

THE FAILURE OF CONTEMPORARY WORLD ORDER IN PREVENTING GENOCIDE IN GAZA

(Genocide in 21st Century)

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ABSTRACT

This article critically examines whether Israel's military conduct in Gaza constitutes genocide under international law, while simultaneously interrogating the effectiveness of the contemporary global justice system, particularly the International Court of Justice (ICJ) and the International Criminal Court (ICC). Applying Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the study adopts a step-by-step legal analysis of the three constituent elements of genocide: specific intent (dolus specialis), the targeting of a protected group, and the commission of prohibited acts. Drawing upon ICJ provisional measures, findings of UN Commissions of Inquiry, official statements by Israeli authorities, and patterns of military conduct, the article argues that the evidentiary threshold used by international tribunals to infer genocidal intent and establish actus reus is met.

Beyond substantive legal qualification, the paper exposes structural and political deficiencies within the international justice architecture, including weak enforcement mechanisms, state non-cooperation, and political interference, which have rendered binding judicial orders and arrest warrants largely ineffectual. Through a comparative legal methodology combining treaty interpretation, case law analysis, and institutional practice, the study highlights how these gaps undermine accountability and perpetuate impunity. Finally, it proposes concrete, institution-specific reforms aimed at strengthening jurisdiction, enforcement, legitimacy, and victim-centric justice within the ICJ and ICC. The article concludes that while international law provides a robust normative framework to address genocide, its protective promise remains unfulfilled without genuine political will, effective enforcement, and structural reform of global judicial institutions.

Keywords: International Law, ICJ, ICC, Genocide, Israel-Palestine Conflict, Global Legal Framework

INTRODUCTION

In the present era, The International Court of Justice (ICJ) and International Criminal Court (ICC) are the two vital organs in the Global Legal Framework. The ICJ primarily adjudicates disputes between states and the ICC focuses on prosecuting individuals for grave international crimes such as genocide, war crimes and crimes against humanity. These

institutions are meant to uphold core human values; human dignity, equality and global justice. Despite their idealistic mandate we have seen the how these institutions have fall short of upholding these basic values as the tragedy in Gaza continues to unfold right now. Since the beginning of October 7 Israel-Hamas War 71,696 Palestinians have been killed by

Israeli forces of which 21,434 were children, 463 were starved to death and 13,147 were women. Nevertheless, these number does not include the fatalities cause due to malnutrition, infectious deceases and other factors.

Such catastrophic failure calls into question the very effectiveness and authenticity of the present global justice system. Despite such serious casualties, non discriminatory military actions, inhumane policies such as not allowing aid to pass through for thousands of innocent women and children and systematic punishment on whole population of Gaza, there are still ineffectual debates whether Israel is carrying out genocide in Gaza. The essence of justice is lost in meaningless interpretations of legal statues and the pursuit of truth becomes obscured by bureaucratic complexities. Thus, the primary objective of this study is threefold (a) whether Israel is carrying out genocide in Gaza as per international law and UN convention on Genocide (UNCG), (b) the existing structure of contemporary international justice system and its loopholes and (c) to propose actionable recommendations for strengthening their roles in promoting global justice and bringing accountability to the perpetrator. To achieve these objectives, the study employs a comparative legal methodology, combining qualitative analysis of case law, treaties, and statutes with a review of scholarly literature and institutional reports

Is it Genocide ?

The term genocide was first coined by Polish-Jewish lawyer Raphael Lemkin in 1944 in his book *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. The term *genos* is derived form Greek meaning race or tribe and *cide* from Latin, which means killing. Hence, genocide can be defined as “ the destruction of a nation or an ethnic group”.

“Genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.

. . . Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.[ibid]

On 9 December 1948, less than two years after the General Assembly declared genocide a crime under international law, General Assembly Resolution 260(III)A unanimously adopted the Convention on the Prevention and Punishment of the Crime of Genocide, Article II of which defines genocide as:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethical, 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.

This definition of genocide can be divided into three functional parts. First, there must be an intent to destroy. Second, the atrocities committed should be again a protected national, ethical, racial or religious group. Lastly, any act or omission, whether taken individually or jointly from among those enumerated in Article 2. We will now, step by step, examine the application of this definition in the context of Israel-Hamas conflict.

Concerning ourselves with the first part we will discuss and breakdown the element of intent in deciding whether Israel is committing genocide in Gaza. In law intent refers to the person’s state of mind at the time of committing the crime also referred as *mens rea* in common law system .The type of intent required (e.g., *dolus specialis*, *dolus eventualis*, general, or knowledge-based) is not stated in the Convention. However, on the examination of international case laws and jurisprudence, the type of intent regularly associated with genocide is the Romano Germanic civil law term, *dolus specialis*. The UN International

Law Commission (ILC), in the Draft Code of Crimes against the Peace and Security of Mankind commentaries (1996), states that a general intent would not be sufficient and that genocide “requires a particular state of mind or a specific intent with respect to the overall consequence of the prohibited act.” Hence, the requirement for *dolus specialis* is that the perpetrator clearly seeks to destroy, in whole or in part, a particular protected group.

Moving further, according to the Independent International Commission of Inquiry on the occupied Palestinian territory, including East Jerusalem, and Israel~ established by the Human Rights Council on 27 May 2021~ to investigate international human rights law violations in the said territory;

“ Genocidal intent may be established either through (i) direct evidence such as statements expressing an intent to destroy, in whole or in part, the protected group as such; or (ii) circumstantial evidence, taking into account the totality of the evidence, by inference through the examination of the pattern of conduct.”

The Commission, therefore, decided to take two factors into account; the intent (*dolus specialis*) and the actions of the perpetrators. The assessment of statements made by Israeli authorities indicated that, since October 7, 2023, the Israeli officials intended to destroy Palestinians in Gaza as a group. Furthermore, statements made by Israeli officials—such as references to Palestinians as ‘human animals,’ the assertion that ‘Gaza won’t return to what it was before... we will eliminate everything,’ made by then Israeli Defense Minister Yoav Gallant, and President Isaac Herzog’s statement that ‘it is an entire nation out there that is responsible’—clearly indicate the intent of Israel’s government to destroy Palestinians in Gaza, an intent that is further reflected in the pattern of conduct of Israel’s military operations. Taking into account all the statements made by Israeli officials since October, 2023 the commission concluded, ‘...statements by Israeli officials are reasonably interpreted as statements expressing an intent to destroy the Palestinian group in Gaza and they have been acted on as such by Israeli security forces in the Gaza Strip. They are direct evidence of *dolus specialis*.’ Hence, the

first and foremost element of genocide which is intent (*dolus specialis*) is proved.

The second element of genocide is that the prohibited actions should be taken against a particular national, ethnic, racial or religious group, declared as a protected group within the scope of Article 2. On 26 January 2024, the International Court of Justice stated that “[t]he Palestinians appear to constitute a distinct ‘national, ethnical, racial or religious group’, and hence a protected group within the meaning of article II of the Genocide Convention. Thus, the second requirement of establishing genocide is also satisfied. The third and last element is that the perpetrator should commit any one or more of the prohibited acts mentioned in Article 2. These prohibited acts include (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*. For the purpose of this inquiry the commission focuses on first four action enumerated above. On 7 October 2023, Israel launched its military offensive in Gaza, which include airstrikes and ground operations. During these operations, 224 Israeli strikes were conducted on residential buildings and tents for displaced people in Gaza Strip, and 83 percent of those killed were civilians, as Israel used heavy unguided missiles with a wide margin of error in densely populated residential areas. As stated in the commission’s report, one military expert said Israel is dropping in less than a week what the United States was dropping in Afghanistan in a year, in a much smaller, much more densely populated area”. Israel not only carried out attacks on healthcare workers, ambulances and journalist but also children and toddler who were shot in the head by snipers. The list of atrocities committed by the IDF is so extensive that it is not possible to address all of them within the scope of this paper. Accordingly, only a limited number of atrocities are discussed here to provide the reader with an indication of the scale and intensity of the destruction caused, and to demonstrate that both the *actus reus* and *mens rea* of ‘killing

members of the group' under Article II(a) of the Genocide Convention are established.

The second prohibited act mentioned in the Article 2 is 'causing serious bodily or mental harm to the members of the group' and the nature of harm should be such that it would contribute to the destruction of the group, in whole or in part. Examples of serious bodily harm are torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs. The Commission notes that the Israeli military operation has resulted in more than 1.9 million people being displaced from October 2023 to 25 June 2025 in Gaza. In its previous report, the Commission has found that the Israeli security forces had clear knowledge of the presence of civilians within areas or buildings that were designated as safe areas but nevertheless proceeded to launch their attacks. The Commission received numerous reports of detainees being stripped, transported naked, blindfolded, kicked, beaten, sexually assaulted and subjected to death threats. One detainee stated that he had been forced to strip and ordered to kiss the Israeli flag. When he refused, he had been beaten, and his genitals had been kicked so severely that he had vomited and lost consciousness. The Commission emphasises that the Israeli security forces committed torture, rape and other forms of sexual violence and cruel, inhuman and degrading treatment against Palestinian detainees and that has resulted in severe bodily and mental harm to the victims. Hence, the Commission concludes that the *actus reus* and *mens rea* of 'causing serious bodily or mental harm to members of the group' under article II(b) of the Genocide Convention are established.

Considering the third element 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part' mentioned among the prohibited acts in the Article 2, the Commission noted that Israel has inflicted in a manner calculated to bring about destruction the destruction of Palestinians in the form of rape, sexual violence, destruction of hospitals and medical services, destruction of homes, building and other infrastructure, forced displacement, and intentionally blocking

humanitarian aid, electricity, water and food supplies. These methods of systematic destruction and punishment led the commission to conclude that the *actus reus* and *mens rea* of 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part' under Article 2 (C) is established. The fourth and last element that the commission undertook for the purpose of this inquiry is 'imposing measures intended to prevent births withing the group.' As Al- Basma IVF clinic is the largest fertility clinic in Gaza, which was shelled in December 2023. Accordingly, the clinic suffered the most damage as compared to the adjacent building, indicating that it was the principal target of the IDF. This led the commission to conclude that Israel is internationally taking on measure to prevents births withing the group. Hence, the *actus reus* and *mens rea* of Article 2(C) of Genocide Convention are established.

Hence, a step-by-step examination of the definition of genocide under Article 2 of the Genocide Convention, in light of Israel's actions, demonstrates beyond any reasonable doubt that Israel has committed genocide in Gaza. The evidence shows deliberate intent to destroy Palestinians, targeting of a protected group, and systematic commission of prohibited acts—including killings, severe bodily and mental harm, and destruction of life-sustaining conditions—underscoring the urgent need for international accountability and justice.

The Existing Global Justice System and Gaps within:

The International Court of Justice (ICJ) and the International Criminal Court (ICC) are two pivotal institutions in the global legal framework, tasked with upholding justice and accountability on an international standards. The ICJ is the principal judicial organ of the United Nations; it focuses on legal disputes between states, whereas the ICC, established by the Rome Statute, targets individuals responsible for genocide, war crimes, crimes against humanity, and aggression. The former entails state responsibility, while the latter emphasizes individual responsibility. However, the effectiveness and transparency of these

institutions are constrained by power politics, lack of state cooperation and under developed enforcement mechanism. These structural inadequacies have often resulted in unsatisfactory outcomes and even if competent judgment is pronounced the lack of optimal implementation machinery renders such decisions unenforceable. The real issue does not lie within international law itself, but in the political and institutional constraints outlined above, which significantly impede its enforcement.

On December 29, 2023, South Africa filed a lawsuit with the International Court of Justice (ICJ), accusing Israel of committing genocide against the Palestinian people in Gaza. South Africa requested the court to impose interim measures or provisional measures, ordering Israel to cease its military operations in Gaza to prevent further irreparable harm to the rights of the Palestinian people. Furthermore, South Africa accused Israel that it failed to prevent genocide and instead carried out genocide, which constituted a (serious) violation of the Genocide Convention. On January 26, 2024, the ICJ delivered a provisional measures order (First PMO) requiring Israel to comply with its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) in relation to its military operations in the Gaza Strip. Provisional measures orders are intended to operate as injunctive relief to avert irreparable harm to parties' rights with risks to life and genocide being priority cases. Consequently, a Second and Third PMO was issued by the Court demanding Israel to take necessary measure to ensure basic services and humanitarian aid, including food, water, electricity, fuel, shelter as well as medical supplies, and care and to halt its military offensive in Rafah. All the PMOs are legally binding, Israel is bound to oblige Court's orders and was directed to report to the Court within one month. Nevertheless, the situation on ground has remained unchanged. Despite the ceasefire on October 10, 2025 414 Palestinians have been killed and 1142 have been wounded by Israeli forces according to Gaza's Ministry of Health. Moreover, the remaining population continues to live in dire conditions devoid of any basic humanitarian

assistance like food, water and shelter. This harsh reality exposes the loopholes and ineffectiveness of contemporary world order where the powerful continues to blatantly defies all laws and the weak continues suffer. Similarly, In May 2024, International Criminal Court Prosecutor Karim Khan applied to issue arrest warrants against Benjamin Netanyahu (Israeli Prime Minister), Yoav Gallant and leaders of Hamas, including Mohammed Deif. The Prosecutor alleged reasonable grounds to believe they bear criminal responsibility for war crimes and crimes against humanity committed during the Gaza conflict, including the use of starvation as a method of warfare, murder, persecution, and other inhumane acts. On 21 November 2024, an ICC Pre-Trial Chamber issued arrest warrants for Netanyahu, Gallant and Deif (Hamas leader). The Chamber found reasonable grounds to believe Netanyahu and Gallant were criminally responsible for: the war crime of intentionally depriving Gaza's civilian population of essentials such as food, water, medicine, fuel and electricity; crimes against humanity including murder, persecution and other inhumane acts, committed between 8 October 2023 and 20 May 2024. This was a historic moment, as it marked the first time a leader of a Western-aligned state was subject to ICC warrants on such charges. As previously, the ICC main focus has been on African states and the Court was accused of being racist and neocolonial. Israel rejected these arrest warrants, calling them 'absurd' and 'antisemitic'. Israel contended that the ICC has no jurisdiction as it has not ratified the Rome Statute. However, Palestine, as a non-member observer state recognized by the UN, has the right to join the Rome Statute, which it did in 2015, thereby conferring territorial jurisdiction on the ICC over crimes in the West Bank, Gaza, and East Jerusalem. In response to these arrest warrants, on February 6, President Trump issued an executive order authorizing asset freezes and entry bans on ICC officials and others supporting the court's work. The order clearly seeks to shield US and Israeli officials from facing charges before the ICC. The order includes visa restrictions and financial penalties for people who help the ICC investigate US citizens and US allies. These types of maneuvers by

powerful states continues to hinder the process and administration of Justice by International Courts, reflecting a desire to manipulate the the Courts through politics and power. Furthermore, the Court relies on governments to carry out arrests, thereby leaving justice at the mercy of States' self-interest and further hindering effective accountability.

Recommendations:

To effectively bridge the gaps built in the current international legal framework following reforms are suggested for a better, more competent and transparent global justice system;

ICJ: Main Recommendations

1. Make jurisdiction broader and more automatic

- Move toward compulsory jurisdiction for all UN member states and expand subject-matter (*ratione materiae*) jurisdiction so more types of disputes can be heard.
- Expand and modernize advisory jurisdiction and the range of requesting bodies.

2. Reduce political influence and strengthen independence

- Reform judge election, tenure, diversity, and age limits to curb political bargaining and improve legitimacy.
- Re-balance the ICJ-Security Council relationship to insulate decisions from veto politics.

3. Improve procedures and case management

- Streamline evidence rules, tighten timelines, and modernize working methods to increase “throughput” while preserving equality of parties

ICC: Main Recommendations

1. Strengthen jurisdiction and state cooperation

- Clarify and expand aggression jurisdiction under the Rome Statute and consider moves toward more universal reach.
- Develop stronger sanctions and countermeasures for non-cooperative states and better use of UN and regional support.

2. Increase efficiency without sacrificing fairness

- Implement Paris Declaration-style efficiency measures focused on core criminal-justice functions.
- Reform investigations, confirmation process, evidence rules, appeals, and defense resources to cut delays while preserving due process.
- Use performance indicators cautiously so speed does not trump fairness and victim participation.

3. Deepen legitimacy, victim-centrism, and restorative impact

- Integrate restorative and transitional justice (stronger victim participation, reparations, guarantees of non-repetition, cooperation with local processes).
- Improve leadership, internal culture, communication, and diversity of judges and staff; professionalize defense and enhance accountability

Conclusion:

Ultimately, this study – applying Article II’s three-part test, scrutinizing official statements, and weighing patterns of military conduct alongside ICJ and Commission findings – shows that the evidence strongly points to both the specific intent (*dolus specialis*) and multiple prohibited acts against Palestinians in Gaza. While final legal determinations belong to competent tribunals, the factual and legal record compiled here meets the thresholds used by international courts and thus demands urgent judicial scrutiny and accountability. At the same time, the paper highlights how political interference, state non-cooperation, and weak enforcement hollow out international justice, and offers concrete reforms to strengthen the ICJ and ICC, improve arrest and implementation mechanisms, and place victims at the centre of reparative processes. The law alone cannot save lives – it needs the political will to act – and the international community now faces both a legal duty and a moral obligation to turn these findings into effective investigations, prosecutions, and durable remedies for survivors. Only by pairing rigorous legal standards with real-world enforcement can

justice become more than an aspiration and instead offer protection, redress, and prevention.

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