

مدى توافق الحملة العسكرية على قطاع غزة بتاريخ ٨ أكتوبر ٢٠٢٣ مع اتفاقية منع
ومعاقبة جريمة الإبادة الجماعية ١٩٤٨: دراسة وتحليل مقارنة

**The extent to which the military campaign in the Gaza Strip on October 8,
2023 is compatible with the Convention on the Prevention and
Punishment of the Crime of Genocide 1948: a comparative study and
analysis.**

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مدى توافق الحملة العسكرية على قطاع غزة بتاريخ ٨ أكتوبر ٢٠٢٣ مع اتفاقية منع ومعاقبة جريمة الإبادة الجماعية ١٩٤٨: دراسة وتحليل مقارنة.

الملخص:

منذ بداية الهجوم الإسرائيلي، تم الإبلاغ عن مقتل ما لا يقل عن ٥٠,٠٠٠ فلسطينيًا غالبيتهم من النساء والأطفال، حيث بلغ عدد القتلى من النساء أكثر من ١٢,٠٠٠ امرأة، ومن الأطفال أكثر من ١٧,٠٠٠ طفل، وأصيب أكثر من ١١٤,٠٠٠ فلسطيني. وقد قدرت مجلة ذا لانسيت الطبية أن عدد الوفيات يصل إلى أكثر من ٧٠,٠٠٠ حالة وفاة مباشرة بسبب الإصابات المؤلمة. بالإضافة إلى أكثر من ١٠,٠٠٠ آخرين في عداد المفقودين ومحاصرون تحت الأنقاض. وكانت الأمم المتحدة قد أدرجت إسرائيل ضمن القائمة السوداء للدول التي تقتل الأطفال. كما أفادت الأمم المتحدة أن جميع السكان الفلسطينيين في قطاع غزة البالغ عددهم ٢.٣ مليون نسمة تقريبًا قد نزحوا داخليًا. وأدى الحصار الإسرائيلي المشدد إلى قطع الضروريات الأساسية من الغذاء والمياه والكهرباء والوقود عن غزة والهجمات على البنية التحتية مما تسبب في انهيار الرعاية الصحية والمجاعة الوشيكة وأزمة إنسانية والتي كانت بالفعل محاصرة من قبل حكومة إسرائيل التي هدّدت بقصف أي مساعدات إنسانية تدخل إلى القطاع. وأرسلت إسرائيل رسائل تحت مليوناً ومئة ألف شخص من سكان غزة على إخلاء شمال غزة إلى الجانب المصري في سيناء، وهو ما رفضته مصر بشدة، حيث يعتبر هذا تهجيراً قسرياً من شأنه أن يرقى إلى جريمة حرب. فيما دعت الأمم المتحدة والعديد من الدول إلى وقف فوري لإطلاق النار وحذرت من خطر التطهير العرقي الجماعي للشعب الفلسطيني.

الكلمات المفتاحية: مدى توافق الحملة العسكرية على قطاع غزة بتاريخ ٨ أكتوبر ٢٠٢٣ مع اتفاقية منع ومعاقبة جريمة الإبادة الجماعية ١٩٤٨: دراسة وتحليل مقارنة.

Abstract:

Since the beginning of the Israeli offensive, at least 50,000 Palestinians have been reported killed, the majority of them women and children. More than 12,000 women and over 17,000 children have been killed, and over 114,000 Palestinians have been injured. The Lancet medical journal estimates that more than 70,000 direct deaths from traumatic injuries have occurred. In addition, more than 10,000 others are missing or trapped under the rubble. The United Nations has placed Israel on a blacklist of countries that kill children. The UN also reported that nearly all of the 2.3 million Palestinian population of the Gaza Strip has been internally displaced. The tightening Israeli blockade has cut off basic necessities such as food, water, electricity, and fuel to Gaza, and attacks on infrastructure have caused a collapse in healthcare, a near famine, and a humanitarian crisis that was already under siege by the Israeli government, which has threatened to bomb any humanitarian aid entering the Strip. Israel sent messages urging 1.1 million Gazans to evacuate northern Gaza to the Egyptian side of Sinai, a request strongly rejected by Egypt, which considers this a forced displacement that would amount to a war crime. Meanwhile, the United Nations and many countries called for an immediate ceasefire and warned of the risk of mass ethnic cleansing of the Palestinian people.

Keywords: Compatibility of the military campaign on the Gaza Strip on October 8, 2023, with the 1948 Convention on the Prevention and Punishment of the Crime of Genocide: A Comparative Study and Analysis.

Introduction

Crimes at the international level that affect human life or degrade their dignity and human value are a group of crimes called crimes against humanity, and are seen as the most serious crimes that the international community has fought since its establishment in its current form.

Perhaps the most prominent of them through the consensus of international institutions and the international community and the most repeated in the history of peoples is the crime of genocide. In 1948, during World War II, the United Nations General Assembly adopted a special agreement to prevent and put an end to the crime, and the agreement was called the Prevention and Punishment of the Crime of Genocide.

The importance of the crime stems from the fact that it is directed towards a specific ethnic, religious, or national group, with the aim of eliminating one of these groups completely or partially, or/and working to deport the remainder of the targeted group, in an organized manner and through a systematic policy pursued by the state or political organization to achieve the goal of eliminating the group.

In modern history, many genocides have occurred, such as the German crime against the Jews in Germany and the case of Serbia and Yugoslavia that occurred during the Bosnian War. The positions of the countries at that time were in support of taking legal action and prosecuting the perpetrators of the crimes, as there was consensus that the crime of genocide poses a danger to the stability and security of the international community. However, the world remained idly by as regards the horrific crime that began in 1948 at the hands of the settlers of the hills against the Palestinians during the Nakba and the occupation of Palestine. The crimes of the occupation have not stopped until today, as the brutal aggression has committed and continues to commit thousands of massacres against civilians throughout Palestine.

During which Gaza was exposed to a total of seven wars launched by Israel using warplanes, boats and artillery shelling, during which internationally prohibited weapons were used, the most important of which was white phosphorus and other prohibited weapons that were used in the shadow of clear international silence and complicity. On October 8, 2023, the occupation renewed its aggression against the Gaza Strip again under the pretext of getting rid of the Palestinian resistance. The number of massacres carried out by the occupation during the ongoing aggression, according to the latest statistics, reached 3,315 massacres and massive destruction in the Gaza Strip. This destruction included the shutdown of the medical sector due to a shortage of resources and medicines, as well as the prevention of the entry of medicines, food and water into the Strip, as the Gaza Strip is experiencing a state of severe famine. With the fall of thousands of Palestinians, the world chose to remain silent and watch the suffering of the Palestinian people once again by governments. However, after what happened in the Gaza Strip, the peoples went out in shameful demonstrations in the Arab and foreign streets, as it is considered a historical precedent for thousands of demonstrators to go out in America, the United Kingdom and France, which prompted governments to provide air assistance and pressure Israel to accept a cessation of the war. During this, the State of South Africa raised a case Against Israel in the International Court of Justice, accusing it of committing the crime of genocide and Israel's failure to avoid committing the crime through the widespread killing in the Gaza Strip and imposing a siege on the Palestinians with living conditions unsuitable for life, in addition to targeting women and pregnant women in a healthy and physical manner. The State of South Africa also added that Israel was determined to commit the crime through the various Israeli statements that require killing and starving the Palestinians without mercy and considering them all individuals in the resistance.

Research Problem:

The State of South Africa filed a case against Israel before the International Court of Justice, accusing it of committing the crime of genocide against the Palestinians in the Gaza Strip, since the beginning of the military campaign on the Strip, which began on October 8, 2023, based on the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. Israel said that the case filed by the State of South Africa lacks legal basis and also accused it of wanting to prevent Israel's right to defend itself and wanting to manipulate the court's decisions.

The research problem lies in analyzing the extent to which the military campaign that began on October 8, 2023 on the Gaza Strip is consistent with the texts mentioned in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and knowing the type of military operations in the Strip and whether it is considered a war crime or self-defense.

The importance of this research:

This research presents a legal vision and analysis of the military campaign launched by Israel on the Gaza Strip on October 8, 2023, in the context of the United Nations Convention on the Prevention of the Crime of Genocide signed in 1948, raises ideas about whether the actions carried out by Israel fall under the definition of genocide according to the signed convention, and also provides an image of the humanitarian conditions of the residents of Gaza.

In short, the research presents a comprehensive and in-depth concept of the Israeli campaign on the Strip from a legal and humanitarian perspective.

Study Questions:

1. What does the Convention on the Prevention and Punishment of the Crime of Genocide stipulate?
2. What is the definition of the crime of genocide?
3. Are there elements of the crime of genocide?
4. What acts are punishable by the Convention?
5. What measures and actions has Israel taken since October 8, 2023 during the campaign on the Gaza Strip?
6. Do Israeli measures and actions comply with the texts and elements mentioned in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948?

Research Methodology

I used the descriptive method by describing the Israeli actions and measures during the campaign on the Gaza Strip and mentioning the violations and breaches that occurred during the campaign of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

Also, the analytical method by analyzing the texts of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

Also, the comparative method to compare the Israeli military behavior and the texts of the Convention on the Prevention and Punishment of the Crime of Genocide by collecting the available evidence of the violations that occurred and the extent of the possibility of Israel's involvement in the crime of genocide and extracting the elements of the crime from Israel's actions and measures.

Scope of research:

Legislative scope: Texts of the Convention on the Prevention and Punishment of the Crime of Genocide 1948

Spatial scope: The Israeli war on the Gaza Strip

Time scope: The military campaign on the Gaza Strip since October 8, 2023

Chapter one: Theoretical Framework Convention on the Prevention and Punishment of the Crime of Genocide 1948

plan

1: The Concept of the Crime of Genocide.

1.1: Definition of the Crime of Genocide.

1.1.2: Victims of the Crime of Genocide.

1.2: Characteristics of the Crime of Genocide

1.3: Elements of the Mass Crime.

Chapter Two: Israeli Practices in the Gaza Strip.

2.1: Israeli Military Measures in Its Campaign on the Gaza Strip During the War.

2.2: The Connection of the Moral Element of the Crime of Genocide with Israeli Military Actions in the Gaza Strip.

2.2.1: The Material Element (Committing the Act).

2.2.2: The Moral Element (Intention to Commit the Act)

Chapter One: Theoretical Framework Convention on the Prevention and Punishment of the Crime of Genocide 1948.

The crime of genocide is considered one of the most important crimes that threaten human life and existence and cause a violation of life and harm for various reasons that may be ethnic, religious,

national or racial, so the international community has stopped it by drafting the Convention on the Prevention and Punishment of the Crime of Genocide 1948, and there is no doubt that the crime of genocide violates all international and humanitarian standards, laws and norms, and its harm falls on an entire community of minorities, which international law stipulates the necessity of respecting and this was reflected in the national laws that were established to protect the rights of minorities in societies in general.

In this chapter, I will discuss the nature of the crime of genocide in terms of definition, characteristics and legal pillars, through the first section, the definition of the crime of genocide, the second section, the characteristics of the crime of genocide, and the third section, the pillars of the crime of genocide.

1: The Concept of the Crime of Genocide.

This section will address a comprehensive and comprehensive definition of the crime of genocide, and the image of the groups that are subject to the crime of genocide through: the first requirement entitled the definition of the crime of genocide and the second requirement entitled the victims of the crime of genocide.

1.1: Definition of the Crime of Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide, also known as the Genocide Convention, resulted from the crimes and atrocities that occurred during World War II, especially those led by the Nazis against the Jews during that period. The Convention was established in 1948 and was the result of a set of understandings and discussions that took place between members of the international community. It is an international treaty that criminalizes genocide and obliges its members to impose its ban. It is the first human rights treaty adopted by the General Assembly on December 9, 1948, during the third session of the Assembly within General Assembly Resolution No. 260¹. The Convention entered into force on January 12, 1951, and was ratified by 152 member states of the United Nations².

Article 2 of the Genocide Convention defines: *Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, which are the acts:

1. Killing members of the group.

¹ International Committee of the Red Cross/Convention on the Prevention and Punishment of the Crime of Genocide/9-12/1948

² [United Nations Treaty Collection](#) /

Updated 4-3-2022 Accessed 9/6/2024

2. Causing bodily or mental harm to members of the group.
3. Deliberately inflicting on them conditions of life calculated to bring about its physical destruction in whole or in part.
4. Imposing measures intended to prevent births within the group.
5. Forcibly transferring children from one group to another within the group.

Article 3 also defines the crimes that may be punished:

1. Genocide.
2. Conspiracy to commit genocide.
3. Direct and public incitement to commit genocide.
4. Attempt to commit genocide.
5. Complicity in genocide³.

The seriousness of the crime does not stop at the fact that it is a robbery or an assault on one person⁴, but rather it is an assault on a group of individuals. It is one of the mixed crimes that may occur in times of war or peace, and is considered one of the crimes that intersect between international humanitarian law and international criminal law⁵.

The term genocide was first coined by Polish Chancellor Raphael Lemkin in his book Axis Rule in Occupied Europe, published in 1944⁶, The term (Genocide) consists of two words, which are compound words from the Greek language, meaning (Geno) meaning race or region and the word (cide) meaning killing⁷, The term was defined in his book as the erasure of an ethnic or national group in general. The Rome Statute establishing the International Criminal Court also defined it as having jurisdiction, and Article (6) of the Statute stated: "For the purposes of this Statute, genocide means any of the following acts committed with intent to destroy, as a national, ethnical, racial or religious group." Through the

³ [Text of the Convention on the Prevention and Punishment of the Crime of Genocide](#)

Accessed 9/6/2024

⁴ Marai, Ahmed Lotfi Al-Sayed (2016). Towards Activating the National Criminal Enforcement of the Provisions of International Humanitarian Law "A Comparative Study", Damer Al-Manhal for Publishing and Distribution, Amman-Jordan, 2016, p. 277.

⁵ Marai, Ahmed Lotfy Al-Sayed (2016). Towards Activating the National Criminal Enforcement of the Provisions of International Humanitarian Law "A Comparative Study", Damer Al-Manhal for Publishing and Distribution, Amman-Jordan, 2016, p. 276.

⁶ <https://www.pbs.org/wgbh/pages/frontline/shows/rwanda/reports/dsetexhe.html> Accessed on 10-6-2024

⁷ Martin Shaw, Genocide: Its Concept, Roots, Development, and Where Did It Occur?, 33 pp.

above definitions, genocide can be defined as committing any act that causes serious harm to another minority group, regardless of the reason, with the intent to erase, destroy and destroy the targeted group.

1.1.2: Victims of the crime of genocide.

Through the text of the agreement and the text of the Rome Statute, the groups targeted in the crime of genocide can be identified as four groups.

1. Nationalism: The definition of nationalism is the connection of people to their land, their loyalty and belonging to it, and to the customs and traditions of their fathers and grandfathers, and putting the interest of the homeland before personal interest. Nationalism is considered a modern movement⁸.

It can also be defined as a group of individuals linked by one national origin, and it also carries characteristics related to the form shared by nationalism, such as the crime of German forces during World War II against Slavic nationalism in Europe⁹.

2. Ethnicity: It is based on similarity in language and culture¹⁰, such as what happened in the Darfur region in Sudan between rebellious minorities and the Sudanese government.
3. Religious: These are groups that share the same religion regardless of race or nationality, which is what happened in Cambodia in 1975, when the government displaced and killed a Muslim minority in the region.
4. Ethnicity: Mentioned in the Encyclopedia Britannica, it is: "A social group, or a class of the population in a larger society, distinguished from others and linked by common ties of race, language, nationality, or culture"¹¹.

1.2: Characteristics of the crime of genocide

The crime of genocide has features that can be extracted from the provisions of the treaty, I will mention some of them.

⁸ https://mawdoo3.com/%D9%85%D8%A7_%D9%87%D9%8A_%D8%A7%D9%84%D9%82%D9%88%D9%85%D9%8A%D8%A9#cite_note-LMGvtxE7pq-1 / Published on April 3, 2019, accessed on June 10, 2024

⁹ Ratib, Muammar and Sayed, Hamed (2016). The Development of the Concept of Genocide in the Scope of the International Criminal Court, Dar Al-Manhal for Publishing and Distribution, Amman-Jordan, pp. 44-45.

¹⁰ International Criminal Court: Fact Sheet 3, Prosecution of the Crime of Genocide, Document No. 40/01/00, 1 August 2000, p. 3.

¹¹ "ethnic group" (2009). In Encyclopædia Britannica/ Retrieved 6-11-2024/ <http://www.britannica.com/EBchecked/topic/194248/ethnic-group>

1. The crime of genocide is of an international nature

Such crimes occur on societies as a whole¹², causing harm to the current and future generations¹³, so these acts were classified as crimes against humanity, and were codified in many international laws and forums, Lombiois defined it as: "Actions that violate the rules of international public law, to violate the interests that concern the international community, which it decided to protect with the rules of this law, or it is that crime that represents a violation of public order in more than one country, and responsibility for such crimes falls on individuals and countries together, it can be said that the legal rule that organized the crime of genocide and set its conditions and pillars and how to deter and punish it and codified it is the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Prevention and Punishment of the Crime of Genocide is considered binding even if the state is not a party to it¹⁴.

2. The crime of genocide is not political in nature.

The Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute stipulate that the crime of genocide is not subject to political reasons, which directly affects the extradition of criminals, so the state becomes obligated to extradite the individuals or party responsible for committing the crime.

The international community removed the political character from the crime of genocide, with the aim of preventing those accused of genocide crimes from evading trial due to their political status or their title in the state in which the act was committed, and thus the international community prevents evasion of judicial accountability for committing these crimes¹⁵.

Article 7 of the Convention on the Prevention and Punishment of the Crime stipulates: Genocide and the other acts mentioned in article 3 shall not be considered political crimes for the purpose of extradition. The Contracting Parties undertake in such cases to comply with the request for extradition in accordance with their laws and treaties in force.

¹² The role of international criminal tribunals in determining and punishing the crime of genocide/ November 2016/ p. 33

¹³ Genocide in International Criminal Law/By Ameerah Saeed/September 3, 2021/Retrieved June 11, 2024 https://jordan-lawyer.com/2021/09/03/genocide-in-international-criminal-law/#_ftnref1

¹⁴ Al-Warikat, Khalil Abdel Fattah (2016). Crimes of Murder before the International Criminal Court, Dar Al-Khaleej for Publishing and Distribution, Amman-Jordan, pp. 31-32.

¹⁵ Boubaker, Zian (2012/2013). The Crime of Genocide in International Humanitarian Law, Master's Thesis, Abdel Rahman Mira University – Bejaia, Algeria, p. 3

3. Criminal responsibility of the individual for committing genocide.

Article 4 of the Convention on the Prevention and Punishment of the Crime states: "Persons who commit genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutional rulers, public officials or private individuals. Article 6 also states that persons accused of committing genocide or any of the other acts enumerated in article III shall be tried by a competent court of the State in the territory of which the act was committed, or by an international penal tribunal which shall have jurisdiction with respect to those Contracting Parties which have recognized its jurisdiction. In this context, international jurisprudence has moved to emphasize the responsibility of individuals, not states, for the crimes of genocide committed, as the legal personality of the State may not be held accountable, but rather penalties may be imposed on perpetrators of genocide crimes.¹⁶

4. The competent judiciary to prosecute perpetrators of genocide crimes.

Article 5 states: "The Contracting Parties undertake to take, each in accordance with its Constitution, the necessary legislative measures to ensure the enforcement of the provisions of this Convention and, in particular, to provide effective penal penalties for persons guilty of genocide or any of the other acts enumerated in article III."

Article 6 also states: "Persons accused of genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by an international penal tribunal which shall have jurisdiction with respect to those Contracting Parties which have recognized its jurisdiction."

It is important to note that the international community has established mandatory rules to make the international community change its national legislation, and to include the texts of the Convention as national laws and texts to prosecute its perpetrators and ensure that they are held accountable.

According to the texts of the previous articles, it can be said that the degrees of litigation in crimes of genocide are either before a national court, provided that the integrity of the trial is guaranteed and that there is no political interference by the state in the trial, or before the international court with jurisdiction, provided that one of the states has explicitly recognized the jurisdiction of the court, or that it is a state party to the treaty, and the International Criminal Court takes over the reins in the event that the state fails to commit to trying the accused.

¹⁶ Mohamed Sadara, The distinction between the crime of genocide and crimes against humanity in international law, a thesis submitted for a master's degree, University of 13 Benyoucef Benkheda, Algeria, Faculty of Law and Administrative Sciences, 2008, p. 16.

1.3: Elements of the Crime of Genocide.

In general, the crime consists of three basic elements: the legal element, the material element, and the moral element. In the crime of genocide, the legal element is the element that criminalizes the act and is also called the international element because they address the legal aspect. The second element is called the material element, which is the act that was carried out and its result. The third element is the moral element, which means the intention to commit the crime.

– legal element:

The principle of crimes and penalties stipulates that there is no crime or punishment without a prior text. This principle is followed in national courts and extends to application in international law, with regard to the crime of genocide, which is prohibited and punishable by the text of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. The statute of the International Criminal Court also stipulates that it has jurisdiction to impose penalties.

Article 3 of the Convention explicitly stipulates the criminal acts.

The following acts are punishable:

- 1. Genocide.**
- 2. Conspiracy to commit genocide.**
- 3. Direct and public incitement to commit genocide.**
- 4. Attempt to commit genocide.**
- 5. Participation in genocide.**

–The material element:

The material element of the crime of genocide occurs when a positive or negative¹⁷ criminal act is committed against a group of groups stipulated in the Genocide Convention. The positive act is the direct commission of systematic killing, and the negative act is the failure to commit an act that could improve the living conditions of the group. Article 2 of the Genocide Convention and Article 6 of the Rome Statute of the International Criminal Court stipulate a set of acts that are considered the material element of the crime.

1. Killing members of the group.
2. Causing serious bodily or mental harm to members of the group
3. Intentionally subjecting the group to living conditions calculated to bring about its physical destruction in whole or in part.

¹⁷ Ahmed Mohamed Abdel Raouf Al-Munifi, The Crime of Genocide of the Palestinians in Gaza According to the International Criminal Court System, p. 20

4. Imposing measures aimed at preventing the birth of children within the group.
5. Forcibly transferring children from the group to another group.

1-Killing members of the group.

This action means repeatedly carrying out killings of communities defined by the agreement. The number of victims is not taken into account, as it is sufficient to carry out organized or random killings to consider the crime of genocide with the elements and conditions listed, There is no condition regarding the type of individuals targeted for the crime to be committed, as the killings can be focused on men alone or children¹⁸, The killing can target women alone to prevent reproduction in the targeted group, It is also not necessary for the targeting to be total, but it can be partial¹⁹, On July 6, 2000, the Preparatory Commission for the International Criminal Court published a report explaining the elements of the crime of murder²⁰:

- 1- The perpetrator kills more than one person.
- 2- This person or persons are members of a particular national, ethnic, racial or religious group.
- 3- The intent of committing this crime is to destroy that national, ethnic, racial or religious group, in whole or in part.
- 4- Conduct that could in itself lead to such destruction, or that the conduct against that group indirectly harms the result.

2-Causing serious bodily or mental harm to members of the group.

This image of the elements of the crime is embodied through acts of torture on the psychological or physical side of the person, such as beating, insulting, rape, inhuman treatment, sexual violence, and any other methods to break the morale of the targeted group, provided that this harm and torture aims to cause harm and injury to the targeted group in order to eliminate them. On July 6, 2000, the Preparatory Commission for the International Criminal Court published a report explaining the elements of the crime of causing serious bodily or mental harm to members of the group, which are as follows:

- 1- The perpetrator intends to cause serious bodily or mental harm to one or more persons
- 2- This person or persons are members of a specific national, ethnic, racial or religious group.

¹⁸ Al-Baqirat Abdelkader, Crimes against Humanity, a thesis for a doctorate in international law, Faculty of Law, University of Algiers, 2003, p. 24.

¹⁹ The Crime of Genocide in International Law: An Analytical Study/ Thesis for a Master's Degree in Criminal Law/ Jude Adnan Dahiliya/2021/p. 20

²⁰ <http://www.preventgenocide.org/genocide/elements.htm> Accessed on 6-17-2024

- 3- The intent of committing this crime is to destroy that national, ethnic, racial or religious group, in whole or in part.
- 4- Behavior that can in itself lead to this destruction, or that the behavior against that group indirectly harms the result.

3-Deliberately subjecting them to living conditions intended to destroy them physically, in whole or in part.

This means that the perpetrator places the victims in harsh living conditions, such as isolating them in areas devoid of water or food and preventing them from receiving treatment and health care. The court has determined the elements of the crime:

- 1- The perpetrator imposes certain living conditions on one or more persons.
- 2- The living conditions were calculated to cause the physical destruction of that group, in whole or in part.
- 3- The imposition of these difficult conditions is intended to destroy that national, ethnic, racial or religious group, in whole or in part.
- 4- Behavior that could in itself lead to this destruction, or that the behavior against that group indirectly harms the result.

4-Imposing measures aimed at preventing the birth of children within the group.

This genocide is considered a type of biological genocide, as it aims to exterminate the target group in a stereotypical and slow manner by preventing pregnancy in women or performing periodic abortions for women or castrating men in the target group, which leads to the extinction of the group²¹, The Preparatory Committee for the Court has identified a set of elements, which are:

- 1- The perpetrator imposed certain measures on one or more persons.
- 2- The aim of the measures imposed is to prevent births within this group.
- 3- This person or persons belong to a specific national, ethnic, racial or religious group.
- 4- Behavior that could in itself lead to this destruction, or that the behavior against that group indirectly harms the result.

5-Forcibly transferring children from the group to another group.

This is done by forcibly transferring children from the targeted group to another group, with the intention of exterminating it and severing their relationship with the original group. It can be considered cultural genocide, as these children constitute the future of the group, as they will be deprived of learning their

²¹ Ayman Abdel Aziz Salama, International Responsibility in Committing the Crime of Genocide, Dar Al-Ulum for Publishing and Distribution, Egypt, 2006, pp. 83-84.

original language, religion and traditions, thus eliminating their connection to the group and eliminating the succession of its generations.

The Preparatory Committee for the Court has identified a set of elements, which are:

- 1- The perpetrator forcibly transferred one or more persons.
- 2- The transfer took place from that group to another group.
- 3- The age of the person or persons is under 18 years.
- 4- The perpetrator of the crime knows, or should have known, that the age of the person or persons is under 18 years.
- 5- This person or persons are members of a specific national, ethnic, racial or religious group.
- 6- The intent of committing this crime is to destroy that national, ethnic, racial or religious group, in whole or in part.
- 7- Behavior that could in itself lead to this destruction, or that behavior against that group indirectly harms the result.

The moral element:

The moral element in the crime of genocide means the perpetrator's intention to commit a criminal act prohibited by the agreement, with his knowledge and awareness that the act is prohibited and will be punished, and the goal is to destroy a national, racial, ethnic or religious group, completely or partially, and the specific intent or goal, which is extermination, must be present.

The intention is not required for the person who commits the crime, as the crime of genocide²², as a person receiving orders from above him, assumes planning, as it is sufficient for the persons responsible for it to bear the specific intent without participating in the implementation directly. This does not negate the criminal responsibility of the perpetrators, as stated in Article (3/25) of the Statute of the International Criminal Court, a person is criminally responsible and is subject to punishment for any crime within the jurisdiction of the court if this person does the following: –

- 1- Committing this crime, whether individually or in association with another or through another person, regardless of whether that other person is criminally responsible.**
- 2- Ordering or enticing the commission of, or inciting the commission of, a crime that has already occurred or has been attempted.**

²² Mohamed Khalil Morsi, The Crime of Genocide in International Criminal Justice, <https://www.bibliotdroit.com> on the Manshoor Maqal website

- 3- Providing aid, incitement or assistance in any other form for the purpose of facilitating the commission of this crime or the attempt to commit it, including providing the means to commit it.
- 4- Contributing in any other way to the commission or attempt to commit this crime by a group of persons, acting with a common purpose, provided that this contribution is intentional and provided.

Chapter Two: Israeli Practices in the Gaza Strip

Introduction

On October 8, 2023, the occupation began an organized genocide in the Gaza Strip, during which it carried out a large number of massacres against Palestinians. The occupation army also bombed schools, shelters, and hospitals on their residents. The occupation also bombed areas that it determined were safe for housing, in order to carry out the largest possible killing operations in the Gaza Strip. The toll of this bombing exceeded tens of thousands of dead and wounded and the removal of residential blocks from existence. The occupation also carried out extensive arrest operations in the Gaza Strip. The number of detainees is estimated at more than 5,000 prisoners so far, according to Al Jazeera updates²³, The number of prisoners from Gaza residents was also subjected to enforced disappearance, estimated at 850²⁴, This prompted South Africa to file a case regarding considering what is happening in Gaza a crime of genocide, as South Africa accuses Israel of committing the crime in the Gaza Strip through a lawsuit consisting of 84 pages, which Israel rejected through its defense committee and statements by Israeli politicians. South Africa based its lawsuit on the fact that the killings that are taking place are with the intention of destroying the Palestinians, and until now the court is still considering the case. In this chapter, I will examine whether there is a match between the elements of the crime of genocide that were previously explained in this research and the Israeli actions in the Gaza Strip, by applying the actions on the ground to the elements. This chapter will address: the Israeli measures in the Gaza Strip and applying the elements of the crime of genocide to the Israeli practices against the residents of the Gaza Strip.

²³ <https://www.aljazeera.net/news/2024/4/17/%D8%A7%D9%84%D9%85%D9%83%D8%AA%D8%A8-%D8%A7%D9%84%D8%AD%D9%83%D9%88%D9%85%D9%8A-%D8%A8%D8%BA%D8%B2%D8%A9-5-%D8%A2%D9%84%D8%A7%D9%81-%D8%A3%D8%B3%D9%8A%D8%B1-%D9%85%D9%86>

Published on 4-17-2024/accessed on 6-18-2024

²⁴ <https://www.aljazeera.net/politics/2024/4/17/6-%D8%B9%D9%82%D9%88%D8%AF-%D9%85%D9%86-%D8%A7%D9%84%D9%82%D9%87%D8%B1-%D8%A7%D9%84%D9%85%D9%82%D8%A7%D9%88%D9%85%D8%A9-%D8%B3%D8%A8%D9%8A%D9%84-%D8%A7%D9%84%D8%A3%D8%B3%D8%B1%D9%89> Atef Daghlis Last update: 4/17/2024 / Viewed on 6/18/2024

2.1 Israeli military measures in its campaign on the Gaza Strip during the war.

With the beginning of the military campaign on the Gaza Strip, Israel adopted several practices followed in its barbaric war on the Gaza Strip, where 15,694 children were killed and 10,018 women were killed in the Gaza Strip²⁵, The Strip is currently facing a humanitarian famine as food and supplies have been cut off from the residents of the Strip due to the siege policy adopted by the Israeli army on the Gaza Strip. Children and residents in the Strip have been exposed to severe emaciation and cases of death among children due to the ongoing siege since the beginning of the war, while the number of victims among medical staff reached 498²⁶ and satellite images revealed damage to 24 hospitals in the Gaza Strip²⁷. The media in Gaza was also subjected to a systematic and barbaric attack to hide the crimes of the occupation in Gaza, where the number of victims among journalists reached 150 victims²⁸, Journalist Mazen Al-Balbisi spoke on World Press Day with Anadolu Channel that Israel deliberately targets journalists and their families to prevent them from covering the massacres committed by the occupation in the Gaza Strip in a systematic manner. He also stressed that international laws and conventions did not deter Israel from committing atrocities against the Palestinian press²⁹.

²⁵ https://www.pcbs.gov.ps/site/lang__ar/1405/Default.aspx/ Palestinian Central Bureau of Statistics in cooperation with the Palestinian Ministry of Health/ Viewed 6/20/2024

²⁶ https://www.pcbs.gov.ps/site/lang__ar/1405/Default.aspx Previous source

²⁷ <https://www.aljazeera.net/news/2024/4/18/%D9%85%D8%B3%D8%AA%D8%B4%D9%81%D9%8A%D8%A7%D8%AA-%D8%BA%D8%B2%D8%A9-%D9%82%D8%A8%D9%84-%D9%88%D8%A8%D8%B9%D8%AF-%D8%A7%D9%84%D8%B9%D8%AF%D9%88%D8%A7%D9%86>

/ Published on 2024-4-18 / Accessed on 2024-6-21

²⁸ https://www.pcbs.gov.ps/site/lang__ar/1405/Default.aspx

/ Previous source

²⁹ <https://www.aa.com.tr/ar/%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84/%D8%A7%D9%84%D8%AA%D8%BA%D8%B7%D9%8A%D8%A9-%D9%85%D8%B3%D8%AA%D9%85%D8%B1%D8%A9-%D8%B1%D8%B3%D8%A7%D9%84%D8%A9-%D8%A5%D8%B9%D9%84%D8%A7%D9%85%D9%8A%D9%8A-%D8%BA%D8%B2%D8%A9-%D9%81%D9%8A-%D9%8A%D9%88%D9%85-%D8%AD%D8%B1%D9%8A%D8%A9-%D8%A7%D9%84%D8%B5%D8%AD%D8%A7%D9%81%D8%A9-%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85%D9%8A-%D8%AA%D9%82%D8%B1%D9%8A%D8%B1/3208680>

٣-٥-٢٠٢٤Publication date /2024-6-21 View date

While the educational sector in the Gaza Strip has suffered the largest share of damage and losses due to Israeli practices, the school year in the Gaza Strip has been suspended since the beginning of the Israeli military campaign on the Gaza Strip, The UNICEF³⁰ spokesman spoke about 325,000 students being deprived of education due to the war and

repeated displacement. Also, 7 out of 10 schools were destroyed according to UNICEF. According to the Euro-Mediterranean Human Rights Monitor, Israel targeted 90% of government school buildings, and the rest are being used as shelters³¹, in addition to other endless violations against UNRWA schools and the systematic targeting of education cadres in the Gaza Strip, causing the collapse of the education sector in the Gaza Strip for many years.

The homes of citizens in the Strip are also being wiped off the map, as the Israeli army conducts systematic surveys of residential areas in the Strip, ensuring that there is no place for the displaced to return to, which will increase their hardship. The number of destroyed buildings has reached 25,010, and the number of demolished residential units has reached 87,000.

This is what prompted South Africa to file a lawsuit against Israel for committing genocide, through the atrocities documented in the media. South Africa's claim is based on several basic points, such as Israel's failure to abide by the Genocide Convention, forcing the people of Gaza into unbearable living conditions, and relying on statements by decision-makers in Israel that incite against

³⁰

<https://aawsat.com/%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A/%D8%A7%D9%84%D9%85%D8%B4%D8%B1%D9%82-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A/4950686-80-%D9%85%D9%86-%D9%85%D8%AF%D8%A7%D8%B1%D8%B3-%D9%82%D8%B7%D8%A7%D8%B9-%D8%BA%D8%B2%D8%A9-%D8%AF%D9%85%D9%91%D8%B1%D8%AA%D9%87%D8%A7-%D8%A7%D9%84%D8%AD%D8%B1%D8%A8-%D9%88%D8%A3%D8%B7%D9%81%D8%A7%D9%84-%D8%AE%D8%B3%D8%B1%D9%88%D8%A7-%D8%B9%D8%A7%D9%85%D9%87%D9%85-%D8%A7%D9%84%D8%AF%D8%B1%D8%A7%D8%B3%D9%8A>

Published on 2024-4-5/accessed on 2024-06-21

³¹ <https://www.aljazeera.net/politics/2024/1/24/%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84-%D8%AA%D8%B4%D9%86-%D8%AD%D8%B1%D8%A8%D8%A7-%D9%85%D9%85%D9%86%D9%87%D8%AC%D8%A9-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D8%AA%D8%B9%D9%84%D9%8A%D9%85>

1/24/2024Published/ Raed Musa/ Viewed 06-21-2024

the Gaza Strip, which are reported to have reached 500³² statements. In addition, Israel has cut off water and electricity to the Gaza Strip since the beginning of the war, and prevented the arrival of fuel to operate the vital facility. Despite the issuance of a decision in which the International Court of Justice called on Israel to take immediate measures to prevent acts of genocide and improve living conditions and the humanitarian situation in the Gaza Strip, and the issuance of a second decision obliging Israel to stop the military operation in the city of Rafah, the war is getting worse for the citizens as Israel continues its barbaric war on the Gaza Strip.

2- The connection between the moral element of the crime of genocide and the Israeli military actions in the Gaza Strip.

By projecting what we mentioned in this research of the elements of the crime of genocide with the Israeli actions in the Gaza Strip and analyzing them, we can reach a result of whether there is a similarity or difference in the elements.

I will address the elements as follows

2.2.1: The material element (committing the act)

The material element is based on committing a group of acts that we mentioned previously

1. Killing members of the group.
2. Inflicting serious bodily or mental harm on members of the group
3. Intentionally subjecting the group to living conditions intended to bring about its physical destruction in whole or in part.
4. Imposing measures aimed at preventing the birth of children within the group.
5. Forcibly transferring children from the group to another group.

1: Killing members of the group.

The agreement did not stipulate a specific number to consider the killings as part of genocide. It is sufficient to kill more than one person to commit the crime of genocide. The number of victims in the Israeli war on the Strip so far has reached 37,431, most of whom are children and women, while the army has committed large groups of random massacres. According to the media office, the number of

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<https://law4palestine.org/ar/%d9%82%d8%a7%d8%b9%d8%af%d8%a9-%d8%a8%d9%8a%d8%a7%d9%86%d8%a7%d8%aa-%d9%84%d9%84%d8%aa%d8%ad%d8%b1%d9%8a%d8%b6-%d8%a7%d9%84%d8%a5%d8%b3%d8%b1%d8%a7%d8%a6%d9%8a%d9%84%d9%8a-%d8%a7%d9%84%d8%a5%d8%a8>

massacres has reached 3,315 massacres. The total number of explosives dropped on Gaza has reached about 79,000 tons of explosives since the beginning of the war³³. Among the most prominent images of genocide committed by the Israeli army in the Gaza Strip is the Baptist Hospital massacre, in which it deliberately targeted the Baptist Hospital, which resulted in more than 500 martyrs and a large number of injuries³⁴. This was announced by the Undersecretary of the Ministry of Health in Gaza among the total victims. The Nuseirat massacre, which took place inside the Nuseirat camp, claimed the lives of 210 martyrs and 400 injured, and left great destruction in the camp in broad daylight inside a residential and commercial complex. The occupation also committed a crime inside the Jabalia camp, as the camp was targeted with bombs weighing up to 1 ton of high explosives. It left a large number of martyrs and wounded and massive destruction. Refugee schools were not spared, as Osama Bin Zaid School and Al-Fakhoura School were targeted, and a large number of victims fell. A statement by the Euro-Mediterranean Human Rights Monitor says that it documented 140 mass, random or temporary graves in the Gaza Strip³⁵. In many cases, burials were recorded by the occupation forces for people who were executed in the field. A statement was issued by the Israeli Minister of Heritage, Amichai Eliyahu, calling for dropping a nuclear bomb on Gaza³⁶. Hebrew sources also mentioned that there were more than 10,000 shells and bombs³⁷. According to media sources, the large number of explosions

³³ <https://felesteen.news/post/152805/%D8%A7%D9%84%D8%A5%D8%B9%D9%84%D8%A7%D9%85-%D8%A7%D9%84%D8%AD%D9%83%D9%88%D9%85%D9%8A-%D9%8A%D9%86%D8%B4%D8%B1-%D8%AA%D8%AD%D8%AF%D9%8A%D8%AB%D8%A7-%D9%84%D8%A3%D9%87%D9%85-%D8%A5%D8%AD%D8%B5%D8%A7%D8%A6%D9%8A%D8%A7%D8%AA-%D8%AD%D8%B1%D8%A8-%D8%A7%D9%84%D8%A5%D8%A8%D8%A7%D8%AF%D8%A9-%D8%A7%D9%84%D9%85%D8%AA%D9%88%D8%A7%D8%B5%D9%84%D8%A9-%D8%A8>

Palestine Online/ 6-17-2024/ Accessed on 6-23-2024

³⁴ <https://web.archive.org/web/20231018131210/https://www.trtarabi.com/now/%D9%85%D8%A4%D8%AA%D9%85%D8%B1-%D8%B5%D8%AD%D9%81%D9%8A-%D9%84%D9%88%D8%B2%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D8%B5%D8%AD%D8%A9-%D8%A8%D9%8A%D9%86-%D8%AC%D8%AB%D8%A7%D9%85%D9%8A%D9%86-%D8%B4%D9%87%D8%AF%D8%A7%D8%A1-%D9%85%D8%AC%D8%B2%D8%B1%D8%A9-%D8%A7%D9%84%D9%85%D8%B9%D9%85%D8%AF%D8%A7%D9%86%D9%8A-15439976>

TRT Arabic / 10-17-2023 / Accessed on 6-23-2024

³⁵ <https://www.bbc.com/arabic/articles/c2e0vyqdy5go/> David Gretten/BBC News 4-24-2024/ Accessed 6-23-2024

³⁶ نشرة إخبارية قناة الجزيرة

³⁷ ٢٠٢٤/١٠/٣١ تصريح وزير الدفاع الاسرائيلي يواف غالانت بتاريخ

caused the destruction of thousands of homes and residential neighborhoods, including their residents, which is enough to establish the moral element of the crime. Also, a UN investigation was issued by the United Nations concluding that Israel committed crimes against humanity during the military operation³⁸, and the report indicated that the Israeli army may have repeatedly violated the basic principles of war.

2: Inflicting serious physical or psychological harm on members of the group.

The most important evidence of Israeli intent to torture and kill is what soldiers do by filming, documenting, publishing and bragging about their crimes. During the ongoing aggression on the Gaza Strip, dozens of Israeli soldiers and officers were seen blowing up entire houses with their occupants or randomly targeting civilians. The Euro-Mediterranean Human Rights Monitor reported that it had received testimonies of Palestinian detainees from the Gaza Strip, including women and children, being subjected to brutal torture and treatment that undermines human dignity, including stripping and sexual harassment or threats thereof. The occupation also imposes strict restrictions on Gaza prisoners and practices the crime of enforced disappearance against them, as their families do not know information about their relatives, whether those arrested from homes and shelters, or those detained at the military checkpoint that separates the Gaza Strip into two parts. No human rights organization or the International Committee of the Red Cross has been able to obtain any information about them. The occupation also used a group of internationally banned weapons because they cause disabilities and deformities in the body, such as white phosphorus in densely populated areas. Medical reports stated that the injuries arriving at the hospital are fractures, shrapnel, amputations, or multiple injuries between fractures and amputations, which leads to complete disability. The Special Criminal Court in Rwanda concluded in its judicial rulings that it is sufficient to cause harm to bodily integrity and cause burns, amputations or impairment of bodily functions. The court set a standard for harm, which is that it is sufficient for the harm to be temporary, provided that the temporary harm incurred is significant³⁹.

3: Deliberately subjecting the group to living conditions calculated to bring about its physical destruction in whole or in part.

With the start of the military campaign, a statement was issued by the Israeli Defense Minister Yoav Galant on (2024-10-9): "I have given an order: Gaza will be under a complete siege, no electricity, no

³⁸ <https://news.un.org/ar/story/2024/06/1131866> Published on 6-19-2024 / Accessed on 6-23-2024

³⁹ زوينة الوليد، جريمة الإبادة الجماعية على ضوء الاجتهاد القضائي للمحكمة الجنائية

لرواندا، رسالة ماجستير 2023م، ص107

food, no fuel, everything is closed⁴⁰." This statement and other statements by the Israeli Minister of Energy explicitly state that Israel will cut off the basic supplies of food and water to the Gaza Strip. The army also cut off the fuel needed to operate hospitals through the Kerem Shalom⁴¹ crossing and water desalination facilities. The ongoing siege has caused the necessary medical supplies to run out and put health facilities out of service. Statements were issued by Doctors Without Borders stating that the health sector in Gaza is out of service after the Nasser Medical Hospital was shut down due to the aggression. Reports speak of the need for 11,000 wounded who need to travel for treatment in order to preserve their lives, and 10,000 cancer patients who may die due to the cessation of their treatment after the cancer hospital was put out of service. The same applies to those with chronic diseases, who number 350,000 people, in addition to the spread of many new diseases in the Gaza Strip⁴². The Food and Agriculture Organization of the United Nations issued a warning that more than one million people in the Gaza Strip, they may face starvation and death by mid-July⁴³, while medical sources said that more than 40 people have died of starvation.

The jurisprudence of the International Criminal Courts in the cases of Rwanda and Yugoslavia stated that such acts are intended to commit the crime of genocide slowly by preventing and reducing basic resources, and preparing the place to become unsuitable for human life by targeting the medical facility, to destroy the targeted group, which is similar to the brutal and systematic actions of the Israeli army to destroy life in the Gaza Strip.

4: Imposing measures aimed at preventing the birth of children within the group.

The Israeli army relied in its aggression on Gaza on putting medical facilities out of service, which deprived Palestinian women of giving birth in the hospital, which makes the birth process more difficult and may face the risk of death. The danger is not limited to the place of birth, pregnant and

⁴⁰ <https://arabic.cnn.com/middle-east/article/2023/10/09/israel-complete-siege-gaza-strip> Published on 10/9/2023 / Accessed on 6/23/2024

⁴¹ Report issued by Cairo News Channel

⁴² <https://www.maannnews.net/news/2115165.html/> Publication date 04-09-2024/ Access date 6/23/2024

⁴³ <https://www.aljazeera.net/news/2024/6/5/%D8%A7%D9%84%D9%81%D8%A7%D9%88-%D9%85%D9%84%D9%8A%D9%88%D9%86-%D8%B4%D8%AE%D8%B5-%D9%82%D8%AF-%D9%8A%D9%88%D8%A7%D8%AC%D9%87%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%AC%D8%A7%D8%B9%D8%A9>

Published on 6/5/2024 Accessed on 6/23/2024

nursing people live an endless nightmare, facing shocks and exhaustion, and let us not forget the famine looming on the horizon due to malnutrition and a lack of basic survival.

Women also suffer from a lack or absence of the necessary means to maintain hygiene and physical safety, as women use rags instead of medical means, and they frequently live the risk of sexual assault by occupation soldiers. Palestinian women also lose their privacy as they live in densely populated refugee areas, and the greatest danger is the displacement of pregnant Palestinian women, as more than 18,500 pregnant women were displaced from Rafah without the minimum level of medical care⁴⁴, and a striking percentage is that more than 70% of the martyrs in the Gaza Strip are women and children, as UN Secretary-General Antonio Guterres said in a speech from New York: Gaza has become a cemetery for children.

2.2.2: the moral element (intention to commit the act)

The moral element is the psychological and mental aspect in terms of intent and awareness. This element is based on the existence of a criminal intent to commit the act criminalized by law with the will to reach the desired result. The Convention defined genocide in Article 2 as acts that aim to destroy a national, ethnic, racial or religious group, in whole or in part. The international criminal courts in Rwanda and Yugoslavia have tended to infer intent from the physical actions of the perpetrator, considering them the only evidence to reach the hidden intent⁴⁵. It cannot be proven by the testimony of the victims. The widespread destruction of the targeted area can be considered such that the force used is not proportional to the act, causing a large number of victims to fall behind it, using various weapons with great firepower and destructiveness.

Through the court's approach, the destructive force used by Israel in its war on the Gaza Strip can be compared, as various reports were issued by Al Jazeera News indicating the destruction of more than 90% of the Gaza Strip, and the number of victims in the Gaza Strip reached more than 37,431. Since the beginning of the war until today, the bombing has affected the entire Strip from the south and the north, and even extended to areas that the army declared to be safe areas on December 18. The army distributed leaflets stating that the neighborhoods of Tel al-Sultan, al-Zahour, and al-Shabura are safe areas and will not be subject to bombing, but the army targeted them with air strikes⁴⁶. The army

⁴⁴ <https://palestine.unfpa.org/sites/default/files/pub-pdf/unfpa-situation-report-8.pdf>

Published on 5/6/2024 / Accessed on 6/23/2024

⁴⁵ Martin Shaw/ Previous source/p. 179

⁴⁶ <https://asharq.com/politics/86619/%D8%AA%D8%AD%D9%82%D9%8A%D9%82-%D8%A3%D9%85%D9%8A%D8%B1%D9%83%D9%8A->

also commits a new set of massacres every day, which demonstrates the Israeli government's intention and insistence on committing the crime of genocide. The extent of the destructive force inflicted on Gaza exceeds the destructive force in the Hiroshima and Nagasaki explosions⁴⁷.

The Israeli army also continuously targets medical crews or people coming to help the wounded as a result of the bombing, which deliberately causes more casualties, and they also bomb the municipality team responsible for pumping potable water. Criminal intent can also be deduced from statements made by politicians and individuals in the political system that committed the crime. In the Rwanda case, the International Criminal Court considered articles that dehumanize the Tutsi people and consider them mere insects as incitement to commit the act. A wide range of human rights organizations and scholars of international law considered this group, the most important of which are statements made by Yoav Galant, who said: Gaza will be under a complete siege, no electricity, no food, no fuel, everything is closed. He said in another statement: "We are fighting human animals and we are acting accordingly." These statements are issued with the intention of dehumanizing the Palestinians. Likewise, President Isaac Herzog said: "There is an entire nation responsible. It is not true what is said about civilians not knowing or not being involved. This is absolutely not true." From his statement, the intention of the political system can be understood in considering all residents of the Strip as combatants and considering them targets for killing. One of the most prominent statements is the statement of the Coordinator of Government Activities in the Territories, Ghassan Alian: "With human monsters like these, we will deal as we should. Israel imposed... A complete closure on Gaza, and you will have no electricity or water, only destruction." He concluded his speech by saying, "You want hell? You will get hell." Israeli Prime Minister Netanyahu also considered in his speech the war with Gaza as

[%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84-%D9%82%D8%B5%D9%81%D8%AA-%D9%85%D9%86%D8%A7%D8%B7%D9%82-%D8%AD%D8%AF%D8%AF%D8%AA%D9%87%D8%A7-%D8%A2%D9%85%D9%86%D8%A9-%D9%81%D9%8A-%D8%AC%D9%86%D9%88%D8%A8-%D8%BA%D8%B2%D8%A9/](#)

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<https://www.aljazeera.net/politics/2023/11/2/%D9%85%D8%A7%D8%B0%D8%A7-%D8%B3%D9%8A%D8%AD%D8%AF%D8%AB-%D9%84%D9%88-%D8%AC%D9%85%D8%B9%D9%86%D8%A7-%D9%85%D8%A7-%D8%A3%D9%84%D9%82%D8%AA%D9%87-%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84-%D9%85%D9%86>

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a war against the forces of evil and barbarism in the region, to dehumanize the residents of the Gaza Strip and claim that there are no civilians and that all residents of the Strip are participating in the war, as well as the Israeli statements calling for striking Gaza with nuclear weapons. It can be understood from the various statements of members of the Israeli government their prior intention to wipe out the residents of the Gaza Strip or/and work to push them to live outside the Strip through the inhumane conditions in which they live. More than one Israeli plan has been revealed with the aim of forcibly emptying the Strip of its population, which constitutes unambiguous evidence of the Israeli government's intention to commit the most heinous crimes, which is genocide with premeditation and deliberation.

Conclusion

The study of the crime of genocide is summarized as an international crime with fictitious elements of committing the act, intent to commit the act, and international criminalization of the act, aiming to destroy a group in whole or in part, and its impact on the stability and security of the international community.

The study also focused on investigating whether the Israeli aggression has met the conditions stipulated in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, by applying the legal conditions of the crime to Israeli actions, considering Israeli practices in the Gaza Strip to constitute a crime of genocide or not. It also looked at the moral aspect of the crime by matching Israeli political statements with their actions on the ground in the Gaza Strip.

In the first chapter, the study dealt with the definition of the crime, the categories to which the crime falls, and the characteristics of the crime. It then moved on to investigate what the elements of the crime are. In the second chapter, it dealt with Israeli practices and measures in the Gaza Strip, whether they were humanitarian measures or not, and whether they respected the decision of the International Court of Justice or not. After that, it moved on to investigate whether Israeli actions represent the material element of the crime of genocide and the possibility of the availability of the material and moral element of the crime during the Israeli military campaign on the Gaza Strip.

Results:

- 1- The Convention on the Prevention and Punishment of the Crime of Genocide is an agreement signed in 1948 to combat the crime of genocide.
- 2- According to the text of the Convention on the Prevention and Punishment of the Crime of Genocide, the crime of genocide is formed by committing or attempting to destroy minorities in whole or in part through direct or indirect killing, such as imposing impossible living conditions.

3- The elements of the crime of genocide are summarized in three elements: committing the act (the material element), the criminal intent (the moral element), meaning whether the perpetrator intended to commit the act or not, and it can be inferred from the statements and the nature of the actions on the ground and their conformity with the proportionality in the use of force, the text that criminalizes the act, which is the signed agreement.

4- The number of victims does not matter for the crime of genocide to occur as long as the intent to commit it is proven.

5- By examining the evidence presented on the ground, Israel did not take into account the humanitarian conditions of the population in the Gaza Strip. On the contrary, Israel increased the misery of living conditions in the Strip by targeting the infrastructure, the medical sector, and the tight siege on the Strip.

6- During the Israeli military campaign on the Gaza Strip, Israel repeatedly and deliberately targeted civilians, and committed thousands of massacres that confirm Israel's intention to destroy life in the Gaza Strip. Israeli actions included the siege of the Strip and cutting off water, electricity, and all other resources, which caused an increase in the difficulty of living conditions, or even their absence, as approximately 70% of the Strip was destroyed. Pregnant women were also systematically targeted through a policy of preventing the entry of medicines and demolishing maternity and children's hospitals. These actions represent the material element of the crime, which confirms its occurrence.

7- During the campaign, there were a huge number of Israeli statements that exceeded 500 statements, all of which called for the erasure of Palestinians and their random and barbaric killing. These statements represent the moral element of the crime, as previous jurisprudence of the International Court of Justice stipulated that such statements that call for killing and dehumanize others, when issued by officials and politicians, reveal their intent.

8- In addition to the possibility of proving the criminal intent through statements, as South Africa did in the case it filed, it can also be proven through actions, such as the army deliberately obstructing and bombing medical teams in order to cause the largest possible number of victims, as well as their bombing of teams responsible for distributing aid and teams distributing drinking water.

Recommendations:

- 1- Holding Israel accountable for committing the crime of genocide in a clear and explicit manner.
- 2- Investigating Israel on the basis of its commission of the crime before the International Court of Justice in The Hague.
- 3- Calling on more organizations and countries to accuse Israel of committing the crime of genocide.

- 4- Call for increased measures aimed at stopping the absurd war on the Strip.
- 5- Use the humanitarian intervention clause in Gaza by the Security Council to stop the genocide in Gaza
- 6- Increase access to health and medical care and call on international organizations to restore and rehabilitate health facilities.
- 7- Ensure the immediate and unhindered entry of aid into the Strip.
- 8- Provide medical supplies and personal hygiene supplies.

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