

GENOCIDE CRIMES COMMITTED IN GAZA BEFORE THE INTERNATIONAL CRIMINAL COURT: REALITY AND CHALLENGES



Mohamed Djelloul ZAADI^{1*}

University OF Akli M'hand Oulhadj-Bouira (Algeria)¹

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Abstract: Legal responsibility for the crimes of genocide in Gaza is one of the most sensitive and complex issues in contemporary international law. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide governs genocide, the most serious of international crimes. This convention requires both states and individuals to prevent and punish these crimes without exception. In the context of Gaza, the military operations that included the widespread killing of civilians, the destruction of vital infrastructure, the targeting of health and educational facilities, and the obstruction of humanitarian aid have sparked extensive legal debate regarding the potential existence of both the material and mental elements of the crime of genocide.

Legally, the state that carries out acts that may constitute genocide bears international responsibility and is accountable before the International Court of Justice. Individuals—whether political or military leaders—are also accountable before the International Criminal Court, as genocide is a crime that has no statute of limitations, and its perpetrators can be prosecuted at any time.

Key Words: Genocide; International Criminal Court; Israel; Palestine; Human Rights; Criminal Responsibility;

جرائم الإبادة الجماعية المرتكبة في غزة أمام المحكمة الجنائية الدولية: الواقع والتحديات

ملخص: تعدّ المسؤولية القانونية عن جريمة الإبادة الجماعية في غزة من الموضوعات الأكثر حساسية وتعقيداً في القانون الدولي المعاصر. فالإبادة الجماعية، باعتبارها أخطر الجرائم الدولية، تخضع لأحكام اتفاقية منع جريمة الإبادة الجماعية والمعاقبة عليها لعام 1948، التي تلزم الدول والأفراد على السواء بمنع هذه الجريمة ومعاقبة مرتكبيها دون استثناء. وفي سياق غزة، أثارت العمليات العسكرية التي شملت قتل المدنيين على نطاق واسع، وتدمير البنية التحتية الحيوية، واستهداف المرافق الصحية والتعليمية، ومنع المساعدات الإنسانية، نقاشاً قانونياً واسعاً حول احتمال توافر الركن المادي والمعنوي لجريمة الإبادة الجماعية.

من الناحية القانونية، تتحمل الدولة المنفذة للأعمال التي قد تشكل إبادة جماعية مسؤولية دولية تتمثل في المحاسبة أمام محكمة العدل الدولية، إلى جانب مسؤولية الأفراد—سواء كانوا قادة سياسيين أو عسكريين—أمام المحكمة الجنائية الدولية، باعتبار أن الإبادة الجماعية جريمة لا تسقط بالتقادم ويمكن ملاحقة مرتكبيها في أي وقت.

الكلمات المفتاحية: الإبادة الجماعية؛ المحكمة الجنائية الدولية؛ الكيان الصهيوني؛ فلسطين؛ حقوق الإنسان؛ المسؤولية الجنائية.

Crimes de génocide commis à Gaza devant la Cour pénale internationale : réalité et défis

Résumé: La responsabilité juridique du crime de génocide à Gaza est l'une des questions les plus sensibles et complexes du droit international contemporain. Le génocide, crime international le plus grave, est régi par la Convention de 1948 pour la prévention et la répression du crime de génocide, qui oblige les États et les individus à prévenir et à punir ce crime sans exception. À Gaza, les opérations militaires, notamment les massacres de civils, la destruction d'infrastructures vitales, le ciblage d'établissements de santé et d'enseignement et l'obstruction de l'aide humanitaire, ont suscité un vaste débat juridique quant à l'existence potentielle des éléments matériels et immatériels du crime de génocide.

Juridiquement, l'État qui commet des actes susceptibles de constituer un génocide est internationalement responsable et doit répondre de ses actes devant la Cour internationale de Justice. Les individus – qu'ils soient responsables politiques ou militaires – sont également responsables devant la Cour pénale internationale, car le génocide est un crime imprescriptible et ses auteurs peuvent être poursuivis à tout moment.

Mots Clés: Génocide; Cour pénale internationale; Entité sioniste; Palestine; droits de l'Homme; responsabilité pénale.

Introduction

Genocide is one of the most serious crimes ever committed by humanity, involving premeditated intent and systematic actions aimed at the total or partial destruction of a specific human group. In the contemporary context, the events in Gaza have become one of the most controversial legal and humanitarian issues. Since October 2023, the Gaza Strip has witnessed an unprecedented wave of military operations, resulting in widespread destruction and significant human losses, which have raised serious concerns about the commission of genocide against the Palestinian population. These operations have led to the deaths of tens of thousands of civilians, the destruction of infrastructure, the collapse of the healthcare system, widespread starvation, and forced displacement—practices that clearly fall under the internationally recognized Genocide Convention of 1948.

The gravity of the situation in Gaza stems from the fact that it does not merely reflect a conventional armed conflict, but rather exemplifies a blatant case of the indiscriminate and excessive use of military force, coupled with inflammatory political rhetoric that betrays hostile intentions toward the Palestinian population. This has led numerous international organizations and legal experts to warn that what is happening could amount to genocide. The case has also been brought before the International Court of Justice, after South Africa filed a lawsuit accusing Israel of committing grave violations of the Genocide Convention. This has garnered renewed global attention to the legal standards that define genocide and to the responsibility of the international community to prevent such crimes and hold perpetrators accountable.

Studying the genocide in Gaza is not merely an examination of a specific case; it is an exploration of the limits of international law and its capacity to protect civilians during conflicts. It is an attempt to understand the relationship between legal texts, on the one hand, and their implementation mechanisms, along with the balance of political power, on the other. Furthermore, it is an effort to document the profound human dimension of the suffering endured by a people who found themselves facing a tragic reality in which their lives and fundamental rights were violated. Therefore, addressing this issue acquires immense scientific and ethical importance, as it contributes to uncovering the truth of what is happening, clarifying the legal framework governing these crimes, and demanding the enforcement of international justice as a fundamental condition for achieving peace and security in the region and the world.

The problematic:

Despite numerous human rights reports and international appeals regarding the serious violations committed in Gaza, the characterization of these acts as "genocide" remains a subject of considerable legal debate, whether concerning legal standards,

mechanisms of proof, or international responsibility. Based on the foregoing, it seems logical to ask the following question: To what extent can Israeli officials be prosecuted before the International Criminal Court for crimes of genocide committed in the Gaza Strip starting in October 2023?

Study division:

We decided to divide the current study into two complementary sections. In the **first topic**, we addressed the conceptual framework of genocide crimes at the international level, where we tried to outline the features of the concept by referring to the initiatives that were undertaken at the doctrinal and legal levels before addressing the elements of genocide crimes. As for the **second topic**, we address within its framework the jurisdiction of the International Criminal Court to consider genocide crimes, which we took as a sample in this field, and we highlight in this framework the crimes committed in the Gaza Strip and the reasons that prevent the prosecution of Israeli criminals before the international judicial body.

Scientific methodology:

In preparing this study, we relied on a range of scientific methods, most notably the descriptive method, which aligns with the theoretical framework of the study, particularly concerning the definition of genocide from both legal and doctrinal perspectives. We also employed the analytical method to examine the possibility of holding Israeli political and military leaders accountable before the International Criminal Court. Finally, we utilized the historical method to recount specific events that constituted acts of genocide in the Gaza Strip.

THE FIRST TOPIC:

The Conceptual Framework of Genocide Crimes at the International Level

The conceptual framework of genocide crimes at the international level is rooted in the collective determination of the international community to prevent and punish acts aimed at the destruction of human groups. Codified primarily in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, genocide is defined as a distinct international crime characterized by specific prohibited acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. This framework integrates legal, moral, and historical dimensions, establishing genocide as a crime under international law that entails individual criminal responsibility, regardless of official capacity. It further reflects the evolution of international criminal justice through the jurisprudence of international and hybrid tribunals, which have clarified the elements of this crime, particularly the requirement

of specific intent (*dolus specialis*), thereby reinforcing genocide's status as one of the gravest violations of international law.

This section of the study addresses the definition of genocide crimes (**First requirement**) before referring to the elements involved in this type of crimes (**Second requirement**).

First requirement: Defining the Crimes of Genocide

The sources that have attempted to define the crimes of genocide have varied, ranging from those that have approached it from a doctrinal (**First section**) to those that have approached it from a legal perspective (**Second section**).

First section-From a doctrinal Perspective:

There is no doubt that genocide has been a common practice during armed conflicts throughout history. However, this concept was not publicly articulated until recently, by the Polish jurist Raphael Lemkin, a former advisor to the U.S. Department of War. Through this step, he sought to lay the initial foundations for an international convention to address and punish this type of practice in light of the atrocities committed by Nazi forces during their occupation of the Soviet Union, which the international community was unable to classify under any of the recognized categories of international crimes. Lemkin suggested that these acts be described by the term "genocide," which is composed of two parts: "geno," meaning "race" or "group," and "cide," meaning "killing." By combining them, we obtain the term "genocide," i.e., the crimes of genocide. He explained that it applies to any act that aims at national, racial, or religious genocide, whether total or partial. In other words, such acts do not target individuals in their personal capacity, but rather because of their affiliation with a specific group, ethnicity, etc. He defined it as directing a number of acts against members of specific human groups, not in their personal capacity, but by virtue of their affiliation with those particular groups, with the aim of eliminating those groups within the framework of a deliberate and organized plan. These acts can include killing, dismantling social and political institutions, eliminating the group's economy, religion, language, and other similar practices¹.

Consequently, numerous attempts have been made to define the parameters of international genocide. Jonassohn and Chalk define genocide as mass killing with the intent to destroy any group, where this group and its membership are predetermined

¹-Sham-leigh searcy christiansen, The definition and prevention of genocide: a rhetorical analysis of the united nations, a thesis presented to the faculty of the graduate school of western carolina university, english departement, carolina, united states of america, April 2017, p17.

by the perpetrator². Meanwhile, Nancy Scheper-Hughes expands the concept of genocide by excluding the element of criminal intent and addressing genocide committed in peacetime. She cites as an example the mistreatment of parents by placing their children in nursing homes, which she considers a form of genocide on a smaller scale³. Furthermore, some legal scholars link the crimes of genocide to a direct nature that can only be realized within the context of armed conflict. Pieter Drost defines the crimes as "deliberate destruction,"⁴, while Helen Fein sees it as a crime requiring "continuous and purposeful action"⁵. Professor Antonio Plonzer defines genocide as "an infringement upon fundamental human rights, rights violated by the crimes of genocide, namely the right to life, the right to physical and mental integrity, the right to personal freedom, and the right to form a family. The crimes of genocide are the denial of the right to life of entire human groups through the violation of fundamental individual rights"⁶. Professor De Vabres views it as "an attack on life, health, and physical integrity through abortions, sterilizations, and attacks on national culture"⁷.

Second section-The legal definition of genocide:

Numerous initiatives have been undertaken at the international level to define the crime of genocide, perhaps the most prominent of which are those included in the various international texts adopted in this regard. Reference should initially be made to the definition contained in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, Article 2 of which states the following:

«In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

²-Kurt Jonassohn and Chalk Frank, A typology of genocide and some implications for the human rights agenda, in: William Isidor and Michael N Dobkowski (eds.), *Genocide and the modern age: Etiology and case studies of mass death*, Syracuse university press, New-york, United States of America, 2000, p 17.

³-N. Scheper-hughes, *the genocidal continuum: peace-times crimes*, in: A. Jones (ed.), *Genocide*, Sage publications Ltd, Newbury Park, California, 2008, p 400.

⁴-Pieter N. Drost, *The crime of State, humanicide, international governmental crime against individual human right*, *Genocide. United Nations Legislation on International Criminal Law*, Vol.II, Leyden, 1960, p 125.

⁵-Fein Helen, *Genocide: a sociological perspective*, London, Sage publications, Newbury Park, California, 1993, p 94.

⁶-Antonio Planzer, *Le crime de Génocide*, St-Gall: F: Schwalb, These presentee pour l'obtention du grade de docteur en droit, faculté de droit de l'université de Fribourg, Suisse, 1956, p6.

⁷-See: Robinson Nehemiah, *The Genocide convention: A commentary*, Institute of international affairs, New-york, 1960, pp, 19-22.

- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group»⁸.

This position reaffirms what the participating states had previously agreed upon in adopting United Nations General Assembly Resolution 96(I) of 11 December 1946, in which they stipulated the following:

«Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations»⁹.

The Member States of the United Nations General Assembly have observed the perpetration of genocide, in which the total or partial destruction of ethnic, religious, political, or other groups has been recorded, and have determined that the prevention of these crimes is a matter of international interest. The General Assembly has thus recognized genocide as a crime under international law, condemned by the civilized world, and punishable by law, regardless of whether the perpetrators are principals or accomplices, or whether they are officials or private citizens, and regardless of whether they commit the crime for reasons of custom, religion, politics, or other grounds. The General Assembly has therefore called upon Member States to adopt the necessary legislative measures for the prevention of these crimes. Given the broad scope and gravity of these international crimes, the Member States of the United Nations General Assembly have recommended the organization of international cooperation to take preventive measures against genocide as quickly as possible and to facilitate the prevention of these crimes¹⁰.

Second requirement-The Elements of the Crimes of Genocide:

Based on the definitions mentioned above, we can deduce the elements constituting the crimes of genocide, which are required for its establishment. These

⁸-Article 2 from the Convention on the Prevention and Punishment of the Crime of Genocide Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948.

⁹-First Para. From the United Nations General Assembly 96(1) adopted at the fifty-fifth plenary meeting of December 11th, 1946.

¹⁰-Paras. 2 and 3 from the United Nations General Assembly 96(1) adopted at the fifty-fifth plenary meeting of December 11th, 1946.

elements are the material element (**First section**), the mental element (**Second section**), and the international element (**Third section**) and are detailed as follows:

First section-The material element:

Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide limits the commission of this international crimes to a set of acts that, if committed, would establish the international criminal responsibility of the perpetrator. These acts include:

a- Killing members of a group:

This act is embodied in the taking of the lives of individuals who share a particular bond, such as language, religion, political views, or other ties. If an isolated individual is targeted, it is not considered genocide. One of the most important characteristics of this behavior is that it manifests in different forms, whether total or partial extermination, and can be carried out either positively or negatively¹¹.

B- Inflicting serious physical or mental harm or damage on members of the group:

For a particular behavior to rise to the level of genocide, it must involve a degree of seriousness and danger that threatens the existence of the group itself. In this regard, various material or moral means may be employed to achieve this goal, whether through beating, mutilation, or torture—practices that result in permanent disabilities for individuals.¹²

C-Subjecting the group to hard living conditions intended to destroy it completely or partially:

This is done by exposing the members of the group to extreme living conditions that make their survival a daily challenge, such as isolating them in places devoid of the essential elements of life, like food and water, confining them to barren areas with no agricultural crops, or placing them in regions where harsh climatic conditions prevail or diseases spread without any means of treatment¹³.

D-Imposing measures aimed at preventing or hindering reproduction within the group:

¹¹-R. J Murray Alexander, Does international criminal law still require a "crime of crimes"? a comparative review of Genocide and crimes against humanity, Goettingen Journal of international law, Vol.02, N°03, 2011, p 596.

¹²-David Alonzo Maizlish, in whole or in part: group rights, the intent element of genocide and the "quantitative criterion", New-york university law review, N° 77, Vol.1369, November 2002, p 1381.

¹³-Claus Kreb, The international court of justice and the elements of the crime of Genocide, The European Journal of international law N°04, Vol.18, 2007, p 624.

This type of practice revolves around initiatives taken by any party to biologically exterminate the group by preventing their reproduction and growth, hindering their development, or even preventing their continuation by separating men from women, aborting pregnant women, cutting off the reproductive organs of group members, or sterilizing one or both sexes, along with other practices aimed at achieving the same goal¹⁴.

E-Forcibly transferring children or young people from their community to another:

This type of practice is considered by some legal scholars to constitute cultural genocide, as it deprives a human group of the continuity of its beliefs, customs, and traditions over time, which is achieved through their transmission from generation to generation. This manifests in preventing children from living in their social and cultural environment and placing them with families to whom they have no connection¹⁵.

Second section-The Moral Element of the Crimes of Genocide:

Individuals involved in the crimes of genocide cannot be held responsible unless criminal intent is proven. Genocide is an intentional crime requiring the individual's will to commit any of the acts constituting the crime of genocide, as mentioned above. This includes the element of intent, meaning the perpetrator must know that the act being committed is legally prohibited and punishable by law. In the current situation, the individual's intent must be directed toward the total or partial destruction of a national, ethnic, racial, or religious group¹⁶.

Third section-The International Element:

The international element of the crimes of genocide does not necessarily mean that the crimes cross the borders of one or more states. Rather, it requires that the crimes be committed according to a premeditated plan devised by one or more states and are often perpetrated by high-ranking political and military officials with sufficient power and influence to implement such a plan. In other words, it is immaterial whether the perpetrator of genocide belongs to the state where the crimes were committed or to a foreign state. Two elements are considered in determining whether the crimes indeed occurred:

¹⁴-Marjolein Cupido, The contextual embedding of genocide: A casuistic analysis of the interplay between law and facts, Melbourne Journal of international law, N° 15, 2014, p14.

¹⁵-Claus Kreb, The international court of justice and the elements of the crime of Genocide, Op. Cit, pp. 624-625.

¹⁶-Claus Kreb, The crime of Genocide and contextual elements. A comment on the ICC Pre-Trial chamber's decision in the Al Bashir case, Journal of international criminal justice, Oxford university press, 2019, pp, 8-9.

- The perpetrator must exercise actual authority or be associated with actual authority;
- The acts must be directed against a group of people whose members are bound together by language, religion, or other similar characteristics, as defined by law¹⁷.

THE SECOND TOPIC:

The Jurisdiction of the International Criminal Court over the Crimes of Genocide in Gaza

The jurisdiction of the International Criminal Court (ICC) over the crimes of genocide in Gaza raises complex legal questions rooted in international criminal law, statehood, and jurisdictional competence. Although Israel is not a state party to the Rome Statute, the ICC's jurisdiction may nonetheless be triggered through Palestine's accession to the statute in 2015 and its recognition as a state party for the purposes of the court's jurisdiction. Under Article 12 of the Rome Statute, the ICC may exercise territorial jurisdiction over crimes allegedly committed on the territory of a State Party, including Gaza. Consequently, acts amounting to genocide, as defined in Article 2 of the 1948 Genocide Convention and Article 6 of the Rome Statute, fall within the Court's subject-matter jurisdiction. The assessment of ICC jurisdiction over alleged genocidal acts in Gaza therefore hinges on legal determinations concerning territorial jurisdiction, individual criminal responsibility, and the evidentiary threshold required to establish genocidal intent, making the issue a central and highly contested matter in contemporary international criminal justice.

This section of the study addresses the genocide crimes committed in the Gaza Strip by the Zionist entity in light of the legal framework provided by the Rome Statute (**First requirement**) before referring to the obstacles that hinder raising the jurisdiction of the International Criminal Court to consider this type of crimes (**Second requirement**).

First requirement-Crimes of Genocide committed in the Gaza strip in light of the Rome Statute:

Genocide represents one of the most serious crimes of international concern. Therefore, this type of act has received the attention of the States Parties to the Rome Statute, who have defined it in Article 6 thereof, which states the following:

¹⁷-Tuti Gusmawati Simanjuntak, Lili Rahmayana Harahap, Ahmad Muhia Sembiring, Bahraini, Characteristics of the crime of genocide in an international criminal law perspective, international criminal law perspective, international journal of law, social science, and humanities, Vol.02, N°01, 2025, p 128.

«For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group»¹⁸.

Governmental and non-governmental organizations have played a crucial role in exposing Israeli practices that fall under the umbrella of genocide, despite Israeli authorities' claims that Hamas was the aggressor. Journalists were unable to carry out their duties easily due to the tragic conditions prevailing on the battlefield, as well as being targeted by Israeli forces. This leads us to rely on statistics compiled by the Palestinian authorities, which indicate that the practices carried out by the Israeli authorities do indeed fall under the main categories of genocide, as follows:

First section-The deliberate killing of Palestinians:

According to the latest statistics provided by the Palestinian health authorities in October 2025, the Palestinian death toll had risen to 67,075, with 169,430 injured, the majority of whom were women and children. This toll resulted from Israeli military operations, in addition to the thousands of Palestinians reported missing, many of whom are presumed to have been buried alive or dead under the rubble of destroyed buildings. These figures do not include those killed whose bodies the Palestinian authorities have been unable to recover. Therefore, the statistics presented so far do not necessarily reflect the true situation in Gaza but rather represent only a limited portion of it. Due to fuel shortages, rescue workers have only a very limited number of vehicles left to retrieve bodies from under the rubble¹⁹.

The principle of distinction is one of the most important principles that restricts the conduct of warring parties, whether during international or non-international armed conflicts. It prohibits them from targeting residential areas, for example, or any other targets whose destruction offers no military advantage, such as hospitals,

¹⁸-Article 6 from Rome statute of the international criminal court adopted in Rome on 17 July 1998 and amended in Kampala on 11 June 2010.

¹⁹-Neta C. Crawford, The human toll of the Gaza war: Direct and indirect death from 7 October 2023 to 3 October 2025, The watson school of international and public affairs, Brown University, October 7th, 2025, p 1.

museums, schools, or even religious sites like mosques, and so on²⁰. To say the least, the aerial bombardments launched by the Israeli authorities since October 31, 2023, have spared neither residential buildings, resulting in the deaths of those inside, nor UNRWA schools, refugee camps, and other civilian infrastructure. Beginning in December 2023, the Israeli forces intensified their airstrikes on the Rafah area in southern Gaza, considered the safest area in the region. Consequently, approximately 1.2 million displaced Palestinians sought refuge in Rafah. On a single night, February 11, 2024, at least 94 Palestinians were killed by Israeli airstrikes during that period²¹.

Second section-Severe physical and mental harm inflicted on Palestinians:

Statistics compiled by the Palestinian Authority between October 2023 and May 2024 revealed that Israeli forces indirectly harmed more than 77,765 Palestinians by denying them access to necessary medical services to treat their illnesses. This was a direct result of the active targeting of healthcare facilities and fuel shortages caused by the Israeli blockade.

The deteriorating health situation in the Gaza Strip during this period led to amputations for Palestinian patients and the wounded, including more than 1,000 Palestinian children. Others suffered severe burns, and some Palestinians underwent surgery without anesthesia due to a lack of necessary medical equipment.

Furthermore, Israeli forces have subjected numerous Palestinians to cruel, inhuman, and degrading treatment on many occasions since the start of their military campaign in the Gaza Strip in October 2023. This has caused physical and psychological harm to the victims. Among the most significant manifestations of this are arbitrary arrests and ill-treatment, particularly when these individuals are young, as well as mistreatment in detention camps. In this regard, testimonies from released detainees detail the brutal treatment they endured in detention centers, where they were often stripped naked, beaten, held in cages, attacked by dogs, and deprived of food or even basic hygiene. On another note, activists from the Mediterranean Human Rights Monitor reveal that Israeli soldiers have invited Israeli civilians to witness sessions of torture and ill-treatment of Palestinian detainees. In addition, a

²⁰-Siamak Karimi, Savalan Mohamadzadeh, An Analysis of the principle of distinction in IHL: A case study of «Al-Aqsa storm» and Israeli military response, The Iranian review for UN studies, Vol.5, Issue 1, Winter & Spring 2023, p 51.

²¹-Debeche Abdenour and Guernane Farouk, The Israeli blockade on Gaza from the perspective of international law, Algerian Journal of human and social sciences, Vol.13, Issue 2, 2025, pp, 596-600.

number of Israeli soldiers have been documenting the mistreatment of Palestinians in videos and posting them on social media²².

Third section-Deliberately subjecting Palestinians to living conditions designed to bring about their complete or partial destruction:

Since October 2023, Israeli forces have deprived Palestinians in Gaza of the necessities for survival. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has repeatedly sounded the alarm about the food insecurity facing approximately 2.17 million people, with half a million Palestinians suffering from famine²³.

Major international news agencies, such as *The Guardian*, have reported the deliberate targeting by Israeli forces of drinking water, irrigation, and sanitation facilities in the occupied West Bank and Gaza Strip during 90 military operations between January 2024 and mid-2025, using bombs and poisons. The Israeli aggressor's intention to subject Palestinians to living conditions designed to bring about their complete or partial destruction is clearly evident in the statement made by Israeli Defense Minister Yoav Gallant at the beginning of the war in October 2023: "There will be no electricity, no food, no water, and no fuel; everything will be shut down."²⁴. In this regard, the Israeli authorities and forces cut off the water supply to Gaza from Israel and later restricted its delivery. They also cut off the electricity supply from Israel to Gaza, which is necessary to operate water pumps, desalination plants, and sanitation infrastructure within Gaza, and restricted the fuel needed to run generators in case of power outages. Furthermore, UN agencies and humanitarian aid organizations were prevented from delivering essential water-related materials and other humanitarian assistance to Gaza. Water and sanitation infrastructure was damaged, and in some cases deliberately destroyed, and its repair was prevented by prohibiting the import of all water-related materials. The targeting of this type of infrastructure resulted in the deaths of workers who attempted to repair water facilities²⁵.

Second requirement–Legal obstacles preventing the activation of the International Criminal Court's jurisdiction over genocide crimes in Gaza:

²²-Haneen Qaraawee and Ismael Abujarad, The impacts of the practices of the Israeli occupation forces (IOF) on the Palestinian children, Turkish journal of Middle Eastern Studies, vol.12, N°01, 2025, pp, 58-72.

²³-Marwan Mosleh and Koustuv dalal and yousef Aljeesh and leif Svanstrom, The burden of war-injury in the Palestinian health care sector in Gaza strip, BMC international health and human rights, Vol.18, N°28, 2018, pp, 6-7.

²⁴-Daniel Bar-Tal, The told story of the Gaza war, World affairs, Vol.188, 2025, p 3.

²⁵-Elai Rettig, Cutting the electricity supply to Gaza-consequences and implications, BESA center perspectives paper N° 2219, Bar-Ilan university, October 16th, 2023, pp, 1-3.

Article 13 of the Rome Statute stipulates that: «The Court may exercise its jurisdiction with respect to the crimes referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15»²⁶.

By examining the text of Article 13 above, we can identify the obstacles that may prevent the prosecution of Israeli officials for international crimes committed, as follows:

First section-The issue related to ratification of the Rome Statute:

According to Article 26 of the Vienna Convention on the Law of Treaties of 1969, the following applies: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith"²⁷. In other words, an international treaty creates legal obligations only for the states party to it. Since Israel has neither signed nor ratified the Rome Statute establishing the International Criminal Court, it is not subject to its provisions²⁸. However, the Rome Statute contains a provision that circumvents this restriction, namely Article 12(2)(a), which allows the Court to exercise its jurisdiction if the conduct in question occurred within the territory of the "State." This would make the case brought by Palestine admissible in principle before the Court, were it not for the issues surrounding the question of whether or not Palestine qualifies as a "State," as explicitly stated in Article 12 above²⁹.

Second section-The problem related to the Security Council's referral of the situation in the Gaza Strip to the International Criminal Court:

There is no doubt that the war waged by the Israeli government on Gaza, in terms of its scope and intensity, constitutes a threat to international peace and

²⁶-Article 13 from Rome statute of the international criminal court adopted in Rome on 17 July 1998 and amended in Kampala on 11 June 2010.

²⁷-Article 26 from Vienna convention on the law of treaties done at Vienna on 23 May 1969.

²⁸-Hossam Eldeeb, The ratification and implimentation of the Rome statute of the international criminal court by the Arab states: prospects and challenges, A thesis submitted for the degree of doctor of philosophy, Brunel law school, Brunel University-London, December 2015, pp, 14-15.

²⁹-International Criminal Court, Pre-Trial chamber I, situation in the state of Palestine, Public document: observations by the state of Palestine to the Pre-trial chamber I pursuant the rule 103 of the rules of procedure and evidence, Document N° ICC-01/18 of 6 August 2024, p3.

security³⁰. Within this framework, the most serious crimes were committed, such as war crimes, crimes against humanity, and genocide³¹. Consequently, the Security Council was supposed to refer the situation to the Prosecutor of the International Criminal Court in accordance with Article 13(b)³². However, the reality of the international arena reveals otherwise. It is inconceivable that the United States of America, the historical ally of Israel, would allow the adoption of such a resolution, and it will undoubtedly use its veto power³³.

Third section-The Prosecutor of the International Criminal Court may initiate investigations into international crimes:

The Prosecutor of the International Criminal Court may initiate investigations into allegations of the most serious crimes within the jurisdiction of the international judicial body, *proprio motu*³⁴. Such investigations are opened based on relevant information received from states, United Nations bodies, intergovernmental or non-governmental organizations, or any other credible sources deemed appropriate³⁵. The legal obstacle in this regard is that the ability to open an investigation is contingent upon the Pre-Trial Chamber accepting the Prosecutor's request, which must be accompanied by all supporting documents, information, and evidence justifying such action³⁶. If the Pre-Trial Chamber rejects this request, the investigation is postponed until the Prosecutor submits a subsequent request based on new facts and evidence³⁷.

³⁰-Chunni Qiao, Haolin Li, Israeli-Palestinian conflict: The biggest threat to international security in the 21st century, international journal of social science and education research, Vol.3, Issue 11, 2020, p 60.

³¹-Yassin Abdalla Abdelkarim, Prosecuting international law: Diagnosing the international legal asthenia concerning the Gaza crisis, Journal of international criminal law, Vol.5, Issue 1, 2024, pp, 2-4.

³²-Article 13(b) from Rome statute of the international criminal court adopted in Rome on 17 July 1998 and amended in Kampala on 11 June 2010; Quigly, J. The Palestinian declaration to the international criminal court : The statehood issue, in: Meloni, C., Togno G. (eds.), Is there a court for Gaza? I.M.C Asser press, The Hague, 2011, p 431.

³³-See for example: Juliette rémond-Tiedrez, The international criminal court's decision on its territorial jurisdiction over Palestine: between power dynamics and political legitimacy, confluences Méditerranée, Vol.2, N°117, 2021, p 153.

³⁴-Article 15, Para.1 from Rome statute of the international criminal court adopted in Rome on 17 July 1998 and amended in Kampala on 11 June 2010.

³⁵-Article 15, Para.2 from Rome statute of the international criminal court adopted in Rome on 17 July 1998 and amended in Kampala on 11 June 2010.

³⁶-Article 15, Paras. 3 and 4 from Rome statute of the international criminal court adopted in Rome on 17 July 1998 and amended in Kampala on 11 June 2010.

³⁷-Article 15, Para.5 from Rome statute of the international criminal court adopted in Rome on 17 July 1998 and amended in Kampala on 11 June 2010.

The main obstacle in this context is the lack of suitable security conditions that would allow the investigative committees to perform their duties effectively. However, the media has highlighted the continuation of Israeli military operations in the Gaza Strip³⁸ and even the existence of infighting among Palestinians, who kill each other under the pretext of eliminating traitors within their ranks and, in some cases, struggle for power in what remains of the Gaza Strip³⁹. Furthermore, it is unreasonable to expect the relevant parties, whether the Palestinian Authority or the Israeli government, to cooperate with the investigative committees dispatched to the areas under Israeli occupation⁴⁰.

Conclusion:

The study of genocide in Gaza, as portrayed in international human rights reports, analyses by UN bodies, and interpretations of international criminal law, reveals the scale of the humanitarian tragedy endured by the residents of the Gaza Strip and the complexity of the legal framework governing the accountability of perpetrators of the most serious international crimes. This study highlights that the systematic killing of Palestinian civilians, the deprivation of basic necessities, the targeting of vital civilian infrastructure, and the widespread forced displacement constitute serious and well-documented international violations that necessitate in-depth legal investigation and the strict application of the rules of international humanitarian law and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Field experience and documented evidence gathered by independent commissions of inquiry have demonstrated that the international community's failure to take deterrent measures has enabled the continuation of these grave violations. This brings to the forefront two crucial questions: the effectiveness of the international legal system and the capacity of its mechanisms to prevent and punish genocide. This study also affirms that genocide is not merely a single act, but rather a

³⁸- United Nations, Consolidate Gaza Ceasefire, Halt Escalating Violence, Settlement Activity in West Bank, Deputy Special Coordinator Tells Security Council Open Debate – Meeting Coverage, 10098th Meeting (AM & PM), SC/16284, 28 January 2026, in : <https://www.un.org/unispal/document/consolidate-gaza-ceasefire-halt-escalating-violence-settlement-activity-in-west-bank-deputy-special-coordinator-tells-security-council-open-debate/>, consulted in: 03/02/2026, at 01: 48.

³⁹-Thibault Lefevre, À Gaza, le Hamas sonne l'heure des règlements de comptes face à des clans rivaux, France info, 14/10/2025, in: https://www.franceinfo.fr/monde/proche-orient/israel-palestine/a-gaza-le-hamas-sonne-l-heure-des-reglements-de-comptes-face-a-des-clans-rivaux_7552012.html, consulted in : 03/02/2026, at 01: 48.

⁴⁰-Kjersti Lohne, The international criminal court at risk of collapse, Prio, 10 January 2025, in: <https://www.prio.org/comments/1164>, consulted in: 03/02/2025 at 01: 48.

series of interconnected policies based on the intent to destroy, in whole or in part, a protected group, thus requiring rigorous legal oversight and a swift response.

Legal awareness of the gravity of these crimes and the activation of the responsibility of states and international bodies are two essential pillars for ensuring that impunity is not tolerated. Therefore, this study not only analyzes the past but also opens avenues toward a more just future, one in which human dignity is respected and what remains of trust in international justice is preserved. The study of this topic allowed us to come up with a number of conclusions, perhaps the most important of which are the following:

- Genocide is one of the most serious international crimes. It is considered a “transnational” crime that does not have a statute of limitations and requires strict international accountability under the 1948 Convention and the Rome Statute.
- The documented events in Gaza have formed a legal basis for accusations of genocide, both before the International Court of Justice and through reports by the Human Rights Council, particularly regarding mass killings, the starvation of civilians, widespread destruction of infrastructure, and forced displacement.
- International judicial enforcement suffers from significant slowness and complexity, allowing violations to continue and creating an environment of impunity.

We have found several legal loopholes based on the aforementioned components, which we advise be addressed by:

- Expediting proceedings before the International Court of Justice in the case concerning genocide allegations, and compelling the parties involved to implement provisional measures;
- Strengthening the role of the International Criminal Court in investigating all violations and providing political and financial support to the prosecutor to complete the files related to political and military officials;
- Activating the principle of universal jurisdiction through states capable of prosecuting perpetrators of serious international crimes, including genocide, war crimes, and crimes against humanity;

Developing international early warning mechanisms to monitor signs of genocide and activating systems for immediate diplomatic and humanitarian intervention.

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