, 2023). “Israel is determined to bring home the hostages held in Gaza and to protect its citizens and territory in accordance with the rule of law, despite facing an enemy that has as much contempt for the law as it does for human life.”

20,000, almost all of Israel is within range of Hamas' rockets, and it must prevent the ability of Hamas and other terrorist groups in Gaza to continue to attack its own citizens and territory.<sup>54</sup>

Israel also claims that it is “fighting ongoing attacks and threats from other states and terrorist groups, including Iran and its proxies such as Hezbollah,” and that “hundreds of rockets, missiles and drones have been fired at Israel from Lebanon and Syria, and that numerous ballistic missiles and UAVs have been launched at Israel from Yemen, and these attacks continue.”<sup>55</sup>

Some Western countries have openly declared their support for this approach. Shortly after the Israeli attacks began, US President Joseph Robinette Biden, Canadian Prime Minister Justin Trudeau, French President Emmanuel Macron, German Chancellor Olaf Scholz, Italian Prime Minister Giorgia Meloni and UK Prime Minister Rishi Sunak declared their support for “Israel’s right to defend itself against terrorism.”<sup>56</sup>

#### ii) Evaluation of Israel’s Acts in the Context of the Fight against Terrorism

The evaluation of Israel’s actions in the context of the fight against terrorism depends primarily on determining whether Hamas is a terrorist organization. While many Western states and Israel consider Hamas a terrorist organization,<sup>57</sup> some states, including Turkey, see Hamas as a political party that won democratic elections and, like Fatah, as a liberation movement of the Palestinian people.<sup>58</sup> It should also be emphasized that Hamas is not on the UN Security Council’s list of terrorist organizations.<sup>59</sup>

Hamas was founded by cadres formed by youngsters who fought against Israeli soldiers with stones in the civil resistance movement called the “First Intifada” in 1987. The founding leader of Hamas is known as the cleric Sheikh Ahmed Yassin. In its first declaration dated 1988, Hamas defined its aim as establishing

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54 “Hamas-Israel Conflict 2023: Frequently Asked Questions”.

55 “Hamas-Israel Conflict 2023: Frequently Asked Questions”.

56 “Joint Statement Following PM Call with Leaders of US, Canada, France, Germany and Italy: 22 October 2023”, Gov.uk, 23 October 2023, <https://www.gov.uk/government/news/joint-statement-following-pm-call-with-leaders-of-us-canada-france-germany-and-italy-22-october-2023>, (Access date: October 23, 2023).

57 The US, UK, EU and other Western countries describe Hamas as a terrorist organisation.

58 Some African and Asian states, as well as most Latin American states, such as Qatar, Iran and Russia, have developed bilateral relations with Hamas. See, Nour Mahd Ali Abu Aisha, Esat Firat and Muhammed Semiz, “The Palestinian Resistance Movement: How Does Which Country View Hamas?”, Anadolu Agency, November 29, 2021.

59 Before his resignation under intense pressure, UN Under-Secretary-General for Humanitarian Affairs Martin Griffiths stated on February 14, 2024 that Hamas was not on the UNSC terrorist organization list and therefore they did not consider it a terrorist organization. See, Danielle Greyman-Kennard, “UN Official Resigns Weeks after Claiming ‘Hamas is Not a Terrorist Group’”, *The Jerusalem Post*, 25 March 2024.

an Islamic Palestinian state in the lands of the former mandate of Palestine and rejected a permanent peace agreement with Israel.<sup>60</sup>

Hamas began using firearms and explosives in 1989. It established its armed wing in 1991, the Izz ad-Din Qassam Brigades. Hamas decided to participate in the elections held after Israel withdrew from Gaza in 2005 and secured the most popular vote in the Palestinian National Authority Legislative Council elections in Gaza under the name of “List of Change and Reform”. After the elections, the tension between Fatah and Hamas escalated into intense armed conflict in 2007. At the end of this process, Hamas established its dominance by removing Fatah from Gaza in 2007. From 2007 onwards, Hamas began to control Gaza and Fatah began to control the areas of the West Bank not under Israeli occupation. According to the UN Human Rights Council, Hamas is the de facto government of Gaza.<sup>61</sup>

Before the events of October 7, 2023, there were repeated attempts to reach a compromise between the two structures and unenforceable agreements were made, but Fatah, which did not want to share its role as the representative of the Palestinian people in the international community, could not form a permanent union with Hamas.<sup>62</sup>

The legal status of Hamas, which is repeatedly stated as the political representative of a section of the Palestinian people (those living in Gaza), is a matter for the Palestinians, who have this right, and for the Palestinian administration, which is overwhelmingly recognized as a state by the international community and addressed by the UN. How the Palestinian national administration, which is the legal representative of the Palestinian state encompassing the West Bank, Gaza and East Jerusalem, qualifies a formation that is the de facto government in a part of the country will also be binding on other states. The Palestinian national administration does not describe Hamas as a terrorist organization.

In fact, it was announced in a statement on July 23, 2024 that an agreement had been reached between Fatah and Hamas on the establishment of a “national

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60 Gökhan Çinkara, “Filistin’de İslami Hareketin Siyasallaşması: Hamas (1946-2024)”, Ombudsman Akademik, Özel Sayı 2 (Gazze), (May 2024), p. 163-194.

61 “The Commission also reiterates that the de facto authorities in the Gaza Strip, led by Hamas, have human rights obligations in light of their government-like functions.” See, “A/HRC/53/CRP.1”, UN High Commissioner for Human Rights, 2 June 2023. <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session53/A-HRC-53-CRP1.pdf>. (Access date: July 5, 2024).

62 “Hamas ile El Fetih Arasındaki Çatışma ve Müzakere Süreci”, SETA, 5 May 2011, <https://www.setav.org/yorum/hamas-ile-el-fetih-arasindaki-catisma-ve-muzakere-sureci>, (Access date: July 10, 2024).



unity government”.<sup>63</sup> This statement alone shows that the two formations that undertake the administration of two separate territories can act together in terms of the Palestinian people exercising their right to self-determination, and that they can also have this right separately. Considering that Fatah, which was considered a terrorist organization by Western states until 1974, has distanced itself from this characterization as the representative of the Palestinian people, reveals the need to exempt Hamas, which represents a portion of the Palestinian people, from this characterization as the representative of the Palestinians living in Gaza.

It is clear that Hamas, which is a party to the armed conflict in the occupied territories as a people's liberation organization, conducted the events of October 7, on the basis of its right to self-determination and its right to resist the occupation. Therefore, Hamas cannot be considered a “terrorist organization”.<sup>64</sup> The actions carried out by Hamas on October 7 can however be considered as violations of international law by a military formation that is the political and military authority of Gaza, rather than the activities of a terrorist organization. These actions can be evaluated as armed actions that overlap with acts prohibited under the Geneva Conventions regulating the law of armed conflict. As Hamas is obliged to comply with the Geneva Conventions and other related rules of international law, it is clear that these violations alone will not constitute sufficient grounds to consider any organization a “terrorist organization”. Resulting individual criminal responsibilities or legal responsibilities at the governmental level from the violations should be taken as separate.

Therefore, Israel's claim of fighting terrorism has no legitimate basis in terms of international law. In particular, declaring women, children, the elderly and civilians as terrorists and making them the target of attacks cannot be associated with such allegations of terrorism.<sup>65</sup> The “war on terror” concept declared by the US after 2001 has widely been debated and not legally accepted to create an indisputable legitimacy basis for military attacks.<sup>66</sup>

Since there is no common definition of terrorism and list of terrorist organizations that states have agreed upon in international law, the question of which action

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63 “Hamas ve El Fetih, Çin'deki Zirvede Ulusal Birlik Hükümeti Kurulması Üzerine Anlaştı”, BBC Türkçe, 23 July 2024.

64 Muhammed Hüseyin Mercan. “Süreklilik Ve Değişim Bağlamında Hamas'ın Siyasal Stratejisi”. *Ortadoğu Etütleri* 10, sy. 1 (June, 2018): 62-78.

65 Halil İbrahim Medet, “Israel Paints Palestinians as ‘Animals’ to Legitimize War Crimes: Israeli Scholar”, *Anadolu Agency*, 23 October 2023.

66 Mary Ellen O'Connell, “The Lessons of 9/11 for October 7”, *EJIL: Talk!*, 28 October 2023, <https://www.ejiltalk.org/the-lessons-of-9-11-for-october-7/>, (Access date: 24 May 2024).

is a terrorist act and which organization is a terrorist organization is debatable. A definition of terrorism put forward by an international mechanism has been put forward by the President of the Special Court for Lebanon, Antonio Cassese. Accordingly, the concept of terrorism in customary law contains three elements:<sup>67</sup>

(a) the commission or threat of a criminal act (such as murder, kidnapping, hostage-taking, arson, etc.); (b) the intention to spread fear among the population or to pressure, directly or indirectly, a national or international authority to take or refrain from taking action; (c) the act has a transnational element...

The acts that take place within this scope will be considered as terrorism. The legally important issue here is the definition of a terrorist organization. Terrorist acts and acts of states and other international law resemble each other. Every use of force by terrorist organizations is considered as a terrorist act. When these actions are carried out during armed conflicts, they constitute violations of the Geneva Conventions<sup>68</sup> and as related crimes. In other words, when these actions are committed during armed conflicts, they constitute a “war crime” in the context of international criminal law and are subject to international criminal prosecution, while terrorist acts carried out by terrorist organizations constitute crimes in terms of national criminal law and are subject to national prosecution only.

The statement of the ICC chief prosecutor on May 20 due to the actions that took place on October 7 actually reveals the nature of Hamas acts. The ICC chief prosecutor announced that he had prepared and submitted to the Court an arrest warrant for Hamas Political Bureau Chief Ismail Haniyeh, Hamas Gaza Officer Yahya Sinwar and Izz ad-Din Qassam Brigades Commander Muhammed Deif, who are considered responsible for war crimes and crimes against humanity.<sup>69</sup> With this statement, the chief prosecutor seems to have confirmed that Hamas is not a terrorist organization and that the acts on October 7 were not acts of a terrorist organization. The ICC does not have jurisdiction to try terror crimes.

That explains why Israel reacted to the arrest warrant not because it includes an arrest warrant for Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yaov Gallant, but because the warrant puts Hamas leaders and them on

67 Antonio Cassese and Paola Gaeta. *Cassese's International Criminal Law* (Oxford University Press; 3rd edition (31 January 2013)

68 According to Article 51(2) of Additional Protocol No. 2 to the Geneva Conventions of 1977, “The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

69 “Statement of ICC Prosecutor Karim A.A. Khan Kc: Applications for Arrest Warrants in the Situation in the State of Palestine”, ICC, 20 May 2024, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>, (Access date: May 20, 2024).

the same foot. The Israeli side stated that “the presence of both Hamas and Israeli leaders in the request is seen as putting terrorists and a state defending its people on the same level and therefore unacceptable, and made various accusations against the prosecutor, ranging from anti-Semitism to defending Hamas.”<sup>70</sup>

As a result, despite the fact that some states especially the western states consider Hamas as terrorist organization, many others do not see Hamas as such. Israel's claim of fighting terrorism is far from being legally acceptable.

### iii) Evaluation of Israel's Acts with Reference to Right to Self Defence

Whether or to what extent Israel's attacks on Gaza can be based on the right of self-defence should be assessed on the basis of how this right is regulated and interpreted by the relevant rules of international law.

Right to Self-defence can traditionally be defined as “self-defence of a country under attack.” It is considered a natural right for states, providing the legitimate basis for the use of force for defensive purposes in the event of an armed attack.<sup>71</sup>

Although Israel withdrew from Gaza, which it controlled from 1967 to 2005, it began imposing land, sea and air blockades after Hamas took control of the city in 2007.<sup>72</sup> Gaza is defined as an occupied, besieged and blockaded territory by the relevant rules of international law.<sup>73</sup> In the indictment prepared by the ICC Prosecutor's Office, it was stated that the claim that Israel lost its status as an occupying power after withdrawing its troops in 2005 was not acceptable, as it still has effective control due to the siege and blockade. Gaza should still be considered as occupied territory.<sup>74</sup> The Pre-Trial Chamber No. 1 of the Court described Gaza as occupied territory.<sup>75</sup> The International Committee of the Red Cross stated similarly that Gaza's status as an occupied territory continues.<sup>76</sup>

70 Haydar Oruç, “UCM Savcısından 7 Ekim ve Sonrası için Tutuklama Talebi: Gerekçe, Tepkiler ve Yansımaları”, *Kriter*, Cilt: 9, Sayı: 91, (June, 2024).

71 For the legal status of the right of self-defense, see the subheading “Right to Self-defense” in this report.

72 “Gaza Strip: The Humanitarian Impact of 15 Years of the Blockade”, BM, (June, 2022), <https://www.un.org/unispal/document/gaza-strip-the-humanitarian-impact-of-15-years-of-the-blockade-june-2022-ocha-factsheet>, (Access date: June 10, 2022).

73 “Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem”, ICJ, 19 July 2024, <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>, (Access date: July 10, 2024); “A/HRC/RES/55/28”, UN, 16 April 2024, <https://www.un.org/unispal/wp-content/uploads/2024/05/g2406764.pdf>, (Access date: July 10, 2024).

74 “Situation on Registered Vessels of Comoros, Greece and Cambodia Article 53(1) Report”, ICC, 6 November 2014, [https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-COM-Article\\_53\(1\)-Report-06-Nov2014Eng.pdf](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-COM-Article_53(1)-Report-06-Nov2014Eng.pdf), (Access date: July 20, 2024).

75 “Decision on the ‘Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine”.

76 “Israel and the Occupied Territories”, Uluslararası Kızılhaç Komitesi, <https://www.icrc.org/en/where-we-work/israel-and-occupied-territories>, (Access date: July 10, 2024).

Before and after the military acts that took place on October 7, the “aggressor” party in the Palestinian territories is the Israeli state due to its status as an occupier. Its position as an occupying power in Gaza clarifies many logical errors. Acts of an occupying power cannot be based on the right of self-defence. It is the same logic that Russia has no right to self-defence due to the attacks by a Ukrainian armed group in the occupied Ukrainian territory.

Nevertheless, the acts of Israel on and after October 7 should be judged with reference to the requirements of Article 51 of the UN Charter and beyond. The concepts of “attack”, “existence of attack” and “criteria of proportionality” should particularly be referred to.

*Allegations of an Unlawful Armed Attack against Israel*

The right of self-defence, traditionally accepted as a natural right for states, constitutes the legitimate legal basis for using armed force against illegal uses of armed force, i.e. acts of aggression. We initially come across with the concept of “aggression”. Has Israel really been come under an illegal aggression?

According to resolution 3314 (XXIX) of the UN General Assembly of December 14, 1974, an aggression is “the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or conduct in a manner incompatible with the UN Charter.” According to the ICC Statute, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.”

Regardless of the declaration of war, any of the following acts shall constitute an act of aggression in accordance with UN General Assembly resolution 3314 (XXIX) of 14 December 1974.<sup>77</sup> The actions mentioned are listed as follows:

- a. The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,
- b. Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- c. The blockade of the ports or coasts of a State by the armed forces of another State;

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<sup>77</sup> Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX). <https://documents.un.org/doc/resolution/gen/nr0/739/16/pdf/nr073916.pdf> (Access date: August 29, 2024).

- d. An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- e. The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- f. The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- g. The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

An act can be considered an aggression if it is, first of all, an armed action. Any coercive acts of economic or commercial nature have not been seen as an aggression. A prerequisite for an act of aggression is the existence of an armed action directly carried out by a state or a state-related group. As stated in Article 3 (g) of the UN General Assembly resolution numbered 3314, “The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein” are also accepted as the use of armed force in the context of giving rise to the right of self-defense.<sup>78</sup>

The acts on October 7, were carried out by the Izz ad-Din Qassam Brigades, the armed wing of Hamas. The actions appear to have reached a level beyond what can be described as low-intensity armed attacks. In total, approximately 1,200 people were killed, thousands were injured, and hundreds of prisoners and hostages were taken.

The representative of the Palestinian state in the international community is the Palestinian national government, also known as the Fatah administration or the West Bank administration. However, Hamas should be accepted as the legitimate political authority or government of Gaza that is an elected authority since 2007. While there is only one Palestinian state that is officially recognized *de jure* by many states and participates in some international organizations, especially

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<sup>78</sup> See, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986, p. 14, par. 195.

the UN, as a full or observer member, internal political conflicts have led to the formation of two separate political authorities in the Palestinian territories. Some states view Hamas as a political authority responsible for the administration of Gaza. Therefore, the armed actions on October 7 on behalf of Hamas, which is a political authority with a military wing, should be evaluated – aside from evaluations based on the rules of international humanitarian law – as actions carried out by the authority in Gaza against the occupying Israel.

In terms of Article 2, paragraph 4 of the UN Charter, which prohibits the use or threat of armed force, in order for the armed actions carried out by Hamas to give rise to the right of self-defence, they must be actions against the “sovereignty,” “territorial integrity,” or “political independence” of another state. The use of force by Hamas, which is the representative of the Palestinians in Gaza,<sup>79</sup> is in accordance with international law within the framework of UN General Assembly resolution 2625 (October 24, 1970). The said decision provides the following statements:

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.<sup>80</sup>

Apart from the evaluations on whether the armed actions carried out by Hamas on and before October 7, 2023 are in compliance with the Geneva Conventions, it is clear that they are in compliance with the *jus ad bellum* rules of international law. The use of force in order to realize the right of peoples to self-determination can also be taken as the exercise of the right of self-defence.<sup>81</sup>

The use of force by Palestinians for the purpose of establishing a sovereign Palestinian state with defined borders, guaranteed territorial integrity and political independence is based on a right accepted within the framework of *jus ad bellum* rules. Armed actions carried out within the scope of the right to self-determination are outside the scope of the concept of “aggression” since they aim

79 “Position paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory including East Jerusalem and Israel”, BM, 26 September 2023, <https://www.un.org/unispal/document/coi-positionpaper-icjadvisoryopinion-26sep2023>, (Access date: July 10, 2024).

80 “A/RES/2625, (XXV)”, T.C. Dış İlişkiler ve Avrupa Birliği Genel Müdürlüğü, 24 October 1970, [https://diabgm.adalet.gov.tr/arsiv/sozlesmeler/coktaraflioz/bm\\_yeni.html](https://diabgm.adalet.gov.tr/arsiv/sozlesmeler/coktaraflioz/bm_yeni.html), (Access date: July 10, 2024).

81 Rodney Pailles. “Self-Determination, the Use of Force and International Law: An Analytical Framework”, *University of Tasmania Law Review*, Cilt: 20, Sayı: 1, (2001).

to protect their own existence rather than targeting the sovereignty, territorial integrity or political independence of another state.

The acts of the Izz ad-Din al-Qassam Brigades against Israel on October 7, 2023 cannot be considered as aggression though they might have violated rules of the 1949 Geneva Conventions. They cannot be considered as acts directed against Israel's sovereignty, territorial integrity or political independence. It is clear that the Palestinians have the right to resist Israel to end the occupation and to achieve their own independence, as Israel is both an occupying state in Gaza and prevents the people's right to self-determination.

Aggression requires a certain seriousness, weight and importance too. The armed acts listed in Resolution 3314<sup>82</sup> and cited in the previous paragraphs are intended to provide an analogy in determining the situations in which the required seriousness, weight and importance are present. An armed action targeting the protected values of a state will only be considered an aggression if it has a certain seriousness. Low-intensity exchanges of fire at the border or actions of error or negligence are excluded from the concept of aggression.

Israel in a status of an occupier in Palestinian territory. Military measure taken against Israel are essentially the exercise of the right of self-defence or the right to self-determination. Apart from the evaluations in terms of the rules of international humanitarian law (*jus in bello*)- Hamas' armed actions are legitimate use of armed force in terms of the rules of *jus ad bellum*. Israel's armed actions to hold the occupied territories cannot be based on the right of self-defence.

#### *Existence of Attack and Compliance with the Principle of Necessity*

The necessity of using an armed attack should be proved for a right to self-defence. This criteria means that "the attack cannot be prevented and protected by any other means" rather than using force as a "last resort". In other words, there should be no means to stop an ongoing attack other than resorting to armed force.

Existence of an act of aggression alone will not be sufficient to legitimize the use of force within the framework of self-defence. Although the acts carried out by Hamas on October 7 do not meet the criteria required for aggression, we may still evaluate them with reference to criteria of "necessity".

If it were possible to achieve the same result by measures that did not involve the use of armed force, there would be no justification for engaging in conduct

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82 "Definition of Aggression" General Assembly Resolution 3314 (XXIX) 14 December 1974. <https://documents.un.org/doc/resolution/gen/nr0/739/16/pdf/nr073916.pdf?token=2ciuJ4JVpt6Sz8OHAz&fe=true> (Access date: July 20, 2024).



that violated the general prohibition on the use of armed force.<sup>83</sup> This indicates that in cases where there is not an ongoing act such as occupation, invasion, or regular or systematic attacks, the use of force within the scope of legitimate defence is no longer valid. If there is no more attack, there is no basis for right to self-defence.

Hamas' acts on October 7 caused a sudden shock but were not ongoing. Hamas infiltrated its militants deep into Israel and withdrew them at the end of the day. Neither an ongoing invasion nor an ongoing armed action existed. Only the rocket attacks that were fired in response to the air operations carried out by Israel in the following days can be observed. Taking hostages and prisoners of war and the partially ongoing rocket fire were the only acts. The Tel Aviv administration's statement on October 8 was that control over Israeli territory had been fully established and the attack had been halted.<sup>84</sup>

Israel still puts forward the rescue of the hostages as an excuse for self-defence. This justification can only make sense if it is a last resort in terms of the criterion of necessity. However, Hamas announced many times<sup>85</sup> that it will release the hostages in return for a ceasefire and has taken steps in this direction during the process, releasing a group of hostages. A plan was further put forward in UNSC resolution 2735<sup>86</sup> eliminates the necessity of conducting a military operation as a last resort to rescue the prisoners. These have invalidated Israel's arguments regarding the necessity criterion in terms of its goal of rescuing the prisoners through a military operation.

#### *Compliance with the Principle of Proportionality*

In the exercise of the right of self-defence, the criteria of "proportionality" must also be met. Even if we accept for a moment that Israel is exercising its right of self-defence, military acts can only continue in a scale to stop the aggression and also not reaching to a level of harming civilians is another condition for the exercise of the right of self-defence.<sup>87</sup>

This criterion determines the scope of the use of force for defensive purposes. The measure sought here includes a necessary and sufficient proportionality to

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83 "State Responsibility", BM, (1980), [https://legal.un.org/ilc/documentation/english/a\\_cn4\\_318\\_add5\\_7.pdf](https://legal.un.org/ilc/documentation/english/a_cn4_318_add5_7.pdf), (Access date: June 20, 2024).

84 David Gritten, "Israel's Military Says It Fully Controls Communities on Gaza Border", BBC, 9 October 2023.

85 "Hamas, İsrail'in Tamamen Çekilmesi Karşılığında 135 Günlük Ateşkes Önerdi", Euronews Türkçe, 10 July 2024).

86 "S/RES/2735".

87 Yücel Acer, "İsrail'in Gazze Saldırısı ve Uluslararası Hukuk", *Kriter*, Cilt: 8, Sayı: 84, (November 2023).



protect the sovereignty, territorial integrity and political independence of the state from the damages suffered as a result of aggression. The scope of the permitted use of force should not amount to a retaliation and punishment other than defensive purpose.<sup>88</sup>

While the number of people harmed by the incident, including those taken hostage or captive by Hamas on October 7, was around 7 thousand.<sup>89</sup> The number of people killed and injured in Israel's ongoing operation alone has reached a figure far beyond 130,000. Accordingly, it is clearly seen that Israel has inflicted at least several times more force on Palestinians following Hamas' actions, and therefore the proportionality criterion has been exceeded.

There have been Israel's statements such as "depopulating Gaza"<sup>90</sup> and completely eliminating Hamas through "Iron Swords" operation.<sup>91</sup> Since it is a political organization elected by the people of Gaza, a people who have the right to self-determination, aiming to completely eliminate Hamas would also mean an attack on the political independence of Gaza. Therefore, Israel is pursuing a level that exceeds the criterion of proportionality. Even if it exists, the right of self-defence would run counter to the principle of proportionality.<sup>92</sup>

If Israel pursued a plan solely to rescue hostages and prisoners to prevent rocket fire directed at it, it would act proportionally. The total destruction operation which do not distinguish between civilians and combatants cannot be considered a proportionate response. Attacks on civilians and civilian settlements are completely outside the legitimate boundaries of the right of self-defence. Israel's military actions in Gaza, which have caused heavy civilian casualties and caused serious damage to the civilian settlements and civilian infrastructure, cannot be justified by the right of self-defence.<sup>93</sup> It is a legal obligation to resolve subsequent problems through peaceful methods following a

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88 Sarthak Gupta, "Israel's Right to Self-Defense Under International Law", JURIST News, 22 December 2023, <https://www.jurist.org/commentary/2023/12/7-10-the-question-of-israels-right-to-self-defense-under-international-law>, (Access date: July 10, 2024).

89 According to the information provided by Israel, in the events that took place on October 7, 2023, around 1,200 people lost their lives, 5,500 people were injured and 247 people were taken hostage and captured. See, "Hamas-Israel Conflict 2023: Key Legal Aspects".

90 Patrick Wintour, "Entire Population of Gaza Becoming 'Dehumanised' Says UN Commissioner", *The Guardian*, 30 October 2023.

91 "Netanyahu Says the War will not End until Hamas is Destroyed", VOA News, 1 June 2024, <https://www.voanews.com/a/netanyahu-says-the-war-will-not-end-till-hamas-is-destroyed-/7639063.html>, (Access date: May 28, 2024).

92 Milanovic, "Does Israel Have the Right to Defend Itself?".

93 Yücel Acer, "İsrail'in Gazze Saldırısı ve Uluslararası Hukuk", *Kriter*, Cilt: 8, Sayı: 24, (November, 2023).

successful resort to self-defence. Article 2, paragraph 3 of the UN Charter imposes an obligation on all countries to resolve problems through non-violent, i.e. peaceful, methods.<sup>94</sup>

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<sup>94</sup> Acer, "İsrail'in Gazze Saldırısı ve Uluslararası Hukuk".



# ISRAEL'S ACTS ON AND AFTER OCTOBER 7<sup>TH</sup> IN TERMS OF *JUS IN BELLO*

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“Law during war” (*jus in bello*) or “international humanitarian law” as it is widely known today, refers to the rules that must be followed by the conflicting parties during conflicts, regardless of whether they start in accordance with the rules of law or not.

## RULES TO BE OBSERVED DURING ARMED CONFLICTS AND CONSEQUENCES OF VIOLATIONS

### i) Rules to be Observed in Armed Conflicts

The rules to be followed during war consist of two subgroups: “rules regarding weaponry and methods of war” and “rules regarding the protection of civilians, wounded, sick and prisoners of war who can be considered as victims of war”.

It is essentially impossible to separate the rules in the two groups completely from each other.<sup>95</sup> Because the main purpose of the rules in the first group is to protect those who are out of the war from the negative effects of the war and to protect the combatants from unnecessary deaths, injuries and pain.

The main purpose of all these rules is to prevent unnecessary deaths, unnecessary suffering and unnecessary destruction without completely preventing the requirements of war, especially defensive wars, and to limit the war to a certain

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<sup>95</sup> On this subject, see: Hilaire McCoubrey, *International Humanitarian Law*, (Dartmouth Publishing: Boston, 1990), p. 2.

extent only to its political purposes. Due to the inseparable relationship between all these rules, the conventions that include legal rules regulating weaponry and methods of war also include the rules regarding the protection of civilians or other non-combatant groups of individuals. Therefore, the concept of “international humanitarian law” is mostly used instead of more traditional the concept of “international law of armed conflict”.

The history of the conventions that created the rules goes back to the 1860s. Today, new international agreements continue to be concluded. The first multilateral international agreement in this field was the “Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 1864.”<sup>96</sup> The agreements concluded before World War I are the conventions signed at The Hague in 1899 and 1907.<sup>97</sup> The Hague Conventions mainly determine the “weaponry” and “war techniques” prohibited to be used. Bu dönemde ayrıca “1906 Cenevre Savaş Alanında Yaralıların ve Hastaların Durumunun İyileştirilmesi Sözleşmesi”<sup>98</sup> nin de yapıldığını görüyoruz.

Similar conventions have also been made in the years between the two world wars. The “1925 Geneva Protocol for the Use of Asphyxiating, Poisonous and Similar Gases and Bacteriological Agents” and the “1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick on the Battlefield” are examples.

The four Geneva Conventions signed in 1949 immediately after World War II and the two additional protocols to these Conventions made in 1977<sup>99</sup> mostly contain rules regarding the protection of non-combatants during wartime, especially civilians, wounded, sick and prisoners of war.

96 Convention for the Amelioration of The Condition of the Wounded in Armies in the Field.

97 These are the “Convention for the Pacific Settlement of International Problems”, the “Convention on the Initiation of Armed Conflict”, the “Convention (IV) respecting the Laws and Customs of War on Land”, the “Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land.” In addition, some conventions on naval warfare have been adopted. For the texts of these conventions, See, D. Schineder ve J. Toman, *The Laws of Armed Conflicts, A Collection of Conventions, Resolutions and Other Documents*, 2. Baskı, (Sijihoff & Northoff, Cenevre: 1981), p. 57, 211.

98 “1906 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick on the Battlefield”.

99 “Convention (I) For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field”, “Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea”, “Convention (III) Relative to the Treatment of Prisoners of War”, “Convention (IV) Relative to the Protection of Civilian Persons in Time of War”. The additional protocols added in 1977 are: “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)”, “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)”. For conventions and additional protocols See, Schineder ve Toman, *The Laws of Armed Conflicts, A Collection of Conventions, Resolutions and Other Documents*, p. 305-525, 551-619.

In addition to the Geneva Conventions and their additional protocols, some other conventions have also been concluded, such as the 1954 Convention for the Protection of Cultural Property in Armed Conflict (and two additional protocols), the 1972 UNESCO World Heritage Convention, the 1972 Biological Weapons Convention, the 1980 Convention on Conventional Weapons and five additional protocols, the 1992 European Convention for the Protection of the Archaeological Heritage, the 1993 Chemical Weapons Convention and the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention).

Rules have also been approved today for the protection of the natural environment from the effects of war. The Hague Convention on the Law and Customs of Land Warfare, the four Geneva Conventions and the 1977 Protocol I are conventions that contain some of these rules. The most detailed regulations on this subject include the Hague Convention for the Protection of Cultural Property in Armed Conflict signed in 1954, the European Convention for the Protection of the Archaeological Heritage in 1992, the UNESCO World Heritage Convention in 1972 and the Convention on the Prohibition of Military or Hostile Use of Environmental Modification Techniques<sup>100</sup> negotiated at the Conference of the Commission on Disarmament in 1976.<sup>101</sup> The Convention was opened for signature by the UN General Assembly in Geneva.<sup>102</sup>

A significant portion of these conventions have acquired the value of customary law rules and have become binding on states that are not party to the said conventions.<sup>103</sup>

#### *Prohibited Types of Weapons and Methods of Conflict*

The rules governing prohibited types of weapons and methods of conflict specify the characteristics of the weapons and types of activities – rather than listing them one by one. The St. Petersburg Declaration of 1868<sup>104</sup> banned bullets that explode and disperse in the human body, causing excessive pain and injuries, and bullets weighing less than 400 grams, explosives, igniters or incendiary bul-

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100 The Convention entered into force on 5 October 1978. UNTS, Cilt 1108, (1978), p. 156-160. Turkey has signed the agreement but has not yet ratified it. Today, 78 countries are parties to this agreement. Armenia became a party to the agreement on May 15, 2002, while Azerbaijan is not yet a party.

101 The conference took place on 10 December 1976.

102 The Convention was opened for signature on 18 May 1977.

103 See, ICTY, Tadic Davasi, Vol II, Chapter 44, p. 106.

104 “Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight”, Saint Petersburg, 29 November-11 December 1868.

lets. Three separate declarations made in The Hague in 1899 banned “asphyxiating gases causing unnecessary suffering” and “dum-dum bullet-like bullets that inflict unnecessary cruel wounds.”<sup>105</sup>

The Hague Convention on the Law and Methods of Land Warfare also emphasizes the principle of unnecessary suffering and clearly prohibits the use of poison or poisoned weapons in land warfare, the cruel killing or wounding of members of the enemy or army, the killing or wounding of an enemy who laid down his arms or is no longer able to defend himself or has surrendered, the declaration of no amnesty from the outset, the use of weapons, ammunition or equipment designed to cause unnecessary suffering, the use of the armistice flag, the national flag or the enemy’s military insignia and uniform or the signs established by the Geneva Conventions of 1864 and 1906 for deceptive purposes or in an improper manner, the destruction or seizure of enemy property unless required by the exigencies of war, and the declaration that the rights and actions of members of the enemy have been annulled, suspended or declared inadmissible in a court of law. It also prohibits forcing the citizens of the enemy to participate in military operations against their own country.<sup>106</sup> The Geneva Protocol of 1925 banned bacteriological weapons.

The 1949 Geneva Conventions and especially the 1977 Additional Protocol I foresee the prohibition of the use of weapons, ammunition, materials and methods of warfare which are of a nature to cause more severe injury or unnecessary suffering.<sup>107</sup> The Protocol also includes the obligation of the party states to ensure that newly developed weapons do not contravene the principles stated in the Geneva Conventions.<sup>108</sup>

Killing, wounding or capturing an enemy through treachery (exploiting the enemy’s trust) other than through stratagems,<sup>109</sup> improper use of the distinctive emblems of the Red Cross, Red Crescent, Red Lion or Red Sun institutions or oth-

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105 “Declaration (IV,1), to Prohibit, for the Term of Five Years, the Launching of Projectiles and Explosives from Balloons, and Other Methods of Similar Nature”, The Hague, 29 July 1899; “Declaration (IV,2) concerning Asphyxiating Gases”, The Hague, 29 July 1899; “Declaration (IV, 3) Concerning Expanding Bullets”, The Hague, 29 July 1899.

106 See, Article 23/e. “IV Convention Respecting the Laws and Customs of War on Land”, The Hague, 18 October 1907, 36 Stat. 2277, Treaty Series 539.

107 “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)”, article 35, par. 1 and 2.

108 “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)”, article 35, par. 1; article 36.

109 “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)”, article 37.

er emblems, symbols or signals provided for by the conventions or this Protocol, using flags or military emblems, insignia or uniforms of neutral or non-participating states, giving orders that no one shall survive, threatening an enemy with this and waging war by this method are all prohibited. In addition, it is prohibited to target a person who is understood to be out of combat or who should be considered so under the existing conditions, and to target people who jump from an aircraft with parachutes during their descent in case of danger.<sup>110</sup> In particular, targeting civilians and civilian settlements not directly involved in armed conflict and subjecting them to attacks are completely prohibited acts.<sup>111</sup>

International agreements established in the years following the 1949 Geneva Conventions have prohibited some specific weapons and methods of war and expanded the scope of application of these prohibitions. The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction<sup>112</sup> prohibits the use of these substances. The 1977 Convention on the Prohibition of the Use, Production and Transfer of Anti-Personnel Land Mines<sup>113</sup> imposes a general ban on lethal warfare equipment of the type specified.

The 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons of Extremely Injurious and Indiscriminate Effects and its Additional Protocol and the amendments to this Convention in 2001 extended these prohibitions to include non-international armed conflicts. In 1995, Protocol IV, titled "Blinding Laser Weapons Protocol",<sup>114</sup> was added to the Convention, which also banned blinding laser weapons. The 1993 Paris Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction prohibits biological and bacteriological weapons.

An important restriction on weaponry and methods of warfare is the protection of the natural environment. The Hague Convention on the Law and Customs of Land Warfare, Geneva Convention IV and the 1977 Protocol I contain provisions on the protection of the environment during armed conflict. Article 53 of

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110 "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)", article 35, par. 1; article 38, 39, 40, 41, 42.

111 "Convention Respecting the Laws and Customs of War on Land", article 23 (c); "Convention (IV) Relative to the Protection of Civilian Persons in Time of War", article 13-23; Protocol I (1977), article 48-58.

112 It was signed on 19 April 1972 and entered into force on 26 March 1975.

113 The Convention was signed on 14 February 1997 and entered into force on 1 March 1999.

114 The protocol was signed on 13 October 1995 and entered into force on 30 July 1998.



the Geneva Convention IV prohibits the intentional or indiscriminate destruction of property belonging to individuals, the State or other public authorities. Article 147 prohibits “illegitimate or arbitrary large-scale destruction or misappropriation of property not justified by military necessity.”

The 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict, the 1992 European Convention for the Protection of the Archaeological Heritage and the 1972 UNESCO World Heritage Convention also contain similar rules. The Convention on the Prohibition of Military or Hostile Use of Environmental Modification Techniques,<sup>115</sup> negotiated at the 1976 Conference of the Commission on Disarmament,<sup>116</sup> also provides similar provisions.

#### *Persons Wounded and Sick*

In all declared or undeclared wars and in all armed conflicts, and also in all occupations, the protection of wounded or sick soldiers is required. In addition, minimum standards have been determined for how these people should be treated even in non-international armed conflicts. These people are considered as members of the armed forces, militia and volunteers, members of organized resistance forces that meet certain criteria, military vehicle crews and resistance fighters in occupied areas.<sup>117</sup>

It is mandatory to provide care and protection to the wounded or sick in all conditions. These people should be treated humanely without discrimination based on gender, race, nationality, religion, political views and similar criteria. Killing, torturing, experimentation and deprivation of medical care are prohibited. Women should be treated with the sensitivity required by their gender, should not be deprived of certain medical care and should not be subjected to poor conditions.<sup>118</sup>

#### *Prisoners of War*

It is also regulated how those who gain the status of prisoner of war when they fall into enemy hands,<sup>119</sup> namely members of the armed forces and militia and volunteers who are taking part in the armed forces, should be treated hu-

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115 The Convention entered into force on 5 October 1978. UNTS, Volume: 1108, (1978), pp. 156-160. Turkey has signed the Convention but has not yet ratified it. Today, 78 countries are parties to the Convention. Armenia became a party to the Convention on 15 May 2002, while Azerbaijan is not yet a party.

116 The conference took place on 10 December 1976.

117 See, Convention (I) for The Amelioration of the Condition of the Wounded And Sick in Armed Forces in the Field, article 3.

118 Article 12.

119 See, Convention (III) Relative to the Treatment of Prisoners of War, article 4.

manely from the moment they fall into the hands of the opposing side until they are released.

These individuals should not be subjected to torture or similar ill-treatment, they should be provided with the medical care and other basic needs, they should be protected against acts of violence and revenge that may be directed at them. Women should be treated in accordance with their gender. They should not be charged for meeting their basic needs. They should not be forced to give information other than their name, surname, date of birth, rank and where they are on duty. They should be treated according to their rank, should be able to communicate in their own language. They should be kept in safe places, be given the opportunity to meet with religious and medical officials and fulfil their religious duties. Torture or ill-treatment of prisoners, forcing prisoners to fight and not being tried fairly are considered “grave breaches” of the Geneva Conventions.<sup>120</sup>

#### *Civilians*

Although Geneva Convention IV, which contains the majority of the rules regarding the protection of civilians, does not directly define who civilians are. It is understood from many rules in the Convention that everyone outside the two categories mentioned and who is not combatant should be considered civilians.<sup>121</sup>

The basic principle regarding the protection of civilians is that civilians should not be subjected to deliberate killing, torture or corporal punishment. Civilians should be treated humanely, and their personality, dignity, family rights, beliefs, worship and traditions should be respected under all circumstances. Rape, forced prostitution and putting them in a shameful situation are prohibited. No discrimination should be made among civilians. Taking hostages, imposing collective punishment or threatening them with such are also prohibited. Health and religious officials and civil defence teams have a special protection status.

It is prohibited to seize and damage enemy property except for war requirements. While public property can be seized, education, health, worship and municipal property should be excluded.<sup>122</sup> Seizure of occupied private property and looting of property are prohibited. Additional Protocol I provides rules regarding the protection of certain properties according to their functions.<sup>123</sup>

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<sup>120</sup> Article 130d.

<sup>121</sup> See, Melike B. Yamaner, *Silahlı Çatışmalarda Sivillerin Korunması*, (Arıkan Publications, İstanbul: 2007).

<sup>122</sup> See, “Convention (IV) Relative to the Protection of Civilian Persons in Time of War”, (1907), article 23, 46.

<sup>123</sup> See, “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)”, article 52 vd.

Article 3 of each of the 1949 Geneva Conventions has the same content. This article, known as Common Article 3, stipulates the following minimum standards for the protection of individuals in non-international armed conflicts. It reads “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:”

“(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

#### ii) Consequences of Violations

In some regulations made immediately after World War I, violations of the rules of the law of armed conflict were considered crimes.<sup>124</sup> While the trials after World War II further strengthened this principle, Articles 49 and 50 of the Geneva Convention I stipulated that those who committed the listed acts would be guilty of

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<sup>124</sup>After World War I, a provision was included in Article 227 of the Treaty of Versailles to try Kaiser Wilhelm II for “grave crimes against international morality and the essence of treaties”, but this provision was not implemented.

a crime and that the party states undertook the obligation to determine the penal sanctions to be applied to those who committed or gave orders to commit one of these crimes. The same provisions are also placed in other Geneva Conventions.<sup>125</sup>

The crime categories that emerged as a result of the international regulations and the international trials to be specified in the following paragraphs are classified as “crimes against peace” (or “crime of aggression”), “war crimes”, “crimes against humanity” and “crime of genocide”.

The crime of aggression is crime of aggression means “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”.<sup>126</sup> In short, the crime of aggression is defined as the planning of a war of aggression contrary to international law.

War crimes are summarized as violations of the rules regulating the protection of weapons and methods, civilians and other non-combatants.<sup>127</sup> Today, acts that harm the natural environment are also considered war crimes. Among the war crimes listed in Article 8 of the ICC Statute, the act of “initiating an attack with the knowledge that it will cause long-term and severe damage to the natural environment” is also mentioned.<sup>128</sup>

Crimes against humanity are acts such as killing, exterminating, enslaving, deporting or forcibly transferring a population when committed as part of a widespread or systematic attack on any civilian population in times of war or peace.<sup>129</sup>

The crime of genocide, which is a more serious form of crimes against humanity, is the commission of one or more of the following acts with the intent to destroy in whole or in part a national, ethnic, racial or religious group: “killing members of the group”, “causing serious bodily or mental harm to members of the group”, “deliberately inflicting on the group conditions of life calculated to bring about its

125 See, “Convention (IV) Relative to the Protection of Civilian Persons in Time of War”, article 146-147.

126 ICC Statute, Article 8*bis*.

127 The second paragraph of Article 8 of the Rome Statute, which established the ICC, defined “grave violations of the 1949 Geneva Conventions” in its first paragraph and “other violations of the laws and customs rules applicable to international armed conflicts” as war crimes in its second paragraph and provided for punishment.

128 Article 8, paragraph 2 (b, iv).

129 Crimes against humanity are listed in Article 7 of the ICC Statute. The crimes in question are defined in the section titled “Genocide and Crimes Against Humanity” of the Turkish Penal Code, and the crime of genocide is defined in Article 76 as “committing one of the following acts against members of a national, ethnic, racial or religious group with the intent to destroy this group in whole or in part through the execution of a plan” and the acts are listed. Crimes against humanity is defined in Article 77 as “the systematic commission of the acts listed in accordance with a plan against a segment of society with political, philosophical, racial or religious motives”.

physical destruction in whole or in part;” “Imposing measures intended to prevent births within the group” and “Forcibly transferring children of the group to another group.”<sup>130</sup> In addition, the acts of “committing genocide”, “conspiracy to commit genocide”, “direct and public incitement to commit genocide”, “complicity in genocide” are also considered crimes in relation to the crime of genocide.<sup>131</sup>

Violations of the rules are “criminal” violations that give rise to criminal liability for real persons. The person alleged to have committed the crimes in question is responsible and will be punished, whether they commit these acts individually, jointly with another person or through another person.<sup>132</sup>

The first concrete example of international criminal trials was in military courts established by the Allied Powers in their own occupied zones in Germany, known as Nuremberg and Tokyo trials.<sup>133</sup> The Nuremberg and Tokyo military criminal courts established following World War II conducted trials that strengthened beyond doubt the principle that violations of the rules on armed conflicts in international law lead to personal criminal liability.<sup>134</sup>

Further examples of international trials have been conducted following the 1949 Geneva Conventions. The International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, established by the UNSC, have been important examples. Following these developments, the ICC was established<sup>135</sup> as a permanent international criminal court with the Statute of 1988 that entered into force in 2002.

## ASSESSMENT OF ISRAEL'S ACTS WITH REFERENCE TO INTERNATIONAL CRIMINAL LAW

### i) The Crime of Aggression and Israel's Acts

In the previous section, we defined the crime of aggression and stated that this crime is the planning of a war of aggression contrary to international law by

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130 See, “Convention on the Prevention and Punishment of the Crime of Genocide”, article 2.

131 “Convention on the Prevention and Punishment of the Crime of Genocide”, article 3.

132 See, “ICC Statute”, article 25.

133 With the enactment of Law No. 10, the Allied Powers tried German military and political leaders for violations of the rules set forth in the Hague Conventions in military courts established in their own occupied territories. Between 1946 and 1949, it tried 12 cases, each of which tried dozens of people. On December 20, 1945, the Control Council for Germany enacted Law No. 10 to give effect to the 1943 Moscow Declaration and the 1945 London Agreement. *Trials of War Criminals before the Nurnberg Military Tribunals*, Cilt 3, (United States Printing Office, 1951), p. XVIII.

134 Howar Ball, *Prosecuting War Crimes and Genocide | The Twentieth-Century Experience*, (University Press of Kansas, Kansas: 1999), p. 85.

135 The ICC Statute was adopted at the conference held in Rome in 1998 and entered into force on 1 July 2002.

a person or persons in a position to effectively control or direct the political or military action of a state.

When the ICC Statute was adopted, no consensus could be reached on the definition of the “crime of aggression”. A definition was made at the meeting of the Assembly of States Parties in Kampala on 10 July 2010, and thus the crime of aggression was actively included in the jurisdiction of the ICC.

According to Article 8*bis* added to the Rome Statute, the crime of aggression is defined as “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”.

The definition of the act of aggression is stated as “act of aggression means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.” In addition, the acts listed in Article 3 of the UN General Assembly’s resolution 3314 (XXIX) dated 14 December 1974 are listed as they are and are shown as examples of the act of aggression.

The most important and perhaps indisputable example of these is the invasion, occupation and annexation. In subparagraph (a): “An invasion or attack by the armed forces of a state against the territory of another state or any military occupation or force resulting from such invasion or attack, however temporary, or the annexation of all or part of the territory of another state.” Again, subparagraph (c) qualifies the blockade of coasts as an act constituting the crime of aggression: “The blockade of the ports or coasts of a state by the armed forces of another state.”

As stated, Israel has been defined as an “occupying power” in resolutions of many UN and some other international organization as well as in judicial evaluations concerning the Palestinian territories.<sup>136</sup> The Israeli operations that started after October 7, 2023 can be defined as the continuation of an occupation ongoing since 1967, and as an invasion. The ongoing policy of establishing new settlements in the Palestinian territories can be considered as an annexation.<sup>137</sup> Again, after Hamas took control of Gaza in 2007, a land, sea and air blockade of Gaza was implemented. Therefore, the invasion, occupation, annexation and blockade of

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<sup>136</sup> “Situation on Registered Vessels of Comoros, Greece and Cambodia”, ICC, 6 November 2014, [https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-COM-Article\\_53\(1\)-Report-06Nov2014Eng.pdf](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-COM-Article_53(1)-Report-06Nov2014Eng.pdf), (Access date: August 14, 2024); “Israel and the Occupied Territories”, ICRC, <https://www.icrc.org/en/where-we-work/israel-and-occupied-territories>, (Access date: August 14, 2024).

<sup>137</sup> A/HRC/RES/55/32, 15 April 2024.

Palestinian territories by Israel constitute ongoing crimes of aggression within the scope of Article 8*bis* of the Rome Statute.

The crime of aggression is a crime that can be committed “by a person in a position effectively to exercise control over or to direct the political or military action of a State”. In other words, only heads of state and government and those in charge of military command can be tried in the context of this crime.

The Assembly of States Parties, which is authorized to determine the date after which the ICC would have jurisdiction over acts of aggression, activated the Court’s jurisdiction as of July 17, 2018. In other words, the ICC has jurisdiction over acts of aggression committed after July 17, 2018.<sup>138</sup>

Considering that Palestine recognizes the jurisdiction of the ICC after May 13, 2014 over the Palestinian territories including those occupied, all senior civilian and military leaders of Israel on duty after July 17 can be tried for the crime of aggression. It is also possible to open an investigation in the context of the “crime of aggression” for all persons in the “War Cabinet” established after October 7, 2023 with decision-making authority, other than ordinary civilian and military officials.

#### ii) War Crimes and Israel’s Acts

In the previous section, the concept of war crimes was defined in general. War crimes arise from violations of the rules regulating the use of weaponry and methods in armed conflicts and aimed at protecting civilians and other non-combatants. These acts are committed negligently or deliberately, often in order to gain military advantage, and are considered violations of these rules, without being part of a widespread and systematic plan.

Deliberate killing, torture or inhuman treatment, including biological experiments, deliberately inflicting great suffering or serious injury on body or health, widespread destruction or appropriation of property without military necessity, unlawful and arbitrary, forcing a prisoner of war or other protected person to serve in the armed forces of an enemy state; deliberately depriving a prisoner of war or other protected person of the right to a fair and regular trial; In addition to actions such as unlawful deportation or transfer or unlawful detention, taking hostages, attacks on civilians, killing surrendered soldiers, abusing the flag of surrender, deporting people from occupied territories, using poi-

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138 “Assembly Activates Court’s Jurisdiction over Crime of Aggression”, ICC, 15 December 2017, <https://www.icc-cpi.int/news/assembly-activates-courts-jurisdiction-over-crime-aggression>, (Access date: December 15, 2023).

soned weapons, using civilians as shields, using child soldiers, attacking those displaying the flag of truce, and killing those jumping from crashed aircraft are considered war crimes. Today, actions that harm the natural environment are also considered war crimes.

A more detailed list of these is included in Article 8 of the ICC Statute. In addition to serious violations of the Geneva Conventions, other violations of the rules regulating weaponry and methods of warfare, which primarily aim to protect non-combatants, are also included in the list of crimes.

The most prominent aspect of the actions carried out by Israel on and after October 7, 2023 is the deliberate killing or injury of civilians. As of the end of May 2024, civilian deaths in Gaza exceeded 34,800. Among those who were identified, 7,356 of them were children and 5,419 of them are women.<sup>139</sup> Thousands of children were missing, most of whom were probably under the rubble of collapsed buildings.<sup>140</sup> As thousands of people are still missing and many of them are under the rubble.<sup>141</sup>

According to figures provided by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) based on data from the Gaza Ministry of Health, 37,396 Palestinians have lost their lives as a result of Israel's attacks between October 7, 2023 and June 19, 2024.<sup>142</sup> These figures show that the number of deaths in the conflict between 2005 and 2023 constitutes only less than one-tenth of the deaths since October 7.

As Israel's attacks continue, the number of civilians killed continues to rise. According to the official figure announced by the Ministry of Health on Thursday, September 27, over 41,534 Palestinians lost their lives and 96,092 civilians were injured.<sup>143</sup>

The Independent International Commission of Inquiry on Occupied Palestine, East Jerusalem and Israel (hereinafter referred to as the Commission of

139 "وزارة الصحة الفلسطينية/ غزة", Telegram, 5 May 2024, <https://t.me/MOHMediaGaza/5405>, <https://t.me/MOHMediaGaza/5401>, (Access date: August 15, 2024).

140 "وزارة الصحة الفلسطينية/ غزة"; "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel", OHCHR, <https://www.ohchr.org/en/hr-bodies/hrc/co-israel/index>, (Access date: August 11, 2024).

141 "10,000 People Feared Buried Under the Rubble in Gaza", UN, May 2, 2024, <https://news.un.org/en/story/2024/05/1149256>, (Access date: August 11, 2024).

142 "Reported Impact Snapshot Gaza Strip", UN Office for the Coordination of Humanitarian Affairs, 19 June 2024, <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-19-june-2024>, (Access date: August 11, 2024).

143 Ali Semerci, Hosni Nedim ve Ömer Erdem, "İsrail'in 356 Gündür Saldırılarını Sürdürdüğü Gazze'de Can Kaybı 41 bin 534'e Yükseldi", Anadolu Agency, 27 September 2024.



Inquiry) assessed that the figures given above indicate a significant increase in the number of deaths of women and children compared to those lost in previous conflicts.<sup>144</sup> It was stated that the Israeli army kills an average of 250 Palestinian civilians per day, which exceeds the daily death toll in other major conflicts in recent years.<sup>145</sup>

The average number of civilians killed in the first weeks of the attacks was even higher. More than 400 civilians were killed every day on average.<sup>146</sup> According to a statement made by the UN, as of October 23, just two weeks after the attacks began, the number of civilians killed exceeded 5,000.<sup>147</sup> In a press conference held on November 7, the head of the government's media office in Gaza, Selame Marouf, stated that as a result of Israel's attacks on Gaza, a total of 10,328 people, including 4,237 women and 2,719 children, were killed and approximately 26,000 people were injured.

The Commission of Inquiry found that the deaths and injuries were related to the Israeli army's frequent use of explosive weapons with a wide area effect in populated areas, including air strikes, tank and artillery fire, and naval bombardments, and the use of various explosive weapons with a wide area effect.<sup>148</sup> The use of these types of weapons, i.e. weapons that indiscriminately harm civilians, also constitutes a war crime.

Due to the nature of Israel's attacks, it will continue to cause civilian deaths in the future beyond the current deaths it has already caused. Even if Israel's attacks stop now, it is estimated that factors such as epidemics will cause many more indirect deaths in the long term. According to research, the cumulative effects of Israel's attacks on Gaza mean that the real death toll could reach more than 186,000 people.<sup>149</sup>

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144 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024) A/HRC/56/26", UN, par. 43, <https://www.un.org/unispal/document/coi-report-a-hrc-56-26-27may24/>, (Access date: August 11, 2024).

145 "Daily Death Rate in Gaza Higher than any Other Major 21st Century Conflict", Oxfam International, 11 January 2024, <https://www.oxfam.org/en/press-releases/daily-death-rate-gaza-higher-any-other-major-21st-century-conflict-oxfam>, (Access date: August 11, 2024).

146 Muhammed Emin Canik, "İsrail'in Saldırılarında Gazze Şeridi'nde 40 Bin Konut Tamamen Yıkıldı", Anadolu Agency, November 7, 2023.

147 "Israel-Palestine: Gaza Death Toll Passes 5,000 with No Ceasefire in Sight", UN, 23 October 2023, <https://news.un.org/en/story/2023/10/1142687>, (Access date: August 11, 2024).

148 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 40.

149 "Gaza Toll Could Exceed 186,000, Lancet Study Says".

Israeli attacks targeting civilians have been continuing even as this report was being prepared. While heavy bombardment was reported to have intensified in northern, central and southern Gaza, the head of UNRWA, the UN agency for Palestinian refugees, stated that shelters converted from schools were being bombed.<sup>150</sup> Israeli forces reportedly killed at least 90 civilians and injured around 300 people in airstrikes on the Mawasi region of Gaza on July 13. UN spokesman Stephane Dujarric stated that reports showed that the attack took place in a densely populated area “designated as a humanitarian zone for displaced people” and said, “This underscores that no place in Gaza is safe.”<sup>151</sup>

In addition to those who lost their lives, there are thousands of women, men and children who have been disabled as a result of the Israeli government’s bombings. These people have lost limbs, perhaps an arm or a leg, and will need support and medical care for the rest of their lives.<sup>152</sup> While evacuations continue during the forced displacement of civilians, the Israeli army continues to attack designated safe zones, including Rafah and Khan Younis. These attacks continue to result in casualties, including the deaths of civilians who were not directly involved in the conflict.<sup>153</sup>

It has been stated that the majority of the deaths since October 7 have been the result of Israeli air and artillery attacks.<sup>154</sup> The killing or wounding of civilians constitutes the most serious of war crimes, namely the deliberate killing or wounding of civilians and other non-combatants.<sup>155</sup> It does not seem possible at all to explain all these killings with the requirements of war.

The deliberate killing of civilians who need to be protected from the effects of war is not only carried out in the form of direct attacks, but also by attacks on civilian infrastructure facilities, rendering basic needs unmet. Israel announced

150 Daniel Johnson, “Schools ‘Bombed-Out’ in Latest Gaza Escalation, Says UNRWA Chief”, United Nations News, 10 July 2024, <https://news.un.org/en/story/2024/07/1151921>, (Access date: August 11, 2024).

151 “Gaza: Guterres ‘Shocked and Saddened’ by Deadly Strikes on Al Mawasi, as WHO and Partners Aid Medical Response”, United Nations News, 13 July 2024, <https://news.un.org/en/story/2024/07/1152081>, (Access date: August 11, 2024). Sığınma kamplarına benzeri bir saldırı için bakınız, “Israeli Air Strike Kills 29 People At Gaza Camp For Displaced” <https://www.bbc.com/news/articles/c880k3930rmo> (Access Date July 10, 2024).

152 “B. Loss of Lives and Injuries”; “Detailed Findings on the Military Operations and Attacks Carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023”, Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel, A/HRC/56/CRP.4.

153 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 60.

154 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 39.

155 ICC Statute, 8(b)(i).

on October 12<sup>156</sup> that water, fuel and electricity would not be provided to Gaza until the hostages were released, and it has bombed and continues to bomb power plants, solar panels, drinking water lines and fuel sources that meet basic civilian needs in Gaza. The head of UNRWA stated in a press conference on October 15 that “life is running out” in Gaza and that Gaza’s clean drinking water resources run out.<sup>157</sup>

Israel carries out attacks that cause civilian deaths and injuries not only in Gaza but also in the West Bank and East Jerusalem. Some of these actions include opening fire on demonstrating civilians, killing, injuring and arresting them, turning a blind eye to Jewish settlers killing Palestinians, and even conducting airstrikes on the city of Jenin in the West Bank.<sup>158</sup> Between October 7 and December 31, 2023, 308 Palestinians, including 80 men, were killed in the West Bank, including East Jerusalem; 300 were killed by Israeli forces and 8 by settlers. From October 7, 2023 to April 30, 2024, 457 Palestinians, including 112 men, were killed by Israeli forces in the West Bank, including East Jerusalem; and 10 people, including 2 boys, were killed by settlers.<sup>159</sup>

Amid all these acts of killing and wounding, the situation of children holds a special place. Apart from the number of children who lost their lives, as of the end of November 2023, approximately 1,000 children had one or more limbs amputated,<sup>160</sup> and the Israeli army’s attacks on densely populated residential areas and refugee camps have caused thousands of children to lose one or both parents and to be separated from their families in the chaos of the conflict.<sup>161</sup> As of February 2024, at least 17,000 children were reported to be unaccompanied or separated

156 Nicola Slawson, “First Thing: No Power, Water or Fuel for Gaza until Hostages are Freed, Israel Says”, *The Guardian*, 12 October 2023.

157 Ahmet Bal, “İsrail Hamas Savaşı 2. Ayına Girdi: İşte İlk 30 Günde Yaşananlar”, NTV, 8 November 2023.

158 On October 11, Israeli border police shot and killed two Palestinians in East Jerusalem; on October 15, according to the Palestinian news agency Wafa, Israeli border police arrested more than 50 Palestinians in the occupied West Bank; and on October 22, Israel carried out an airstrike on the Ansar Mosque in the city of Jenin in the occupied West Bank. See, Turgut Alp Boyraz, “Israeli Police Kill 2 Palestinians in East Jerusalem”, Anadolu Agency, February 15, 2016; “İsrail’in Cenine Düzenlediği Hava Saldırısında Can Kaybı 4’e Yükseldi”, TRT Haber, 25 October 2023.

159 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 62.

160 “Press Briefing by the United Nations Information Service”, UN, 1 December 2023, <https://www.ungeneva.org/en/news-media/bi-weekly-briefing/2023/12/press-briefing-United-nations-information-service>, (Access date: August 11, 2024); “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par 71.

161 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par 72.

from their parents.<sup>162</sup> According to the Gaza Ministry of Health, at least 15,173 children in Gaza have lost one or both parents since October 7.<sup>163</sup>

The widespread destruction or arbitrary seizure of property without military necessity, and the targeting of civilian settlements also constitute war crimes.<sup>164</sup> As recently as November, UN Special Rapporteur Balakrishnan Rajagopal stated that Israeli attacks on targets in Gaza had resulted in the destruction or damage of 45 percent of all housing in the city.<sup>165</sup>

The Israeli army has primarily targeted high-rise buildings and other civilian objects in the Rimal neighborhood, Khan Younis, Gaza City, the Jabaliya and Shati refugee camps, and other locations, with airstrikes that have levelled residential blocks and neighbourhoods with almost continuous heavy bombardments, causing thousands of deaths and the destruction of civilian infrastructure and civilian settlements.<sup>166</sup> Israel has carried out destruction in Gaza that has left almost no stone unturned.

Furthermore, the mass casualties and destruction in areas evacuated by Israeli attacks have created conditions where families have no homes to return to.<sup>167</sup> A new report by the World Bank and the UN found that as of the end of January 2024, Gaza's built infrastructure had suffered approximately \$18.5 billion in direct damage, equivalent to 97 percent of the West Bank and Gaza's combined gross domestic product (GDP) in 2022, with more than four-fifths of the damage concentrated in housing (72 percent of the total) and commerce, industry and services (9 percent of the total), while the remaining 19 percent of the damage occurred in other critical infrastructure and services, such as education, water, sanitation and hygiene, health, energy, information and communications technology, municipal

162 "Stories of Loss A-and Grief: At Least 17,000 Children Are Estimated To Be Unaccompanied Or Separated From Their Parents in The Gaza Strip"

163 "وزارة الصحة الفلسطينية/ غزة".

164 "Intentionally Directing Attacks against Civilian Objects, that is, Objects Which are Not Military Objectives"; ICC Statute, 8(b)(ii); "Attacking or Bombarding, by Whatever Means, Towns, Villages, Dwellings or Buildings Which are undefended and Which are Not Military Objectives", ICC Statute, 8(b)(v).

165 "Gaza: Destroying Civilian Housing and Infrastructure is an International Crime, Warns UN Expert", OHCHR, 8 November 2023, <https://www.ohchr.org/en/press-releases/2023/11/gaza-destroying-civilian-housing-and-infrastructure-international-crime>, (Access date: August 11, 2024).

166 "Hostilities in the Gaza Strip and Israel Flash Update #4", OCHA, 10 October 2023, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-4>, (Access date: August 11, 2024); "Hostilities in the Gaza Strip and Israel Flash Update #20", OCHA, 26 October 2023, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-20>, (Access date: August 11, 2024).

167 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 60.

services and transportation. Approximately 80 percent of the total damage occurred in Gaza, North Gaza and Khan Younis regions.<sup>168</sup>

According to the The United Nations Satellite Centre (UNOSAT), between October 7 and November 26, Israeli airstrikes damaged 37,379 structures in Gaza, or 18 percent of the total structures in Gaza. These included completely collapsed, severely damaged and moderately damaged structures. By mid-January 2024, this number had nearly doubled to 69,146 damaged structures, or approximately 30 percent of the total structures in Gaza. Among these, 22,130 collapsed structures, 14,066 severely damaged structures and 32,950 moderately damaged structures were identified, or approximately 30 percent of the total structures in Gaza.<sup>169</sup> By April 1, 2024, approximately 50 percent of the total structures in Gaza had been damaged, with a total of 123,706 damaged structures.<sup>170</sup> UN Assistant Secretary-General Dr. Abdullah al-Dardari announced that more than 80 percent of the buildings in the Gaza Strip have been destroyed, including UN-built structures such as the desalination plant in Khan Younis, which cost \$55 million to build.<sup>171</sup>

Each of these actions constitutes a war crime. UN Special Rapporteur Balakrishnan Rajagopal stated that “the systematic destruction and damage of civilian housing and infrastructure, and the systematic destruction of civilians’ homes and infrastructure, and the rendering of a city like Gaza City uninhabitable for civilians, constitutes a war crime.”<sup>172</sup>

Another war crime is the deliberate conduct of an attack with the knowledge that such an attack will result in the loss of life or injury of civilians, damage to civilian objects, or widespread, long-term and severe damage to the natural environment, and will be clearly excessive in relation to the tangible and direct military advantages that will be achieved.<sup>173</sup> According to the Commission of Inquiry, the toxic residues released into the environment from deadly explosions,

168 “Gaza Strip Interim Damage Assessment Summary Note”, World Bank, 29 March 2024, <https://thedocs.worldbank.org/en/doc/14e309cd34e04e40b90eb19afa7b5d15-0280012024/original/Gaza-Interim-Damage-Assessment-032924-Final.pdf>, (Access date: August 11, 2024); “Gaza Infrastructure Damages Estimated at \$18.5bn in UN-World Bank Report”, Aljazeera, 2 April 2024.

169 “UNOSAT Gaza Strip Comprehensive Damage Assessment-January 2024”, United Nations Institute for Training and Research (UNITAR), 1 February 2024, <https://unosat.org/products/3793>, (Access date: August 11, 2024).

170 “UNOSAT Gaza Strip 6th Comprehensive Damage Assessment-April 2024”, UNITAR, 19 April 2024, <https://unosat.org/products/3824>, (Access date: August 11, 2024).

171 “UN: Over 80% of Gaza’s buildings destroyed” <https://www.middleeastmonitor.com/20240820-un-over-80-of-gazas-buildings-destroyed/> (Access date: August 20, 2024).

172 “Gaza: Destroying Civilian Housing and Infrastructure is an International Crime, Warns UN Expert”.

173 Rome Statute, 8(b)(iv).

including dangerous heat and chemical reactions, could pose long-term threats that will last for generations.<sup>174</sup> As of October 12, 2023, four of the five wastewater treatment plants in Gaza have been closed due to lack of electricity, resulting in 120 thousand cubic meters of untreated sewage being discharged into the sea daily, while sewage and solid waste are being discharged into the streets, posing a serious health and environmental threat.<sup>175</sup>

In this context, another striking method of attack in human terms is attacks on hospitals and health institutions. On October 14, Red Crescent ambulances were deliberately hit, on October 17, the Ehli Baptist Hospital, where thousands of Palestinians took refuge, was bombed, on October 27, Israeli warplanes bombed both the Shifa Hospital and the Indonesian Hospital in Gaza, on October 30, the Turkish-Palestinian Friendship Hospital was bombed, on November 3, an ambulance convoy was attacked, and the Shifa Hospital was bombed once again.<sup>176</sup>

The World Health Organization (WHO) announced on October 15 that the Israeli Armed Forces had demanded the evacuation of 21 hospitals in Northern Gaza, while bombing 4 hospitals in Gaza, rendering them unusable. Israel also carried out attacks to render health institutions unusable by bombing the areas around hospitals, spreading fear, and restricting access to hospitals.<sup>177</sup> The head of the government's media office in Gaza, Salame Marouf, said in a statement during the early stages of the attacks that the number of ambulances attacked was 32, 113 health institutions were seriously damaged, and 16 hospitals and 32 health centres were out of service.<sup>178</sup>

As of January 11, 2024, 21 of the 36 hospitals in Gaza were not functioning and 15 hospitals, 9 in the south and 6 in the north, were only partially functional.<sup>179</sup> Hospitals face vital challenges, including a lack of medical personnel, including specialist surgeons, neurosurgeons and intensive care personnel, and a lack of

174 "Detailed Findings on Attacks Carried Out on and after 7 October 2023 in Israel", OHCHR, 10 June 2024, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session56/a-hrc-56-crp-3.pdf>, (Access date: August 11, 2024).

175 "Hostilities in the Gaza Strip and Israel", OCHA, 14 October 2023, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-8>, (Access date: August 15, 2024).

176 "Şifa Hastanesi'nin Çatısı Bombalandı", TRT Haber, 6 November 2023.

177 "İsrail, Bir Gün İçinde Gazze'de 6 Hastaneyi Hedef Aldı", Anadolu Agency, November 11, 2023.

178 "İsrail'in Gazze'ye Yönelik Bombardımanında İki Hastanede Büyük Yıkım Oldu", Anadolu Agency, November 7, 2023.

179 "Detailed Findings on Attacks Carried Out on and after 7 October 2023 in Israel"; "Gaza Strip: Critical Water and Wastewater Infrastructure", Relief Web, 17 October 2023, <https://reliefweb.int/map/occupied-palestinian-territory/gaza-strip-critical-water-and-wastewater-infrastructure-17-october-2023>, (Access date: August 11, 2024).

medical supplies such as anaesthesia, antibiotics, painkillers and external fixators (external metal frames used to fix broken bones). In addition, the urgent need for fuel, food and drinking water is not being met adequately.<sup>180</sup>

By February 12, Israeli soldiers had surrounded and occupied hospitals with tanks and snipers, rendering 25 out of 36 hospitals and more than 80 percent of primary health care centres inoperable.<sup>181</sup>

Among the civilian infrastructure targeted were schools and places of worship. Many mosques were bombed, the compound of the Greek Orthodox St. Porphyry Church in Gaza was hit on October 19,<sup>182</sup> and Israeli airstrikes targeted many schools in Gaza. The head of the government's media office in Gaza stated that 136 mosques were damaged in various ways, 56 mosques were completely destroyed and three churches were damaged, and 237 schools were damaged in the Israeli army's attacks, with 60 schools out of service.<sup>183</sup>

The Inquiry Commission examined photographs and videos showing widespread destruction of residential complexes and neighbourhoods in Gaza, including agricultural land, public facilities, religious and cultural sites, schools, universities, and hospitals. Entire neighbourhoods in Gaza were destroyed, with homes, shops, hospitals, schools, universities and farmland severely damaged. The attacks also severely damaged vital infrastructure for children's basic needs, such as hospitals, schools, electricity, water and sanitation. All these increased the death toll and preventing the wounded from receiving adequate treatment.<sup>184</sup>

Another method of attack by Israel has been to attack aid convoys UN agencies, such as UNRWA, that assist the Palestinian people in Gaza. Four UNRWA workers were killed in airstrikes on Gaza on October 10, and two in another attack on October 20.<sup>185</sup> The head of the government's media office in Gaza stated

180 "Detailed Findings on Attacks Carried Out on and after 7 October 2023 in Israel".

181 "Anatomy of a Genocide, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese, A/HRC/55/73", Relief Web, 25 March 2024, par. 38, <https://reliefweb.int/report/occupied-palestinian-territory/anatomy-genocide-report-special-rapporteur-situation-human-rights-palestinian-territories-occupied-1967-francesca-albanese-ahrc5573-advance-unedited-version>, (Access date: August 15, 2024).

182 "İsrail Ordusunun Tarihi Aziz Porphyrius Kilisesi'ni Vurmadiğı İddiası", Anadolu Agency, October 24, 2023.

183 Muhammed Emin Canik, "İsrail'in Saldırılarında Gazze Şeridi'nde 40 Bin Bina Tamamen Yıkıldı", Anadolu Agency, November 7, 2023; Fayeze Abdulsalam ve Zeynep Tüfekçi Gülay, "İsrail'in Gazze'ye Düzenlediğı Saldırılarda Can Kaybı 9 Bin 500'e Yükseldi", Anadolu Agency, November 5, 2023.

184 "Detailed Findings on Attacks Carried Out on and after 7 October 2023 in Israel", par. 60, 133, 400.

185 Eyad Kourdi ve Alex Stambaug, "At Least 4 UN Relief Workers Were Killed in Airstrikes in Gaza", CNN World, 11 October 2023; Seda Sevensan, "2 Additional UNRWA Staff Members Killed, 16 in Total since Gaza Conflict Onset", Anadolu Agency, October 20, 2023.



at a press conference on November 7 that the number of UNRWA workers killed to date was 67.

It has been recorded that 60 direct hits were made on UNRWA facilities between October 7 and December 31, 2023, and 68 other UNRWA facilities were damaged. It is estimated that at least 315 people living in UNRWA facilities died between October 7 and December 30, 2023, and at least 1,148 people were injured.<sup>186</sup> On October 17, 2023, an UNRWA-run school in Maghazi Refugee Camp was hit by an airstrike. According to UNRWA, the school, which was hosting displaced people, was targeted, killing six people, including UNRWA staff, and injuring dozens.<sup>187</sup>

On April 22, 2024, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported that at least 249 aid workers had been killed since October 7, 2023, including 181 UN staff (178 from UNRWA) and 27 Palestine Red Crescent Society (PRCS) staff and volunteers. As of August 2024, more than 280 aid workers (mostly UNRWA staff) had been killed in Gaza alone since October 2023.<sup>188</sup> Additionally, the Ministry of Health in Gaza reported that more than 450 health workers and 66 civil protection personnel died while on duty.<sup>189</sup>

Many members of the press have also lost their lives in Israel's attacks. The Committee to Protect Journalists announced on October 15 that at least twelve journalists have been killed, eight injured, and two journalists are missing.<sup>190</sup> The head of the government's media office in Gaza stated in a press conference on November 7 that the number of journalists killed to date was 48.<sup>191</sup> As of July 2024, it is stated that 161 journalists/members of the press have lost their lives in the attacks.<sup>192</sup>

186 "UNRWA Situation Report #59 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem", UNRWA, 2 January 2024, <https://www.unrwa.org/resources/reports/unrwa-situation-report-59-situation-gaza-strip-and-west-bank-including-east-jerusalem>, (Access date: August 11, 2024).

187 "Gaza: UNRWA School Sheltering Displaced Families is Hit", UNRWA, 17 October 2024, <https://www.unrwa.org/newsroom/official-statements/gaza-unrwa-school-sheltering-displaced-families-hit>, (Access date: August 11, 2024).

188 "Unprecedented number of aid workers killed in conflicts worldwide, says UN" <https://www.aa.com.tr/en/world/unprecedented-number-of-aid-workers-killed-in-conflicts-worldwide-says-un/3307514#:~:text=Since%20October%20last%20year%2C%20more,in%202024%2C%20said%20the%20UN> (Access date: August 20, 2024).

189 "Hostilities in the Gaza Strip and Israel - Reported Humanitarian Impact", OCHA, 22 April 2024, [https://www.ochaopt.org/sites/default/files/Gaza\\_casualties\\_info-graphic\\_22\\_April\\_2024.pdf](https://www.ochaopt.org/sites/default/files/Gaza_casualties_info-graphic_22_April_2024.pdf), (Access date: August 11, 2024).

190 "Gazeteciler için En Ölümcül Savaş", VOA Türkçe, 28 October 2023.

191 Muhammed Emin Canik, "İsrail'in Saldırılarında Gazze Şeridi'nde 40 Bin Bina Tamamen Yıkıldı", Anadolu Agency, 7 Kasım 2023.

192 "1 More Journalist Killed in Israel's Attacks on Gaza", Anadolu Agency, July 20, 2024.



The unlawful deportation or transfer, unlawful detention, or deportation of people from occupied territories constitutes another category of war crime. On October 12, Israel announced that all people in northern Gaza must leave to south within 24 hours. In response to this statement, UN officials declared that this was an inhumane method that would lead to grave consequences.<sup>193</sup> Amnesty International, which warned of a humanitarian disaster, called on Israel on October 13 to rescind the evacuation order.<sup>194</sup>

Israel has forcibly displaced at least 1.7 million Palestinians. More than eighty evictions were ordered by the Israeli army between October 7 and December 30, 2023.<sup>195</sup> These evictions were carried out entirely without the consent of the local population, through threats and coercion, and involved the expulsion of civilians who could not be related to military necessity, namely their safety. That their safety was not a priority is also evident from the Israeli army's attacks on civilians migrating on the roads. The Israeli army's mass casualties and destruction in the evacuated areas have created conditions where entire settlements have been razed to the ground and families have no homes to return to.

It has been observed that war crimes such as torture or inhuman treatment, deliberately causing great suffering and serious harm to the body or health have also been committed during the forced displacements. The Commission has identified abuse and specific attacks on Palestinians of all ages and genders who were evacuated, including being forced to undress at gunpoint and to walk without clothes for long periods during the evacuation process. These cases show that Israeli security forces intentionally inflict many of the hardships experienced during this process.<sup>196</sup>

Since October 7, the Israeli army has systematically targeted Palestinians, subjecting them to sexual humiliation, including the dissemination of nude im-

193 Ekrem Biçeroğlu ve Nuri Aydın "BM: İsrail'in Gazze'nin Kuzeyindeki 1 Milyon Sivile 24 Saat Tanıması Dehşet Verici", Anadolu Agency, October 13, 2023.

194 "Israel/OPT: Appalling Gaza "Evacuation Order" must be Rescinded by Israel Immediately", Amnesty International, 13 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-appalling-gaza-evacuation-order-must-be-rescinded-by-israel-immediately>, (Access date: August 11, 2024).

195 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 58-60.

196 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 59. Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence constituting a grave violation of the Geneva Conventions are also war crimes. (ICC Statute 8bxxii) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence defined in article 7, paragraph 2 (f), also constitute a grave violation of article 3, common to the four Geneva Conventions (8(e)(vi).

ages on the internet, and subjecting them to a variety of treatments, including forced nudity in public, forced public undressing, sexualized torture and abuse, sexual humiliation and harassment. It is stated that these incidents mostly occur during ground operations, together with evacuations and arrests. It is stated that sexual violence is used in civilian homes, in shelters for women and girls, before or during the evacuation processes throughout the occupied territory.<sup>197</sup>

Israeli forces have forced Palestinians, including those in the presence of victims, to undress and bare their bodies in public in many places under degrading conditions; have interrogated them while blindfolded, kneeling in underwear with their hands tied behind their backs, or while fully or partially naked; have subjected them to verbal and physical abuse during interrogations; have forced them to perform physical acts while naked; and have filmed or photographed them while performing any of these acts. The aim of these acts has been stated to be to humiliate the victims and Palestinian society in general by perpetuating gender stereotypes that create a sense of shame, submission, castration and inferiority.<sup>198</sup>

It has been reported that large numbers of civilians have been detained and arrested without legal guarantees, particularly in the West Bank and East Jerusalem. The Commission has observed an increase in large-scale military search and arrest operations in Tulkarem, Nablus and Jenin in the West Bank.<sup>199</sup> Threats against Palestinians have included the destruction of property, including water tanks and pipes, solar panels, harming animals, and physical violence, including the use of live ammunition and weapons. There have been reports of torture and ill-treatment of civilian detainees in a manner that constitutes war crimes.<sup>200</sup>

Israel's attacks have also caused serious damage to the human and natural environment. Israel has destroyed at least 195 historical sites, 208 mosques, 3 churches and the central archives of Gaza (covering 150 years of history). By the end of January, more than 1 million civilians (in the south) had been forcibly displaced and cities devastated.<sup>201</sup>

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197 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 65.

198 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 66-69.

199 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 62.

200 "Detailed Findings on Attacks Carried Out on and after 7 October 2023 in Israel", par. 345, 352.

201 Francesca Albanese, "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, A/HRC/55/73", par. 35.

The Israel avts, as evidenced above, are consistent with many acts that constitute war crimes. Indeed, just three days after the attacks began, the Commission of Inquiry announced that there was clear evidence that war crimes may have been committed in the outbreak of violence in Israel and Gaza, and that anyone who violates international law and targets civilians must be held accountable for their crimes.<sup>202</sup>

The deliberate killing or injury of civilians, serious harm to the body or health, torture and ill-treatment, forced displacement of civilians, inhuman treatment, destruction of civilian settlements and civilian infrastructure, destruction of health institutions, schools, refugee camps, places of worship by making them targets of attack, extensive destruction of property, use of prohibited types of weapons, and damage to the environment are the actions that stand out and constitute war crimes.

### iii) Crimes against Humanity and Israel's Acts

As set out in the previous section, crimes against humanity are the killing, extermination, enslavement, deportation, forcible transfer of the population and other acts listed in Article 7 of the ICC Statute, when committed as part of a widespread or systematic attack directed against any civilian population.<sup>203</sup> The acts constituting such crimes almost completely overlap with the acts constituting war crimes. However, crimes against humanity, unlike war crimes, are based on the element that the acts in question are committed “as part of a widespread or systematic attack directed against any civilian population”. Indeed, Article 7 of the ICC Statute states that the acts specified constitute crimes against humanity when they are “intentionally committed as part of a widespread or systematic attack on any civilian population”.

These acts are, as in war crimes, killing, wounding, extermination, enslavement, deportation or forcible transfer of the population, imprisonment or severe deprivation of physical liberty in violation of fundamental rules of international law and other acts listed in Article 7 of the ICC Statute.

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202 “Commission of Inquiry Collecting Evidence of War Crimes Committed by All Sides in Israel and Occupied Palestinian Territories since 7 October 2023”, OHCHR, 10 October 2023, <https://www.ohchr.org/en/press-releases/2023/10/commission-inquiry-collecting-evidence-war-crimes-committed-all-sides-israel>, (Access date: August 11, 2024).

203 Crimes against humanity are listed in Article 7 of the ICC Statute. The crimes in question are defined in the section titled “Genocide and Crimes Against Humanity” of the Turkish Penal Code, and the crime of genocide is defined in Article 76 as “committing one of the following acts against members of a national, ethnic, racial or religious group with the intent to destroy this group in whole or in part through the execution of a plan” and the acts are listed. Crimes against humanity are defined in Article 77 as “systematic perpetration of the acts listed in accordance with a plan against a segment of society with political, philosophical, racial or religious motives”.

The previous section provided ample evidence that Israel has committed the actual elements of crimes against humanity on a widespread basis. This section will address whether there is evidence that Israel “willfully committed these actions as part of a widespread or systematic attack on any civilian population.”

The statements made by the Israeli government and military in the early days of the attacks contain significant evidence that essentially reveals the nature of the attacks and the actions that constitute them. Just three days after the attacks began, on October 10, an Israeli army spokesman made the following statement:

This is the situation now. We need to use a different language, a different terminology. Our attacks in Gaza are not like the number of bullets and targets in the past. The logic is different. We attack wherever, wherever there is the slightest sign of intelligence.<sup>204</sup>

In another example, Israeli Defense Minister Yoav Gallant stated that “Gaza will never go back to how it was before” and “I have lifted all restrictions, we are using everything.”<sup>205</sup> Given that the information received indicates that there are relatively few Hamas militants<sup>206</sup> compared to the general civilian population, and Israel’s repeated claim that the militants are “entrenched”<sup>207</sup> among the civilian population, these statements can be considered to indicate that the Israeli government has given the Israeli army general authority to target civilian areas in Gaza on a large scale and indiscriminately.<sup>208</sup>

These findings show that Israel has stated from the very beginning that the attacks will be widespread and systematic, targeting everywhere, that there will be no distinction between civilians and soldiers, and that in this sense, it has lifted the restrictions stemming from international humanitarian law.

The way Israel carries out its actions on the ground has also provided concrete evidence for these statements. Israel’s bombing strategy has also seemed consistent with the application of the so-called “Dahiya doctrine” to Gaza. The Dahiya doctrine is described as a strategy used by Israel during the second Lebanon war

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204 14 עכשיו, YouTube, 10 October 2023, <https://www.youtube.com/watch?v=lk1tLVR1wPo8>, (Access date: July 10, 2024).

205 ערוץ כנסת, YouTube, 10 October 2023, <https://www.youtube.com/watch?v=h9pekNeOYII>, (Access date: July 10, 2024).

206 “Terrorist Organizations”, Central Intelligence Agency, [www.cia.gov/the-world-factbook/references/terrorist-organizations/](http://www.cia.gov/the-world-factbook/references/terrorist-organizations/), (Access date: August 11, 2024).

207 Israel Defense Forces, X, 29 October 2024 <https://x.com/IDF/status/1718426727288803524>, (Access date: August 10, 2024).

208 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 44.

in 2006, involving the use of overwhelming and disproportionate force against civilian areas and infrastructure as a “tool to restrain and deter Hezbollah.”<sup>209</sup>

Israel has carried out numerous large-scale attacks on civilian targets in Gaza, demonstrating the use of this doctrine. In this context, the Commission of Inquiry documented dozens of other attacks, including on aid organizations, convoys, and refugees. In most of these cases, the Commission of Inquiry failed to identify military targets as the focus of the attacks, and even when military targets were claimed to be present, the attacks lacked distinction, proportion, and precaution, resulting in the deaths and injuries of thousands of people and the widespread destruction of entire neighbourhoods, including Jabalia, Rimal, Yarmouk, and Maghazi.<sup>210</sup>

The Commission of Inquiry also identified cases in which Israeli ground forces killed civilians who posed no threat, including while carrying a white flag. In one case, two civilian women who were taking refuge in a church were shot and the church building was bombed.<sup>211</sup> In another incident in November, Israeli soldiers killed a man in the Shati Refugee Camp who they admitted was unarmed when he was killed; on November 12,<sup>212</sup> a Palestinian woman was shot by a sniper while holding the hand of her grandson who was waving a white flag during an evacuation in the Rimal neighborhood; and on November 15, members of the Israeli army shot and killed three Israeli hostages, one of whom was carrying a white flag.

The army’s investigation into this incident stated that the incident was due to a failure to comply with the rules of engagement, and clearly demonstrated that this and other incidents were deliberate practices of shooting with the intent to kill without first determining who the targets were and whether they posed a threat.<sup>213</sup>

On October 17, 2023, for example, a school operated by UNRWA in the Maghazi Refugee Camp was hit by airstrikes, although UNRWA had shared the

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209 See, Jean Loup Samaan, “From War to Deterrence? Israel-Hezbollah Conflict Since 2006”, Strategic Studies Institute, (May 2014), <https://apps.dtic.mil/sti/pdfs/ADA601846.pdf>, (Access date: July 10, 2024)

210 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 45.

211 Aljazeera English, YouTube, 11 May 2024, <https://www.youtube.com/watch?v=3Dp95bN81Ww>, (Access date: August 11, 2024).

212 Aljazeera English, YouTube, 11 May 2024, <https://www.youtube.com/watch?v=3Dp95bN81Ww>, (Access date: August 11, 2024).

213 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 46.

coordinates of its facilities with both sides of the conflict prior to the attack.<sup>214</sup> This is just one of hundreds of pieces of evidence to show that the targets of these attacks were systematically selected and that they were civilian targets as part of this plan.

The process of forced displacement of local people in Gaza is also significant evidence of crimes against humanity. Although the Israeli army did not explicitly use the term “safe zones” in relation to the evacuation areas, it used the term “humanitarian aid zones” instead and claimed in statements that it “advised” civilians to go to these areas “for their safety.”<sup>215</sup> It thus effectively stated that these areas constituted safe zones with the relevant legal protections.<sup>216</sup> However, the Israeli army also targeted these areas, leading to the deaths of hundreds of civilians. The displaced people were targeted either on the roads or in the camps where they had taken refuge. While the evacuations continued, the Israeli army continued to attack designated safe zones, including Rafah and Khan Younis. These attacks resulted in casualties, including the deaths of civilians who were not directly involved in the fighting.

The Israeli army also caused mass casualties and destruction in the evacuated areas, with entire settlements being razed to the ground and families having no homes to return to.<sup>217</sup> The extent of the destruction of the settlements, as described in the previous section, is essentially another clear indication of Israel’s systematic plan to prevent civilians from returning.

Another piece of evidence that the attacks on civilians are widespread or part of a systematic attack is the nature and implementation of the orders to evacuate civilians. The evacuation orders are confusing, have vague timelines, or are insufficient to ensure safe evacuation.<sup>218</sup> Evidence of deaths or injuries at checkpoints set up by the Israeli army, widespread inadequacy of transportation, deliberately creating chaos, and harassment and specific attacks on evacuees, including the

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214 “Gaza: UNRWA School Sheltering Displaced Families is Hit”, UNRWA, 17 October 2023, <https://www.unrwa.org/newsroom/official-statements/gaza-unrwa-school-sheltering-displaced-families-hit>, (Access date: August 11, 2024).

215 افيخاي ادراعي, X, 13 October 2023, <https://x.com/AvichayAdraee/status/1712846493747495223?s=20>, (Access date: July 10, 2024).

216 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 56.

217 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 60.

218 “Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)”, par. 58.

forcing of Palestinians of all ages and genders to undress at gunpoint and walk without clothes for long periods during the evacuation process, are all evidence that the Israeli army carried out all of these deliberately.<sup>219</sup>

The provision of basic needs has been deliberately obstructed by Israel. Rescue efforts have often been impossible or prevented from taking place due to air and ground strikes, obstructions and restrictions, lack of rescue equipment, fuel shortages for vehicles and equipment, and limited or non-existent communication capabilities.<sup>220</sup>

Another concrete indication that the attacks are systematic against civilians is that the attacks have also severely damaged infrastructure necessary for children's basic needs, such as hospitals, basic infrastructure, and schools, resulting in increased deaths and inadequate treatment for the injured. Infrastructure, especially health, education, and social services for children, has been destroyed in a way that will affect generations.<sup>221</sup>

In a way that cannot be explained by military necessity, the complete destruction of homes to prevent people from returning to their former places,<sup>222</sup> the bombing of hospitals to target the wounded and civilians seeking refuge, the forcing of civilians to leave their places by granting them limited time, the prevention of humanitarian aid, the interruption of the flow of basic necessities to Gaza, the forcing of people to leave the city by carrying out attacks that will instill fear (for example, showing that no place in Gaza is safe), and the carrying out of bombings that will cause as many human casualties as possible should be considered as evidence that attacks on civilians are systematic and part of a general plan.<sup>223</sup>

As a result, the deliberate bombing of roads<sup>224</sup> to which civilians are evacuated and places they use as shelters, the killing or wounding of civilians, the bomb-

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219 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 59.

220 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 70; "Reporting Period: 11 to 17 January 2024", UNICEF, (January 2024), <https://www.unicef.org/sop/media/3461/file/UNICEF%20in%20the%20State%20of%20Palestine%20Escalation%20Humanitarian%20Situation%20Report%20No.15.pdf>, (Access date: August 11, 2024); "10,000 People Feared Buried under the Rubble in Gaza", United Nations News, 2 May 2024, <https://news.un.org/en/story/2024/05/1149256>, (Access date: August 11, 2024).

221 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 71.

222 "İsrail'in Gazze'ye Yönelik Bombardımanında İki Hastanede Büyük Yıkım Oldu", Anadolu Agency, November 7, 2023.

223 "İsrail'in Gazze'ye Yönelik Bombardımanında İki Hastanede Büyük Yıkım Oldu".

224 Muna Asghar, "70 Palestinians Killed, 200 Injured as Israel Strikes Convoy of Displaced People in Gaza: Interior Ministry", Anadolu Agency, October 13, 2023.



ing of refugee camps where displaced Palestinian civilians have been sheltering for many years,<sup>225</sup> and the killing or wounding of civilians,<sup>226</sup> are actions that can only be part of a general plan. Because these actions are not actions that can be taken out of carelessness, negligence, or to gain military advantage over a military group that operates mostly underground, such as Hamas.

Although the Israeli government has stated that their aim is to eliminate Hamas' military capabilities and end its dominance over Gaza,<sup>227</sup> when the stated nature of the attacks is examined, it is easily understood from the nature and form of these actions that the main target is not Hamas but Gaza as a whole and everyone living in Gaza.

The fact that all of Israel's attacks are part of a general plan is also reflected in the statements of Israeli officials themselves. Examples of this are the statements of Israeli officials that do not describe Palestinians in Gaza as "human beings", that portray all Palestinians in Gaza as Hamas militants or Hamas supporters, that resemble a second Nakba, and that suggest the relocation of the civilian population out of Gaza and the reestablishment of Israeli settlements.<sup>228</sup>

Based on all this data, it is possible to compare the actions Israel has implemented in Gaza to the crime of "ethnic cleansing" as well as crimes against humanity. The actions of creating an ethnically homogeneous geographical region by forcibly displacing the civilian population or through mass murder are referred to as the crime of ethnic cleansing.<sup>229</sup> The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, stated that "Israel has already carried out mass ethnic cleansing of Pal-

225 Can Kamiloğlu, "BM Genel Sekreteri: "Cebaliye Mülteci Kampına Düzenlenen Saldırı ve Artan Şiddet Yüzünden Dehşete Düştük", VOA Türkçe, 1 November 2023.

226 "Gaza: Destroying Civilian Housing and Infrastructure is an International Crime, Warns UN Expert"; "Israel Pummels Gaza with Strikes as it Expands Ground Operations", France 24, 27 October 2023 <https://www.france24.com/en/live-news/20231027-israel-pummels-gaza-with-strikes-as-it-expands-ground-operations>, (Access date: August 11, 2024).

227 "İsrail Savunma Bakanı: Hamas'ı Tamamen Bitireceğiz", Rudaw, 22 October 2023, <https://www.rudaw.net/turkish/world/2210202317>, (Access date: August 11, 2024).

228 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)", par. 61; Ariel Kallner, X, 8 October 2023, <https://x.com/ArielKallner/status/1710769363119141268>, (Access date: August 11, 2024); תוכן למנויים בלבד, Mako Co. 11, 11 October 2023, [https://www.mako.co.il/mako-vod-channel2-news/meet\\_the\\_press-9402aea3d6045810/830a0730d-9a7b810/VOD-5f8843ca2fe9b81027.htm](https://www.mako.co.il/mako-vod-channel2-news/meet_the_press-9402aea3d6045810/830a0730d-9a7b810/VOD-5f8843ca2fe9b81027.htm), (Access date: August 11, 2024).

229 "UN Security Council Res. 808", 22 February 1994; Adopted on the Former Yugoslavia, UN Security Council, Statement of President, UN. Doc. S/PRST/1994/14, 6 April 1993; Adopted on the Former Yugoslavia; Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Serbia and Montenegro)" Merits, Judgement, 26 February 2007, par. 190; "The Practical Guide to Humanitarian Law", Medecins Sans Frontieres, <https://guide-humanitarian-law.org/content/article/3/ethnic-cleansing>, (Access date: August 11, 2024).



estinians under the fog of war” and that “Israel is once again trying to legitimise ethnic cleansing in the name of self-defence”.<sup>230</sup>

Albanese later stated in her report that “The pattern of killings of civilians who evacuated to the south, in combination with statements of some senior Israelis declaring an intent to forcibly displace Palestinians outside Gaza and replace them with Israeli settlers, lead to reasonably infer that evacuation orders and safe zones have been used as genocidal tools to achieve ethnic cleansing.”<sup>231</sup>

#### iv) The Crime of Genocide and Israel's Actions

Under the subheading “Crimes Against Humanity and the Acts of Israel”, it was stated that a more serious form of crimes against humanity is the crime of genocide, and that the crime of genocide is the commission of one or more of the following acts with the intent to destroy a national, ethnic, racial or religious group in whole or in part: “killing members of the group”, “causing serious physical or mental harm to members of the group”, “deliberately changing the living conditions of the group with the intention of destroying its physical existence in whole or in part”, “taking measures to prevent births within the group” and “forcibly transferring children of the group to another group”.<sup>232</sup>

It can be said that the gravity of this crime is essentially due to the fact that it is a crime that leads to the deprivation of a society's right to exist or live. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide, in addition to stating that acts constituting genocide are crimes, also criminalizes certain other acts related to the crime of genocide, such as “committing genocide,” “conspiracy to commit genocide,” “direct and public incitement to commit genocide,” “attempt to commit genocide,” and “complicity in genocide.”<sup>233</sup>

In the subheading “Crimes Against Humanity and the Acts of Israel,” we had stated that Israel had in fact knowingly carried out a “widespread and systematic attack” on Palestinian civilians and that therefore Israel's actions should be considered in the category of crimes against humanity. Another important question is whether Israel's actions, go beyond crimes against humanity and constitute the crime of genocide according to its definition.

230 “UN Expert Warns of New Instance of Mass Ethnic Cleansing of Palestinians, Calls for Immediate Ceasefire”, OHCHR, 14 October 2023 <https://www.ohchr.org/en/press-releases/2023/10/un-expert-warns-new-instance-mass-ethnic-cleansing-palestinians-calls>, (Access date: August 11, 2024).

231 Francesca Albanese, “Anatomy of a Genocide Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967”, par. 86. A/HRC/55/73.

232 See, “Soykırımın Önlenmesi ve Cezalandırılmasına Dair Sözleşme”, article 2. See also, ICC Statute, article 6.

233 “Convention on the Prevention and Punishment of the Crime of Genocide”, article 3.

As we have stated, the acts constituting genocide are listed as killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, forcibly transferring children of the group to another group.

Under the subheading “War Crimes and Israeli Actions”, we have shown that Israel has committed acts of killing, causing serious physical or mental harm, deliberately changing the living conditions of the group in a way that would partially eliminate its physical existence (for example, completely preventing basic needs such as food, electricity and health services from being met), and preventing births within the group (for example, practices that cause pregnant women to lose their lives and the lives of their unborn babies in hospitals). It is clear that these acts overlap with the acts specified in the definition of the crime of genocide.

However, in order to determine whether these acts exceed the dimension of crimes against humanity and constitute the crime of genocide, it is necessary to determine whether the other fundamental element is present. The crime of genocide – as in all other crime categories – must have a moral element (*dolus specialis*, special deceit) in addition to its material elements. In this context, in order to determine whether the actions mentioned by Israel constitute the crime of genocide, it is necessary to establish whether the actions in question go beyond systematically targeting Palestinians, especially Palestinians in Gaza, and act with the “intent to destroy them in whole or in part.”

Undoubtedly, it is not possible to expect clear statements from Israel that it acts with the intention to destroy Palestinians in whole or in part while carrying out all these actions. However, there are two methods that can be applied simultaneously to establish whether Israel’s intention is to destroy Palestinians in whole or in part.

The first of these is to look at whether Israeli officials make statements implying that this is the intention, even if they are not expected explicitly to state genocidal intent.

The second is to examine the nature of the attacks and the way they are carried out to determine what the real intention is. Indeed, it is widely accepted that intent can be reached by considering the nature of the acts, their general context, the scale of the brutality, the systematic targeting of the victims because of their affiliation with a particular group, the nature and scale

of the persecution, or the repeated implementation of destructive and discriminatory acts. In this context, genocide is not an act but a process.<sup>234</sup> This process may include acts such as removal (forced transfer, ethnic cleansing), restrictions on movement (discrimination, large-scale prisons), mass killings (murder, disease, starvation), assimilation (cultural erasure, child removal), and birth prevention.<sup>235</sup>

### *Official Statements*

When viewed in the first way, some official statements by Israel show that attacks that will cause the partial destruction of civilians are planned, knowingly and deliberately implemented, albeit indirectly. In the period immediately following October 7, Israeli Defence Minister Yoav Gallant made a clear statement saying, “A complete siege... No electricity, no water, no food, no fuel. We are fighting human animals and we are acting accordingly.”<sup>236</sup>

President Isaac Herzog, referring to all Palestinian civilians, stated shortly after the October 7 attack that “an entire nation outside” was responsible and that Israel would “break their backbones.”<sup>237</sup> Prime Minister Benjamin Netanyahu described the Palestinians as “Amalek” and “beasts.”<sup>238</sup> The Amalek reference is God’s command to Samuel Saul, “Go now and strike Amalek, destroy all that they have and spare them not; It is a biblical passage that commands the people to “kill both men and women, babies and sucklings, oxen and sheep, camels and donkeys.”<sup>239</sup>

Israeli Defense Forces Spokesperson Daniel Hagari stated that their focus should be on “maximum damage,” demonstrating a strategy of disproportionate and indiscriminate violence.<sup>240</sup> Likud MP Revital Gottlieb made the following

234 IT-95-10-A, para. 47; IT-98-33-A, para. 27, 34-35; T-05-88-T, para. 1178; Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese, A/HRC/55/73, 25 March 2024, par. 46. See also, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), ICJ, par. 370 vd.

235 “Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese. A/HRC/55/73”, OHCHR, par. 9.

236 “You wanted hell, you will get hell” The Coordinator of the Government in the Territories Maj. Gen. Ghassan Alian speaking to Hamas and the residents of Gaza. Watch? See, COGAT, X, 10 October 2023, <https://x.com/cogatonline/status/1711718883323752586>, (Access date: August 11, 2024).

237 Rageh Omaar, “Israeli President Isaac Herzog Says Gazans Could Have Risen up to Fight ‘Evil’ Hamas”, ITV, 13 October 2023, <https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas>, (Access date: August 11, 2024).

238 “Christmas Message from PM Netanyahu”, Gov.il, 24 December 2023, <https://www.gov.il/en/departments/news/christmas-message-from-pm-netanyahu-24-dec-2023>, (Access date: August 11, 2024).

239 The Bible, 1. Samuel, 3.

240 “Press Briefing” <https://www.idf.il/en/mini-sites/hamas-israel-war-24/briefings-by-idf-spokesperson-rear-admiral-daniel-hagari/october-press-briefings/press-briefing-by-idf-spokesperson-rear-admiral-daniel-hagari-october-10th-morning/> (Access date: October 10, 2023).

statement on her social media account: “Destroy the buildings! Bomb indiscriminately!... Flatten Gaza. Without mercy! No mercy this time!”<sup>241</sup>

There is ample evidence that these phrases have been materialised and put into practice by troops on the ground. Israeli soldiers refer to Palestinians as “terrorists,” “cockroaches,” and “rats,” including on social media channels run by the Israeli army, and frequently use terms used by political leaders. Israeli soldiers have been caught on camera chanting slogans such as “No more uninvolved civilians,” “Occupy Gaza... Cleanse the seeds of Amalek,” boasting about killing families, mothers, and children, humiliating Palestinian detainees, blowing up dozens of homes, destroying entire residential areas, and defiling and degrading cemeteries and places of worship.<sup>242</sup>

*From Nature of Actions to Intention*

A similar conclusion emerges when looking at the second method, namely the way the attacks are carried out. In this context, it can be stated that Israel’s actions against two groups in general can be taken as evidence of genocidal intent: killing group members; subjecting them to conditions that will cause their partial or total destruction.

Killing group members:

Israel kills hundreds of Palestinian civilians every day, primarily through its actions in Gaza. Since October 7, it has killed more than 41,000 Palestinians in Gaza, or approximately 1.5 percent of the city’s population, with lethal weapons and deliberately imposing life-threatening conditions. By the end of February, another 12,000 Palestinians were reported missing, presumed dead under the rubble.<sup>243</sup> We have stated above that this number will exceed 41,000 as of September 2024. Israel has also killed thousands of Palestinians fleeing “safe” routes and areas by bombing, sniper fire, or mass executions using unguided munitions (dumb bombs) and 2,000-pound “bunker-busting” bombs in densely populated and “safe” areas. The victims include 125 journalists and 340 doctors, nurses, and other healthcare workers (4 percent of Gaza’s healthcare personnel), students, academics, scientists, and family members.<sup>244</sup>

Israel also inflicts serious physical and mental harm on Palestinians. Since October 7, Palestinians have been subjected to brutal physical and psycholog-

241 Yehuda Shaul, X, 17 October 2023, <https://x.com/YehudaShaul/status/1714301964886917631>, (Access date: August 11, 2024).

242 “Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese. A/HRC/55/73”, par. 53.

243 “Anatomy of a Genocide”, par. 23.

244 “Anatomy of a Genocide”, par. 24.

ical harm, many struggling to cope with violence and deprivation, including severe hunger, thousands of Palestinians, mostly men, youth and children, detained and often without being told where they are being held, subjected to severe treatment, including torture that sometimes leads to death, and as of September 2024, more than 96,000 Palestinians are struggling to cope with injuries resulting from the attack, many of which are extremely painful and result in long-term disabilities.<sup>245</sup>

Subjecting Palestinians to conditions that will partially or completely destroy them:

These actions are considered evidence of genocidal intent because they do not directly kill the members of the group but can lead to their physical destruction in various ways.<sup>246</sup> These include starving and thirsty, forcibly displacing the protected group, destroying objects indispensable for their survival, reducing basic medical services to minimum requirements, and depriving them of shelter, clothing, education, employment, and hygiene.<sup>247</sup>

Since the beginning of its attacks, Israel has been intensely involved in actions such as cutting off humanitarian aid to civilians, blocking food and energy flows, bombing hospitals, and making Palestinians targets of attack in places where they were forced to migrate to southern Gaza. Israel, which began launching attacks on Gaza on October 7, announced that it had placed Gaza under complete siege just two days later. The siege has taken on such a nature that the flow of basic resources and necessities has been cut off, people's access to food, water, fuel, and electricity has been greatly restricted and in some places completely blocked, and all crossings between Israel and Gaza have been closed, completely halting regular humanitarian aid deliveries. Between October 7 and 20, no aid trucks were able to enter Gaza, directly affecting nearly two-thirds of the population, which already relies heavily on humanitarian aid.<sup>248</sup>

On October 7, Israeli Energy and Infrastructure Minister Israel Katz signed an order to cut off all electricity supplies to Gaza. On October 8, Israeli authorities cut off all water supplies to Gaza via three connecting pipelines. Between October 8 and November 14, Israel also stopped all fuel from entering the area, citing

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245 "Anatomy of a Genocide", par. 28-30.

246 Convention, Article II(c); Rome Statute, Article 6; ICTR-96-4-T, par. 505-506.

247 "Anatomy of a Genocide", par. 34.

248 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel (27 May 2024)...", par. 48.

concerns about potential use by Hamas.<sup>249</sup> Despite the increasing need, the main entry point for goods from Israel to Gaza, Kerem Shalom, was completely sealed by Israel between October 7 and December 16. Subsequently, partial permits have been both irregular and far from adequate.<sup>250</sup>

As of December 2023, more than 90 percent of the population in Gaza has experienced acute food insecurity. This has been the combined result of the destruction and obstruction of local food production, including agriculture, fishing and baking, the siege preventing the import of sufficient food supplies, and the endangering of humanitarian workers in the distribution of the limited food supplies available.<sup>251</sup> Indeed, the ICC prosecutor has frequently emphasized the use of hunger as a tool of war by Israel in his application to the court requesting the arrest of Netanyahu and Gallant.<sup>252</sup>

The deliberate air and ground attacks targeting hospitals have gradually turned them into death zones rather than treatment zones. By February 12, only 11 out of 36 hospitals and only 17 percent of primary health care centres remained operational. Israeli soldiers have detained, mistreated and tortured medical personnel, patients and displaced people, forcibly removed even premature babies from hospitals, and in some cases, performed interventions that led to the deaths of infants.<sup>253</sup>

By mid-December, about three months after the start of the attacks, Israeli bombs and shells had destroyed or severely damaged 77 percent of health facilities, 68 percent of telecommunications infrastructure, numerous municipal services, commercial and industrial areas, almost half of all roads, more than 60 percent of Gaza's 439,000 homes, 68 percent of residential buildings, all universities, 60 percent of other educational facilities, including 13 libraries, and most of the vital infrastructure.<sup>254</sup> The attacks carried out from land and air

249 "The Gaza Strip: UNRWA Finally Receives Fuel; Much More is Needed for Humanitarian Operations", UNRWA, 18 November 2023, <https://www.unrwa.org/newsroom/official-statements/gaza-strip-unrwa-finally-receives-fuel-much-more-needed-humanitarian>, (Access date: August 11, 2024); "Timeline of Restrictions on Entry of Fuel into Gaza", Gisha, 26 December 2023, <https://gisha.org/en/graph/1-timeline-of-restrictions-on-entry-of-fuel-into-gaza>, (Access date: August 11, 2024); "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (27 May 2024) A/HRC/56/26", par. 51.

250 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (27 May 2024)...", par. 52.

251 "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (27 May 2024)...", par. 53.

252 "Statement of ICC Prosecutor Karim A.A. Khan KC".

253 "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese, A/HRC/55/73. 25 March 2024", par. 38.

254 "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese, A/HRC/55/73. 25 March 2024", par. 35.

have destroyed agricultural lands, farms, crops, livestock and fishing assets, thus seriously endangering people's livelihoods, the environment and the agricultural system.<sup>255</sup>

The statements presented so far, implying genocidal intent by Israeli officials and the fact that these statements have been adopted by the armed forces on the ground; as well as the nature of the attacks carried out by Israel, which directly target civilians as a whole, such as killing and wounding, and the fact that Palestinians are subjected to conditions that will result in their partial or total destruction, are strong evidence of genocidal intent. In particular, considering the importance of children to the future development of a society, inflicting serious physical or mental harm on them can reasonably be interpreted as a means of destroying the group in whole or in part.<sup>256</sup> In our opinion, these actions have gone beyond the collective punishment of the entire population for the actions of a group and have reached the point of intending to destroy it in part or in whole.

The statements made by independent UN experts,<sup>257</sup> academics<sup>258</sup> and states, including Turkey and the Republic of South Africa,<sup>259</sup> in the ICJ's interim injunctions in the *Republic of South Africa v. Israel Genocide Case*, regarding the fact that Israel's actions constitute genocide, contain warnings that the actions may amount to genocide. In its interim decisions in the case, the ICJ found the claim that there was a risk of "irreparable harm" to the rights of Palestinians in Gaza, a group protected under the Genocide Convention, to be plausible and ordered Israel to "take all measures within its power" to prevent acts of genocide, prevent

255 "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese, A/HRC/55/73. 25 March 2024", par. 39.

256 "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese, A/HRC/55/73. 25 March 2024", par. 33.

257 "Gaza: UN Experts Call on International Community to Prevent Genocide against the Palestinian People", OHCHR, 16 October 2023, <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>, (Access date: August 11, 2024).

258 Raz Segal, "Statement of Scholars in Holocaust and Genocide Studies on Mass Violence in Israel and Palestine since 7 October", *Contending Modernities*, 9 December 2023, <https://contendingmodernities.nd.edu/global-currents/statement-of-scholars-7-october>, (Access date: July 8, 2024).

259 "OIC Supports South Africa's ICJ Case against Israel for Genocide", Organisation of Islamic Cooperation, 11 January 2024, [https://www.oic-oci.org/topic/?t\\_id=40224&t\\_ref=26858&lan=en](https://www.oic-oci.org/topic/?t_id=40224&t_ref=26858&lan=en), (Access date: August 11, 2024); "Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)", ICC, 8 February 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240208-pre-01-00-en.pdf>, (Access date: August 11, 2024); "Brazil's Lula Likens Gaza War to Holocaust | Reuters", YouTube, 18 February 2024, <https://www.youtube.com/watch?v=aoQeOsgs0Dc>, (Access date: August 11, 2024); "Joint Statement by the African Union Commission and the General Secretariat of the League of Arab States on the Grave Situation in Gaza", Afrika Birligi, 15 October 2023, <https://au.int/ar/node/43236>, (Access date: August 11, 2024).

and punish incitement to genocide and provide urgent humanitarian assistance, among other things.<sup>260</sup>

This was also the conclusion reached after a detailed examination by the UN Rapporteur for Palestine, Francesca Albanese. Albanese's report analysed the patterns of violence and Israel's policies in the Gaza offensive, concluding that there were reasonable grounds to believe that the threshold for committing genocide had been met. One of the key findings is that Israel's executive and military leadership and its soldiers deliberately distort the principles of *jus in bello* in order to legitimise genocidal violence against the Palestinian people, thereby undermining their protective functions.<sup>261</sup>

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260 "Public Sitting", ICJ, 11 January 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240111-ora-01-00-bi.pdf>, (Access date: August 11, 2024).

261 "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese, A/HRC/55/73", 25 March 2024.





# ISRAEL'S ACTS AND INTERNATIONAL JUDICIAL MECHANISMS

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As previously stated, violations of international humanitarian law committed in the Palestinian territories are violations that give rise to individual criminal liability. The violations of international humanitarian law committed in the Palestinian territories since June 13, 2014, including the current attacks on Gaza have led to an investigation being initiated before the ICC. Furthermore, the current attacks on Gaza have given rise to Israel's international legal responsibility as a state. Specifically, the violations resulting from non-compliance with the Genocide Convention have led to the initiation of a genocide case against Israel before the ICJ.

## ONGOING JUDICIAL PROCESS IN THE ICC

### i) Functioning of the Court

A large portion of the violations that shake the order established by the rules of law in the international community and therefore constitute crimes are committed during armed conflicts. These violations manifest themselves as unlawful attacks, killings, injuries, deportations, destructions and massacres, producing new hostilities and conflicts. Therefore, the relevant rules of international law consider the actions taken during armed conflicts as crimes and foresee the punishment of the real persons who commit these actions.

The relevant rules of international law classify the crimes in question as “crime of aggression”, “war crimes”, “crimes against humanity” and “crime of genocide”,

and lead to the personal criminal liability of the persons alleged to have committed them.<sup>262</sup>

The crimes in question must be so defined also in the national legal systems of states, both in accordance with the rules of international customary law and the relevant international agreements. Related criminal prosecutions must also be carried out.<sup>263</sup> It is expected that the persons alleged to have committed these crimes will be tried in their national judiciaries due to the personal criminal jurisdiction that the states have over their citizens. It is further accepted that there is universal jurisdiction over those alleged to have committed crimes against humanity or genocide. Based on this principle, it is possible for those alleged to have committed crimes against humanity or genocide to be tried by the national judicial institutions of any state.<sup>264</sup>

However, the problem is that those who commit the crimes in question are either never tried or are given show-trial by their own national courts. In the face of this widespread situation, attempts have been made to ensure that suspects who have never been tried or who have not been effectively tried can be tried in an international court to prevent impunity. Especially after World War II, the Nuremberg and Tokyo military criminal courts were established with a temporary status, and international criminal courts were established by the UNSC to try those who committed crimes during the events in the former Yugoslavia and Rwanda.

However, the fact that these courts are temporary and were established for the purpose of trying those who committed crimes during certain armed conflicts has not permanently solved the problem of suspects going unpunished. The establishment of the ICC with the agreement signed in Rome in 1998 was a major step towards eliminating this deficiency. The founding treaty entered into force in 2002 after receiving sufficient ratification, and 124 states have already become parties to this treaty.

The founding treaty of the ICC has determined the crimes to be subject to prosecution as “genocide”, “crimes against humanity”, “war crimes” and “crime

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262 See, ICC Statute, article 25. *Bosnia v. Serbia* (footnote 40), par. 384, 385-386, 396-400.

263 See, Convention I, article 49; Convention II, article 50; Convention III, article 129; Convention IV, article 146.

264 As of 1 September 2012, at least 142 (approximately 73.6 percent) of UN member states had included at least one war crime as a crime under national law, and at least 136 (approximately 70.5 percent) UN member states provided universal jurisdiction over such crimes. See, *Universal Jurisdiction A Preliminary Survey of Legislation Around the World-2012 Update*, (Amnesty International Publications, 2012), p. 12.

of aggression” in its articles 6, 7, 8 and 8*bis*. The persons that the Court can investigate and try must be citizens of one of the party states or persons alleged to have committed one or more of the crimes in the territory of a state party to it.<sup>265</sup> Meanwhile, a state may accept the trial of persons alleged to have committed the crimes in question in its territory by a declaration without being a party to the treaty establishing the Court.<sup>266</sup>

In addition, in order for a person to be tried by the ICC, he/she must not be tried by national judicial bodies. The Court still has jurisdiction over a person if he/she has not been tried genuinely in the national courts. In the event of the “unwillingness” of the states with jurisdiction or in cases of fake trials, the Court may begin to exercise its jurisdiction to investigate and try.<sup>267</sup> When a “situation” in which one or more of the crimes in question may have been committed is referred to the Court prosecutor by the UNSC, the related persons who are to be investigated and tried by the Court.<sup>268</sup>

The aforementioned principles show that if a crime or crimes are alleged to have been committed in the country of a party state or in an incident referred to the prosecutor by the UNSC, a citizen of a state that is not a party to the founding treaty can also be investigated and tried by the Court.

However, even if enough evidence is obtained to warrant a trial, the person in question must be brought before the ICC in person in order to proceed to the trial phase. The prosecutor may request the Pre-Trial Chamber to issue a warrant for the arrest of a person under investigation at any stage of the investigation, and if there are sufficient grounds, an arrest warrant can be issued.<sup>269</sup> Therefore, in order for a person to be tried, an arrest warrant must be issued for him/her, he/she must be arrested and delivered to the Court.

#### ii) ICC's Jurisdiction in Palestine and Related Developments

On January 1, 2015, the State of Palestine requested the ICC to investigate and prosecute those who committed crimes in Palestine, “including crimes committed in the occupied Palestinian territory” since June 13, 2014, with no end date. The ICC prosecutor began to investigate crimes allegedly committed in the Palestinian territory as of June 13, 2014.

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<sup>265</sup> See, Article 12.

<sup>266</sup> See, Article 12(3).

<sup>267</sup> See, Article 17.

<sup>268</sup> See, Article 13(b)

<sup>269</sup> See, Article 58.

After the State of Palestine became a party to the ICC founding treaty in May 2015, the prosecutor began conducting his investigations in the form of an investigation into the territory of a party state. However, the first problem that the prosecutor had to solve was to determine whether the jurisdiction to investigate covers also the occupied territories, as a significant part of the State of Palestine is under Israeli occupation. The prosecutor asked the Pre-Trial Chamber No. I for a decision on this issue. The Chamber No. I ruled on February 5, 2021 and observed that the Court's jurisdiction covers also the occupied territories of Palestine, including East Jerusalem, the West Bank and Gaza. The prosecutor announced on March 3, 2021 following this decision that an investigation had been opened into the situation in the State of Palestine.

The jurisdiction of the ICC therefore covers the attacks carried out by Israel on Gaza since October 7, 2023. Indeed, based on the evidence obtained through investigations in the context of the attacks in Gaza, the Prosecutor applied to the Pre-Trial Chamber No. 1 on May 20, 2024, requesting an arrest warrant for Israeli Prime Minister Netanyahu and Israeli Defence Minister Gallant.<sup>270</sup> In his reasoning warranting the arrest request, the prosecutor emphasized that his authority also includes the violent incidents that have increased since October 7, and that he also has jurisdiction over crimes committed in the Palestinian territories by citizens of non-state parties. The prosecutor emphasised that everyone alleged to have committed a crime in the Palestinian territories would be investigated.<sup>271</sup>

In his application submitted to the Pre-Trial Chamber, the ICC Prosecutor felt the need to emphasize that his investigation is fair and impartial by explaining how the evidence that forms the basis of the accusations and the arrest warrant request were obtained.<sup>272</sup> These detailed statement by the Prosecutor is no surprise since the occasional statements made by Israel and the US are being made to “discredit” both the Court and its Prosecutor personally, as well as the investigations.<sup>273</sup> The Prosecutor stated that the evidence included interviews with survivors and eyewitnesses, verified video, photographic and audio material, satellite imagery and statements from the alleged perpetrators. He empha-

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270 “Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine”, ICC, 20 May 2024 <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>, (Access date: August 11, 2024).

271 “Statement of ICC Prosecutor Karim A.A. Khan KC”.

272 “Statement of ICC Prosecutor Karim A.A. Khan KC”.

273 See for instance, “Biden’s Defense of Netanyahu Undermines the ICC — and Hurts the U.S.”, The Japan Times, 22 May 2024, <https://www.japantimes.co.jp/commentary/2024/05/22/world/bidens-defense-netanyahu-icc>, (Access date: August 11, 2024).

sised that the existing evidence was essentially obtained from primary sources that were concrete and undeniable.

However, assuming that the issue of how this evidence was interpreted could also be questioned, an explanation was also made regarding the examination of the evidence. The Prosecutor emphasized that the examination was “the result of an independent and impartial investigation”, that “the accusatory and exculpatory evidence was equally investigated” and that it was meticulously prepared “by separating the allegations from the facts and relying on the evidence”.

As an additional precaution, the Prosecutor stated that the recommendations of a panel of highly respected experts in the field of international humanitarian law and international criminal law, an impartial group, were also obtained to support the examination of evidence and legal analysis regarding the request on arrest warrant. The panel included Adrian Fulford, a former appellate judge and former ICC judge; Helena Kennedy, the Chair of the International Bar Association Human Rights Institute; Elizabeth Wilmshurst, former Deputy Legal Adviser at the UK Foreign and Commonwealth Office; Danny Friedman, an expert on criminal liability, human rights and public law; and two special counsels (Amal Clooney and Justice Theodor Meron). The Prosecutor stated that this independent expert analysis supported and strengthened the submissions.

The Prosecutor’s allegations against Netanyahu and Gallant are noteworthy. They support our findings in the previous sections of this report that Israel committed war crimes and crimes against humanity. The Prosecutor, citing the relevant articles of the ICC’s Statute, emphasized acts such as “starvation of civilians as a method of warfare that constitutes a war crime,” “intentionally causing great suffering or serious injury to body or health or cruel treatment as a war crime,” “intentionally killing or murder as a war crime,” and “intentionally directing attacks against civilians as a war crime.”

The Prosecutor listed acts such as “extermination and/or murder, including deaths caused by starvation,” “persecution as a crime against humanity,” and “other inhumane acts that may be considered crimes against humanity”. It was emphasized that the effects of starvation as a method of warfare, as well as other attacks on civilians in Gaza and collective punishment, were known to be “acute, visible and widespread,” and that this was confirmed by numerous local and international medical doctors and other witnesses interviewed by the Office of the Prosecutor. It was noted that hunger caused malnutrition, dehydration, deep suffering and increasing deaths among the Palestinian people, including

infants, other children and women. The Prosecutor underlined in particular that hunger as a method of warfare and the denial of humanitarian aid constituted crimes under the ICC Statute.

It was emphasized that, regardless of the military outcomes that Israel may have aimed for, each of the tools and methods it chose to achieve these goals in Gaza constituted a crime. The prosecutor stated that crimes against humanity were committed as part of a widespread and systematic attack on the Palestinian civilian population in accordance with Israeli state policy. Therefore, the prosecutor emphasized that the attacks on civilians were “widespread and systematic” and revealed that these actions were crimes against humanity. He also emphasized that these crimes continue today.

The most important deficiency in the ICC Prosecutor’s request is that there is no charge of genocide among the charges against Netanyahu and Gallant. While it is stated that the attacks on civilians in particular are widespread and systematic among the charges against these two names, it should not have been overlooked that this could actually amount to genocide. It should not have been overlooked that especially when it is emphasized that hunger is used as a tool of war on civilians, the aim could be to partially or completely destroy these people and therefore the crime of genocide is highly probable.

The ICC Prosecutor’s decision to limit the aims of Israel’s attacks and other methods to “eliminating Hamas,” “ensuring the return of hostages taken by Hamas,” and “collectively punishing the civilian population in Gaza that they perceive as a threat to Israel” has also been a rather superficial approach. Considering the nature of the actions, it is also necessary to foresee that the aim of the Israeli attacks may well be to partially or completely destroy the Palestinians in Gaza.

## ONGOING JUDICIAL PROCEEDINGS IN THE ICJ

### i) The Fundamentals of the Judicial Proceedings against Israel in the ICJ

According to the ICJ Statute, the Court’s jurisdiction only covers disputes between states. Non-state actors or international organizations do not have the right to be a party to a dispute before the Court in principle.

In order for the ICJ to have jurisdiction over a matter, the related states must have recognized the Court’s jurisdiction. However, since the Court’s founding treaty is an integral part of the UN Charter, each UN member state becomes a party to the Court’s statute. The process of recognizing the ICJ’s jurisdiction is a separate issue and can be done through different methods. First, they can gen-

erally recognize the Court's jurisdiction against states that have recognized the Court's jurisdiction. Currently, 73 states have accepted the Court's general jurisdiction. Secondly, notification can be made for certain states, subject to the condition of reciprocity, or for a certain period of time.<sup>274</sup>

Apart from these two methods, two or more states party to a dispute can only bring the dispute to the ICJ by reaching an agreement among themselves regarding that dispute. In addition, the Court has jurisdiction to hear disputes regarding the interpretation or implementation of a treaty in cases where the relevant treaty authorizes it. The 1961 Vienna Convention on Diplomatic Relations, the 1965 Convention on the Elimination of All Forms of Racial Discrimination, and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide are examples to grant the ICJ jurisdiction over disputes regarding the interpretation and implementation of articles.

States that are not members of the UN have the opportunity to bring their disputes before the Court by recognizing its jurisdiction.<sup>275</sup> The State of Palestine, which is not a full member of the UN, may bring a case before the Court with a notification that it recognizes the jurisdiction of the Court within the framework of Article 35/2 of the ICJ Statute and the UNSC Resolution No. 9 dated 1946.<sup>276</sup> Indeed, following the recognition of Jerusalem as the capital of Israel by the Washington administration in 2018, the State of Palestine was able to apply to the Court against the United States by declaring that it accepted the jurisdiction of the ICJ within the context of the 1961 Convention on Diplomatic Relations. Similarly, on June 3, 2024, Palestine made a declaration that it accepted the jurisdiction of the Court within the context of the Convention on the Prevention and Punishment of the Crime of Genocide.

Israel is trying to prevent a legal process that could be initiated by Palestine through a "declaration" regarding the agreements to which the State of Palestine is also a party. Israel declared that it did not recognize Palestine as a state and that it would not accept the use of its jurisdiction provisions against itself. However, since no such dispute has been brought before the ICJ to date, it is not clear whether this declaration by Israel will prevent the Court jurisdiction.

<sup>274</sup> ICJ Statute, article 36.

<sup>275</sup> In this context, Switzerland (28 July 1948), Liechtenstein (29 March 1950), San Marino (18 February 1954), Japan (2 April 1954) and Nauru (29 January 1988) have become parties to the charter, without yet being members of the UN.

<sup>276</sup> "Resolution of 15 October", S/RES/9, 15 October 1946, <https://undocs.org/S/RES/9>, (Access date: August 11, 2024).



In light of all this information, the authority of the State of Palestine to file a lawsuit against Israel before the ICJ is not all clear. However, there is another possibility based on a specific principle which offers the possibility of filing a lawsuit in favour of Palestine against Israel. This is the principle of *erga omnes partes* obligation.

*Erga omnes partes* obligations are set forth in the famous *obiter dictum* ruling of the ICJ in the Barcelona Traction Case Decision in 1970.<sup>277</sup> The Court ruled in this decision that some of the relevant protection rights included in *erga omnes* obligations can be found in international agreements. Article 1 of the 2005 decision<sup>278</sup> on *erga omnes* obligations prepared by the Institute of International Law defines *erga omnes partes* obligations as obligations that a state party to a multilateral agreement “undertakes in any case towards all other states”.

States that are party to a multilateral agreement are obliged to undertake such obligations towards all states when common values are taken into account, and all other states are legally allowed to take action against the violation of such provisions. In the decisions of *Belgium v. Senegal* of 2009<sup>279</sup> and *Gambia v. Myanmar* of 2019,<sup>280</sup> the ICJ stated that *erga omnes partes* obligations were violated within the scope of the “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” and the “Convention on the Prevention and Punishment of the Crime of Genocide”. Therefore third states party to the agreement have the capacity to become parties to the case.<sup>281</sup>

In a situation where the possibility of the State of Palestine filing a lawsuit against Israel at the ICJ is uncertain, third states have the opportunity to file a lawsuit against Israel and states supporting Israel within the context of *erga omnes partes* obligations. The Republic of South Africa, which is seen to be indirectly based on this principle, applied to the ICJ on 29 December 2023, particularly on the basis of the authority granted by the Genocide Convention, and filed a lawsuit

277 “Barcelona Traction, Light and Power Company, Limited, Judgment”, I.C.J. Reports, 1970, p. 3.

278 M. Giorgio Gaja, “Obligations and Rights Erga Omnes in International Law”, Institut de Droit International, (2005), [https://www.idi-iil.org/app/uploads/2017/06/2005\\_kra\\_01\\_en.pdf](https://www.idi-iil.org/app/uploads/2017/06/2005_kra_01_en.pdf), (Access date: June 7, 2024).

279 “Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment”, ICJ, (2012), p. 422.

280 “Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020”, ICJ, (2020), p. 3, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>, (Access date: August 11, 2024).

281 “Given their shared values, all States Parties to the Genocide Convention have a common interest in ensuring that acts of genocide are prevented and that, when they do occur, their perpetrators do not go unpunished. This common interest means that any State Party owes something to all other States Parties to the Convention.” See, “Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment”, para. 41.

against Israel in relation to the actions that took place in Gaza on and after 7 October 2023. Again on this basis, Nicaragua initiated a lawsuit against Germany on 1 March 2024, by applying to the Court, claiming that it supported Israel's "acts of genocide in Gaza".

ii) Republic of South Africa *v.* Israel Case

On 29 December 2023, the Republic of South Africa (hereinafter referred to as South Africa) applied to the ICJ claiming that Israel violated the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The case that started with this application is the fifth case brought before the Court regarding the Genocide Convention and the genocide claim since the establishment of the Court. The other cases are the *Bosnia and Herzegovina v. Serbia*, *Croatia v. Serbia*, *Gambia v. Myanmar* and *Ukraine v. Russia*.

According to South Africa's statements, the Pretoria had administration demanded Tel Aviv's compliance with the Genocide Convention since October 30, 2023, through its public statements, its statements at the UN General Assembly, and its notes sent directly to the Israeli Embassy.<sup>282</sup> Lastly, on December 21, 2023, one week before its application to the ICJ, it submitted another note to the Israeli Embassy in this regard.<sup>283</sup>

Israel signed the Convention on the Prevention and Punishment of the Crime of Genocide on August 17, 1949, and ratified it on March 9, 1950. Israel has no reservations regarding Article 9, which concerns the jurisdiction of the ICJ. South Africa stated in its application<sup>284</sup> that it has a responsibility to prevent genocide as a party to the Genocide Convention, and then listed its claims as follows:

Israel has violated the obligations imposed on it by articles 1, 3, 4, 5 and 6 of the Genocide Convention in conjunction with article 2, through its state organs, officials and other persons or groups acting under its influence, control or instructions. These violations include, but are not limited to: failure to prevent genocide (article 1); perpetrating genocide (3/a); collaborating in the commission of genocide (3/b); directly and publicly inciting genocide (3/c); attempting to commit genocide (3/d); participating in genocide (3/e); failing to punish the acts listed above (violation of articles 1, 3, 4 and 6); failing to enact the necessary legal measures to punish the acts listed above (violation of article 5); Directly or indirectly obstructing the investigation of acts of genocide (violation of articles 1, 3, 4, 5 and 6).

Following these allegations, South Africa requested the ICJ to rule as follows:

282 "Application Instituting Proceedings", ICJ, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>, (Access date: August 11, 2024).

283 "Application Instituting Proceedings".

284 "Application Instituting Proceedings".

- Establish that Israel has violated and continues to violate the obligations imposed on it by the Genocide Convention (especially Article 1 and Articles 2, 3, 4, 5 and 6)
- Immediately cease all actions and measures that could lead to the violation of these obligations (all other actions, including deaths)
- Ensure that those who violate these obligations are tried in national or international courts
- Ensure that evidence of the acts of genocide is collected and preserved
- Ensure that Palestinian victims are compensated for their losses
- Provide assurances and guarantees to prevent the recurrence of violations of the Genocide Convention

The majority of the information in the case file is based on the findings of UN institutions, organizations and officials. This information is particularly based on the UN Secretary General, the UN Humanitarian Agency (OCHA), WHO, UNICEF and UNRWA. Although limited, references have also been made to Amnesty International and some other international civil society organizations, as well as heads of state and government who have described Israel's actions as genocide. Turkey is among the countries that have described Israel's actions in Gaza after October 7, 2023 as genocide.

South Africa specifically mentioned Israel's attacks on Gaza after 2005 in its petition, and voiced its findings of violations of international law in these attacks by citing decisions and reports by UN institutions and officials. The application included also the atrocities and killings of Palestinians by Israeli soldiers and settlers in the West Bank and East Jerusalem after October 7.<sup>285</sup>

South Africa further requested in its application that an interim measure be issued in accordance with Article 41 of the ICJ Statute and Articles 73, 74 and 75 of the Rules of Procedure. In this context, the application also includes the following:

- Israel immediately ceases its military operations in Gaza
- Israel prevents other armed groups under its control, supervision or influence from taking further steps to fulfil the first request
- South Africa and Israel take all reasonable measures necessary to prevent genocide
- Israel renounces all actions within the scope of its obligations under the Genocide Convention

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<sup>285</sup> "Application Instituting Proceedings".

- Israel takes all measures and lifts restrictions within the scope of its obligations under the Genocide Convention
- Israel carries out the necessary work to punish genocide
- Israel cooperates to reveal the facts
- Israel submits a report to the court within one week regarding the measures taken
- Israel refrains from taking any further aggravating steps until the court makes a decision

Shortly after receiving the application requesting interim measures, the ICJ announced its first decision on the interim measure on 26 January 2024,<sup>286</sup> following the hearings on 11<sup>287</sup> and 12 January.<sup>288</sup> This decision, which orders provisional measures, is important in terms of establishing that the precondition for having the necessary *prima facie* jurisdiction has been met and that the Israeli actions in Gaza since 7 October 2023 can be assessed in the context of violations of the Genocide Convention. Although the provisional measure decisions taken by the ICJ did not include an immediate ceasefire, they are important both in terms of showing that Israel's actions can be assessed in the context of genocide allegations and in terms of demanding some provisional measures.

South Africa requested new interim measures to be ruled on February 12<sup>289</sup> and then on March 6,<sup>290</sup> when the situation did not change and even worsened. The Court announced new interim measures with its decision on March 28, 2024.<sup>291</sup> In a period when life conditions in the region were getting increasingly worse, the ICJ ruled that the State of Israel should urgently take the necessary measures for the passage of humanitarian aid to Gaza.

286 "Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)", ICJ, 26 January 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>, (Access date: August 11, 2024).

287 "Public Sitting", ICJ, 11 January 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240111-ora-01-00-bi.pdf>, (Access date: August 11, 2024).

288 "Public Sitting", ICJ, 12 January 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>, (Access date: August 11, 2024).

289 "Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)", ICJ, 12 February 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240212-wri-01-00-en.pdf>, (Access date: August 11, 2024).

290 "Urgent Request and Application for the Indication of Additional Provisional Measures", ICJ, 6 March 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240306-wri-01-00-en.pdf>, (Access date: August 11, 2024).

291 "Request for the Modification of the Order of 26 January 2024 Indicating Provisional Measures", ICJ, 28 March 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf>, (Access date: August 11, 2024).

On May 10, 2024, South Africa once again applied to the ICJ<sup>292</sup> and requested changes to the interim measures previously taken, while the Court ruled on May 24, 2024,<sup>293</sup> following the hearings held on May 16 and 17, that Israel should immediately cease its military operations against Rafah.<sup>294</sup> Despite this decision, Israel continues its military operations against Gaza including Rafah.<sup>295</sup> It is likely that the Court will rule on new interim measures to be directed in parallel with new developments in the process.

In accordance with the decision of the Court on April 5, 2024,<sup>296</sup> South Africa will be able to submit its preliminary objection and written opinions on the merits on October 28, 2024, and Israel on July 28, 2025.

Many states, especially Turkey, have applied to intervene in the Case.<sup>297</sup> Nicaragua on January 23, 2024,<sup>298</sup> Colombia on April 5, 2024,<sup>299</sup> Libya on May 10, 2024,<sup>300</sup> Mexico on May 24, 2024,<sup>301</sup> Palestine on June 3, 2024,<sup>302</sup> Spain on June

292 “Urgent Request for the Modification and Indication of Provisional Measures”, ICJ, 10 May 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240510-wri-01-00-en.pdf>, (Access date: August 11, 2024).

293 “Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)”, ICJ, 24 May 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>, (Access date: August 11, 2024).

294 “Israel must immediately cease its military attacks on the Rafah area and any other actions that could negatively affect the living conditions of the Palestinian group in Gaza, which could lead to their complete or partial physical destruction.” See, “Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)”, ICJ, 24 May 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>, (Access date: August 11, 2024).

295 “Birleşmiş Milletler Güvenlik Konseyi'nin Ateşkes Kararı İsrail'i Durdurabilecek mi?”, SETA, 15 June 2024, <https://www.setav.org/yorum/birlesmis-milletler-guvenlik-konseyinin-ateskes-karari-israili-durdurabilecek-mi>, (Access date: August 11, 2024).

296 “Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)”, ICJ, 5 May 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240405-ord-01-00-en.pdf>, (Access date: August 11, 2024).

297 Mehmet Şah Yılmaz, Sümeyye Dilara Dinçer ve Muhammet Tarhan, “Türkiye, Güney Afrika'nın ICJ'de İsrail'e Karşı Açtığı Soykırım Davasına Müdahil Olacak”, Anadolu Agency, 1 May 2024.

298 Nicaragua, which was the first to petition for intervention, stated that it had petitioned to intervene in the case because it believed that Israel's actions were contrary to its obligations under the Genocide Convention and that, as a party to the Convention, it had an obligation not to leave South Africa alone in this case. See, “Application for Permission to Intervene by the Government of the Republic of Nicaragua”, ICJ, 23 January 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240123-int-01-00-en.pdf>, (Access date: August 11, 2024).

299 In its petition to intervene, Colombia stated that its aim was not to become a party to the case but to assist the Court in interpreting the Genocide Convention. See, “Declaration of Intervention by the Republic of Colombia”, ICJ, 5 April 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240405-int-01-00-en.pdf>, (Access date: August 11, 2024).

300 Libya stated its reasoning for intervening in the case as “supporting the Palestinian people.” See, “Declaration of Intervention of the State of Libya”, ICJ, 10 May 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240510-int-01-00-en.pdf>, (Access date: August 11, 2024).

301 Mexico, as a party to the Genocide Convention, declared in its petition its desire to intervene in order to contribute to the interpretation to be made by the Court and which would be binding. See, “Declaration of Intervention by the United Mexican States”, ICJ, 24 May 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-int-01-00-en.pdf>, (Access date: August 11, 2024).

302 The State of Palestine requested intervention as a victim of Israeli actions and as a state that would be directly affected by the decision to be taken, and also to ensure that South Africa's claims were taken into account. See, “State of Palestine Ministry of Foreign Affairs and Expatriates”, ICJ, 31 May 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240603-int-01-00-en.pdf>, (Access date: August 11, 2024).

28, 2024,<sup>303</sup> and Türkiye on August 7, 2024 applied to intervene. These and similar possible interventions will create a strong stance against Israel's acts and support the genocide case against it.

iii) Nicaragua v. Germany Case

Nicaragua, which applied to intervene in the case filed by South Africa against Israel on January 23, 2024, also submitted an application to the ICJ against Germany on March 1, 2024. Prior to this application, the Nicaraguan administration sent messages to Germany, the Netherlands, Canada and the United Kingdom on February 2, 2024 reminding them of their obligations arising from the Genocide Convention, but the application was only directed to Germany.

In its application, Nicaragua requested the Court to decide and declare the following in relation to Germany's conduct in the occupied territories, in relation to serious breaches of the imperative norms of international law:

- It failed to fulfil its obligation to prevent the genocide committed and continuing against the Palestinian people, including those living in Gaza. It also contributed to the perpetration of genocide by violating the Convention.
- It breached its obligations under international humanitarian law, stemming from the 1949 Geneva Conventions, the 1977 Protocols and the peremptory principles of international humanitarian law. It also acted contrary to its obligation to ensure respect for these fundamental norms.
- It breached its obligation to comply with other peremptory norms of international law, particularly by providing aid or assistance in maintaining the unlawful situation of the ongoing military occupation of Palestine, including the ongoing unlawful aggression in Gaza.<sup>304</sup>

Based on these statements, Nicaragua claims that every state party to the Genocide Convention is obliged to do everything possible to prevent genocide, and that Germany, by stopping financial aid to UNRWA and providing political, economic and military support to Israel, has supported the “the ongoing plausible genocide” that has been committed in the occupied Palestinian territory, especially in Gaza, since 7 October 2023, and has thus violated its obligations. It also claims that it has violated its obligations under the 1949 Geneva Conventions and

303 İspanya davada taraf olma amacı taşımayıp soykırım sözleşmesinin yorumlanması bakımından katkı sunmayı amaçladığını belirtmiştir. See, “Declaration of Intervention of Spain”, ICJ, 28 June 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240628-int-01-00-en.pdf>, (Access date: August 11, 2024).

304 “Application Instituting Proceedings”, ICJ, 1 March 2024, <https://www.icj-cij.org/sites/default/files/case-related/193/193-20240301-app-01-00-en.pdf>, (Access date: August 11, 2024).

their additional protocols, as well as the imperative rule of Palestinians' right to self-determination.<sup>305</sup>

Nicaragua has determined that the events that took place on 7 October 2023 were in the occupied Palestinian territories of Sderot, Kfar Aza, Nir Oz and Be'eri, meaning that they were not in Israeli territory. This determination is particularly important from Nicaragua's perspective on the legal characterization of the events of 7 October 2023.<sup>306</sup>

In its application, Nicaragua also requested provisional measures that Germany should halt the supply of weapons to Israel that could be used to commit genocide, and resume cooperation with UNRWA.

In the oral hearing on provisional measures held on 8 April 2024,<sup>307</sup> Nicaragua also emphasized the joint statement made by Germany, France, Denmark, Canada, the Netherlands and the United Kingdom on 15 November 2023 regarding its involvement in the *Gambia v. Myanmar* Case, together with Germany's intervention in the *Gambia v. Myanmar* Case, regarding its obligations under the Genocide Convention and humanitarian law.<sup>308</sup>

At the time this request for intervention was made, acts amounting to genocide were continuing in the Palestinian territories, and it was significant that the states that made this statement had continued to support Israel and approve Israel's so-called right to "defend itself and protect its citizens" since then. In the same hearing, Nicaragua also referred to the decisions of the Dutch and Canadian courts to prevent arms sales to Israel. It also brought up whether Germany, which has joint arms programs with the US, contributed to the F-15 and F-35 warplanes for which the Washington administration signed a sales contract to Israel. As a result, although Nicaragua centrally put forward a discourse against Germany, it also recorded the arms sales made to Israel by other Western states.

Based on all these issues, Nicaragua underlined that Germany violated *jus cogens* rules and *erga omnes partes* obligations and was also responsible for "aiding

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305 "Application Instituting Proceedings".

306 "Application Instituting Proceedings", para. 6

307 "Application Instituting Proceedings".

308 -20231115-wri-01-00-en.pdf, (Access date: August 11, 2024). "Further bearing in mind the *jus cogens* character of the prohibition of genocide and the *erga omnes partes* nature of the obligations under the Genocide Convention, all States parties have a common interest in the realization of the higher aims of the Genocide Convention." See, "Joint Declaration of Intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland", ICJ, 15 November 2024, <https://www.icj-cij.org/sites/default/files/case-related/178/178>



the commission of an internationally wrongful act” under Article 16 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts of 2001.

In the oral hearing held on April 9, 2024, Germany claimed that due to historical reasons, Israel’s security was at the centre of its foreign policy, that this constituted a *raison d’état*, and that in order for this case to be accepted, it had to be accepted that there was a genocide, whereas Israel did not commit genocide and ensured the security of its own citizens. Moreover, the case was brought by a state that was not a party to the conflict against another state that was not a party to the conflict. Therefore the application was beyond the jurisdiction of the Court, and requested that the case be dismissed and the application be dropped.<sup>309</sup>

The ICJ concluded in its interim decision dated 30 April 2024 that there was no need to order interim measures. However, an important element of the Court’s decision should be noted: Germany’s request that there be no dispute between the parties, that there was no “reasonable violation” to accuse Germany of, and therefore, that the application be dropped due to clear lack of jurisdiction was not found to be justified. The case filed against Germany for allegedly violating its obligation to prevent genocide will continue on the merits in the upcoming period.

This application itself has produced results. Germany announced in a statement on April 24, 2024 that it would restart cooperation with UNRWA, which it announced that it had suspended aid on January 27, 2024. It is also seen that the arms sales, which were 200 million euros in October 2023, have been reduced to 1 million euros as of March 2024, and that the weapons provided during this process consist of military equipment such as anti-tank missiles and submarines and are not related to the ongoing conflicts.<sup>310</sup> These situations show that the Berlin administration foresees some changes in its attitudes.<sup>311</sup>

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309 “Submissions by Germany, Verbatim Record”, ICJ, 9 April 2024, <https://www.icj-cij.org/sites/default/files/case-related/193/193-20240409-ora-01-00-bi.pdf>, (Access date: August 11, 2024).

310 “Submissions by Germany, Verbatim Record”.

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# ISRAEL'S ATTACKS ON GAZA SINCE OCTOBER 7, 2023 AND INTERNATIONAL LAW

YÜCEL ACER, FETHULLAH BAYRAKTAR

It is of great importance that the attacks on Gaza that Israel launched on October 7, 2023 and continues to this day should be evaluated based on the relevant principles and rules of international law for certain reasons. The fact that international political mechanisms have been ineffective against Israel to date makes it even more important to conduct legal assessments and carry out legal processes. Whereas, three different international judicial processes have already been initiated and are ongoing against or regarding Israel. All of these demonstrate that it is of great importance to identify Israel's legal violations; to reveal the other fundamental rights of Palestinians that have been severely violated, especially the right to life; to compensate for the damages caused by the violations within the framework of appropriate political conditions and to punish those responsible.