

ISRAEL'S CRIMES IN GAZA

YÜCEL ACER

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SUMMARY

This study presents the relevant parts of international law before engaging in a legal assessment of Israel's actions in Gaza.

Israel has been engaged in human rights violations in occupied Palestinian territories since 1967, including subjecting hundreds of thousands of Palestinians in the Gaza Strip to a blockade since 2007. In the wake of a series of military assaults by Hamas's military wing, the Al-Qassam Brigades, from the Gaza Strip against Israel on Oct. 7, 2023, the Israeli armed forces launched a large-scale military attack that directly targets the blockaded territory. Thousands of civilians lost their lives or suffered injuries across Gaza, which Israel has been continuously targeting by air and land. Hundreds of thousands of Palestinians were forced to relocate as Israel's pledge to "eliminate Hamas" rendered Gaza uninhabitable. It is crucial to establish whether these severe attacks have any legal basis and which crimes Israel has committed by violating fundamental laws. Even the most general assessments suggest that Israel's unlawful attacks, completely devoid of any legal basis, amount to war crimes, crimes against humanity, and even genocide.

INTRODUCTION

Hamas's military wing, the Al-Qassam Brigades, launched armed attacks against Palestinian territories under Israeli occupation, as well as Jerusalem and some Israeli towns on Oct. 7, 2023. That assault, dubbed Operation Al-Aqsa Flood, claimed more than 1,400 lives according to the Israeli authorities as Hamas took approximately 200 hostages.¹

The Israeli air force launched airstrikes on Gaza some three hours after the attacks, which appeared to have deeply shocked Israel. As Prime Minister Benjamin Netanyahu announced that his country was in a state of war, Defense Minister Yoav Gallant stated that Israel was going to prevent the delivery of electricity, fuel, and food to the Gaza Strip as part of a "total siege." The Israeli minister proceeded to claim that they were "fighting against human animals" and acting accordingly.²

1 Israel recently revised that number as 1200. See "Israel Revises Hamas Attack Death Toll to 'Around 1,200'", Reuters, 10 November 2023.

2 "İsrail Savunma Bakanı Gallant: Gazze Tamamen Ablukaya Alınacak" [Israeli Defense Minister Gallant: Gaza will be placed under a total blockade], Anadolu Agency, 9 November 2023.

Although Israel launched the initial attacks concerning its right to self-defense, the campaign soon became large-scale and ruthless, resulting in the destructive bombardment of residential areas and civilian infrastructure in the Gaza Strip.³ The Israeli assault, which remains underway and has caused thousands of Palestinian civilians to lose their lives or suffer injuries, has reached a point that calls for a comprehensive review based on international law and especially international humanitarian law.

Specifically, it is necessary to establish whether Israel has a right to self-defense in this case and if it complies with the rules that govern the exercise of that right. After all, there are reasons to seriously suspect that the scope of Israel's attacks may have exceeded the limits of its alleged right to self-defense at the very least. The severity of those assaults and especially their serious repercussions for the civilian population, however, suggest that Israel has been engaging in gross violations of international humanitarian law and committing heinous crimes.

In this context, this study presents the relevant parts of international law before engaging in a legal assessment of Israel's actions in Gaza.

THE LAW OF INTERNATIONAL ARMED CONFLICT AND INTERNATIONAL HUMANITARIAN LAW

The law of international armed conflict (IAC) refers to the rules that states must obey when they use military force against

3 "Blinken in Tel Aviv: As Long As Us Exists, Israel Won't Have to Defend Itself Alone", The Times of Israel, 12 October 2023.

each other. In addition to regulating when states may resort to force, it determines the proper conduct of states in an armed conflict with each other or terrorist organizations and non-state armed groups.

THE RIGHT TO USE FORCE

Article 2(4) of the United Nations Charter prohibits the threat or use of force in a general sense and, accordingly, identifies two exceptional conditions under which states may take such steps. The first exception relates to the right to self-defense—which Article 51 of the U.N. Charter describes as an “inherent” right. Accordingly, any given state may exercise that right in response to an “armed” attack by itself or in cooperation with other states. It is important to note that states can exercise the aforementioned right “until the Security Council has taken measures necessary to maintain international peace and security.”

The second exception, in turn, relates to the United Nations Security Council taking necessary measures “by air, sea or land forces as may be necessary to maintain or restore international peace and security” per Article 42 of the U.N. Charter.

THE RULES OF ARMED CONFLICT

First and foremost, the rules of war aim to protect non-combatants, including civilians, prisoners of war, the sick and the wounded, from attacks and other acts of war. Secondly, they are intended to stop combatants from getting exposed to unnecessary suffering and death. A set of more recently adopted rules, in turn, seeks to protect the environment, historical artifacts, and natural wonders during armed conflicts.

Experts also refer to those rules as “international humanitarian law” (IHL) due to their aforementioned humanitarian objectives. IHL attempts to serve that purpose by imposing restrictions on the weapons and methods utilized in war. It is important to recall that the rules, that govern the use of certain weapons and methods in an armed conflict, emerged out of a succession of international agreements dating back to 1864. The Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864), the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (1906), the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare (1925), the Geneva Convention Relative to the Treatment of Prisoners of War (1929), and the Hague Conventions (1907) all predated World War II.

In the aftermath of World War II, the international community adopted four Geneva Conventions (1949) and two additional protocols (1977), as well as the 1980 Convention on Certain Conventional Weapons and five additional protocols, the 1993 Chemical Weapons Convention and the 1997 Ottawa Convention on Anti-Personnel Landmines.

Yet others, including the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (and two additional protocols), the 1972 UNESCO World Heritage Convention, the 1972 Biological Weapons Convention, and the 1992 Convention for the Protection of the Archeological Heritage of Europe, were subsequently adopted to protect the environment, as well as historical and cultural artifacts.

The above-mentioned international conventions also identified some specific weapons that states may not use against each other during armed conflict.⁴ Additionally, some conventions introduced certain criteria regarding the use of weapons “causing unnecessary suffering and death,” as well as failing to distinguish between civilians and soldiers, imposing serious restrictions on (potential) weapons, and failing to abide by those rules. For instance, the 1949 Geneva Conventions and especially the Additional Protocol Relating to the Protection of Victims of Non-International Armed Conflicts (1977) established the principle that the use of weapons, munitions, and materials and methods of war that cause unnecessary injury or suffering was prohibited. The Protocol also stipulates that new weapons must comply with the principles of the Geneva Conventions.⁵

Meanwhile, some conventions regarding prohibited methods of war impose a ban on certain methods by mentioning them individually. In this context, targeting individuals known to be non-combatants, or should be assumed as such under the circumstances, and subjecting civilians and civilian residential areas, which are not directly involved in armed conflict, to attacks are strictly prohibited. Another major restriction on the weapons and

methods of war relates to the protection of the natural environment.⁶

THE LEGAL IMPLICATIONS OF VIOLATIONS

It is important to recall that violating the aforementioned rules is not the same as breaking the law. Specifically, violations of basic human rights in war and armed conflict represent a crime and render the relevant persons criminally liable. Such acts are often described as gross violations of the Geneva Conventions. Article 50 of the First Convention, Article 51 of the Second Convention, Article 130 of the Third Convention and Article 147 of the Fourth Convention, as well as Articles 11 and 85 of the First Protocol, govern those prohibitions widely considered “gross violations” of the Geneva Conventions.

Willful killing, inhumane treatment including torture and biological experiments, willfully causing great suffering or serious bodily harm, the destruction of health and property unjustified by military necessity and in unlawful and unethical ways, forcing prisoners of war to serve in the armed forces of the enemy state, depriving prisoners of war of their right to a fair and regular trial under the Geneva Conventions, the forced deportation or relocation and unlawful imprisonment of people, forcing protected persons to serve in the armed forces of the enemy state or depriving them of their right to a fair and regular trial, taking hostages and destroy-

4 The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and the 1977 Anti-Personnel Landmines Convention were the most recent examples. The 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed Excessively Injurious or to Have Indiscriminate Effects, along with its additional protocols and the 2001 amendments, broadened the above-mentioned prohibitions to cover non-international armed conflict. Moreover, the Protocol on Blinding Laser Weapons was added to the Convention in 1995. Finally, the 1993 Chemical Weapons Convention imposed a ban on biological and bacteriological weapons.

5 The Hague Convention on the Laws and Customs of War on Land, too, highlights the importance of avoiding unnecessary suffering and prohibits the use of weapons, munitions and materials, which are designed to kill or injure the enemy by causing unnecessary suffering, such as poison and poisonous weapons.

6 The main detailed regulations in this area were put in place by the 1954 Hague Convention for the Protection of Cultural Property, the 1992 European Convention on the Protection of the Archeological Heritage and the 1972 UNESCO World Heritage Convention. There are also more general rules of international law regarding the protection of the environment, The Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques, which was negotiated at the 1976 Conference of the Committee on Disarmament and opened to signatures by the UN General Assembly in Geneva, also include similar provisions.

ing property unjustified by military necessity all amount to criminal conduct if they target protected persons or property.

Likewise, attacking medical or religious personnel, medical teams or ambulances, and civilians represent serious crimes. It is also criminal to carry out indiscriminate attacks despite knowing that they will cause excessive loss of life and harm to civilians and civilian property, attacking businesses and facilities containing dangerous materials despite knowing about the likely death toll and harm to civilians and civilian property, attacking non-combatants deliberately, subjecting people to apartheid and other inhumane and humiliating practices rooted in racial discrimination, destroying historical monuments, artworks, and places of worship that represent the cultural and spiritual heritage of peoples, and depriving individuals of their right to a fair and regular trial, too, amount to criminal conduct.⁷

ISRAEL'S ATTACKS AGAINST GAZA AND THE RIGHT TO SELF-DEFENSE

As mentioned above, Israel launched attacks on Gaza, claiming to exercise its right to self-defense, in the wake of Hamas's assault known as the Al-Aqsa Flood. Indeed, the country called up its reservists on Oct. 7, 2023, and declared a 'state of war' as the Israeli air forces began bombing Gaza.

It is important to note, however, that Israel does not have the right to self-defense over military assaults by Palestinian groups since it occupied Palestinian territories in the first place. In this sense, Israel solely has the legal obligation to

retreat from the areas under its occupation and keep its forces within its legitimate borders. In other words, Israel would only have a right to self-defense if it were to suffer an attack within its legitimate borders and would have to exercise that right to solely defend its territory.

Israel does not have the right to self-defense over military assaults by Palestinian groups since it occupied Palestinian territories in the first place.

States may exercise their right to self-defense in the face of illegitimate use of force. Regardless of the legitimacy of Hamas's methods, it is the Palestinians who exercise their right to self-defense, in this case. In other words, Palestine is entitled to exercise its right to self-defense at any point in time because it remains under occupation. The International Court of Justice also made that case in its advisory opinion regarding Israel's construction of a wall in the Palestinian territory.⁸ Furthermore, some countries have shared that view in official statements⁹ and some experts have made that point in their commentaries.¹⁰

Even if one were to disregard Israel's occupation and assume that Israel was exercising its right to self-defense, it is possible to establish that the Israeli counteroffensive quickly

⁸ See "Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", (ICJ Reports, 2004), p. 136, 194.

⁹ See "Israel Has No Right to Self-Defense As 'Occupier,' Russia Says", The Moscow Times, 2 November 2023.

¹⁰ "Israel's War in Gaza is Not a Valid Act of Self-Defence in International Law", OpinioJuris, 9 November 2023, <https://opiniojuris.org/2023/11/09/israels-war-in-gaza-is-not-a-valid-act-of-self-defence-in-international-law/#:~:text=Israel%27s%201967%20war%20was%20illegal,self%2Ddefence%20pre%2Demptively>, (Accessed: 13 November 2023).

⁷ Additional Protocol I, Article 11 and Article 85.

exceeded the legal limits of the right to self-defense and thus became an all-out attack devoid of any legal basis, considering the disproportionality of force and the persons and locations targeted.

In this sense, Israel launched a heavy bombardment of residential areas in northern Gaza, killing or injuring numerous civilians and destroying civilian infrastructure. At the same time, the Israeli army announced that it was subjecting the West Bank to complete isolation.¹¹ Pledging to deprive the Gaza Strip of electricity, food, and fuel, Defense Minister Gallant said that Israel was fighting “human animals” and acting accordingly.¹²

In truth, the right to self-defense does not mean that a given state can engage in all types of military activity on any scale. Instead, Article 51 of the U.N. Charter, refers to the right of a state to defend itself against an armed attack individually or in cooperation with other states.

As mentioned in Article 51, the right to self-defense is rooted in natural law and is therefore part of customary law. By extension, the element of proportionality is part and parcel of that right. In this context, states must proportionally use force within the framework of self-defense.¹³ Any move that is disproportionate to the act, which triggers the right to self-defense, and intends to punish one’s adversary or to take revenge, exceeds the legal limits of the right to self-defense. In conjunction with that point, the response to any attack should be able to stop it and force the attacker to retreat. Using force be-

yond that necessity, however, goes beyond the right to self-defense.

Accordingly, even if one were to accept that the Hamas military actions amounted to an attack and therefore gave rise to, as claimed by Israel, its right to self-defense. Regardless, it would be subject to various legal limitations and restrictions. In this context, Israel would be entitled to take military action until the attack stops and it can liberate its “occupied territory” if that is indeed the case. However, that force must be proportionate in the sense that it is just enough to stop the attack and liberate any piece of land that the country in question controls legally. Any attack by Israel against Palestine, where more than 2 million people live in a territory just 41 kilometers long and 12 kilometers wide, could easily exceed the limits of legitimacy – even in the absence of support from any other nation.

Finally, it is important to stress that the right to self-defense absolutely does not cover attacks against civilians or residential areas. Any civilian death due to Israel’s military actions in Gaza or any damage to civilian residential communities and civilian infrastructure would amount to a serious crime.

To conclude, Israel’s military attacks since Oct. 8 lack legitimacy and represent an unlawful war of aggression. As mentioned in Article 8 of the Rome Statute, the treaty that established the International Criminal Court (ICC), the planning, preparation, initiation, or execution of an “act of aggression” by a person or persons in a position to exercise control over or to direct the political and military action of a state would represent a crime of aggression. Committing that crime would render political and military leaders individually liable and require the rel-

11 “Israel Declares Siege of Gaza as Hamas Threatens to Start Killing Hostages”, *The Guardian*, 9 October 2023.

12 “İsrail Savunma Bakanı: İnsan Hayvanlarla Savaşıyoruz” [Israeli Defense Minister: We are fighting human animals], *VOA Türkçe*, 9 October 2023.

13 *Military and Paramilitary Activities in and Against Nicaragua*, (ICJ Reports, *Nicaragua v. United States of America*: 1986), p. 14, 94, 103; Malcom N. Shaw. *International Law*. Seventh Ad. 2104, p. 827.

evant state to address the damages suffered by the opposite party.

THE NATURE OF ISRAELI ATTACKS

Israel's ongoing attacks against Gaza have certain striking features that deserve attention within the context of international humanitarian law. The country's attacks and other military measures do not exclusively relate to the Gaza Strip but also target other parts of Palestine, including the occupied West Bank and Jerusalem.

The most striking aspect of Israel's actions relates to the deliberate killing or injuring of civilians. Specifically, aerial bombardments by Israeli warplanes, along with artillery or rockets fired by the country's ground forces against locations, where civilians are known to be present, amount to willful killing or injuring.

It is important to note that Israel bombs civilian evacuation routes¹⁴, kills or injures civilians by deliberately bombing shelters, kills or injures Palestinian civilians by targeting refugee camps that they have inhabited for years¹⁵, and kills civilians by knowingly and willingly bombing towns and villages¹⁶ daily.

According to the United Nations, the civilian death toll exceeded 5,000 by Oct. 23 – just two weeks after the attacks began.¹⁷ In a Nov. 7 press conference, Salama Maruf, head of the media bureau of the government in Gaza, said

Israeli attacks claimed the lives of 10,328 people, including 4,237 women and 2,719 children, and injured approximately 26,000 others. It is important to note that no recent conflict had resulted in so many daily civilian casualties until Israel began to kill hundreds of civilians. According to media reports, the country claims more than 400 civilian lives per day.¹⁸

Israel bombs civilian evacuation routes, kills, or injures civilians by deliberately bombing shelters, kills or injures Palestinian civilians by targeting refugee camps that they have inhabited for long years, and kills civilians by knowingly and willingly bombing towns and villages daily.

Moreover, U.N. Special Rapporteur Balakrishnan Rajagopal said Israel's attacks against Gazan targets caused 45% of all residences in the Gaza Strip to collapse or suffer damage, internally displacing approximately 1.5 million people. He added that more than 10,000 people, including 80 U.N. employees, had lost their lives, while women and children accounted for 67% of all casualties. According to Rajagopal, Israeli airstrikes injured more than 25,000 people and killed 1,300 children. He also noted that the majority of 2,300 missing persons were probably under the rubble.¹⁹

Indeed, Israel targets civilians in Gaza and the occupied West Bank alike. The country's ac-

¹⁴ A case in point was the killing of 70 people in the Oct. 13 bombardment of the evacuation route on Salah Al-Din Street: "70 Palestinians Killed, 200 Injured as Israel Strikes Convoy of Displaced People In Gaza: Interior Ministry", Anadolu Agency, 13 October 2023.

¹⁵ Can Kamiloglu, "BM Genel Sekreteri: 'Cebaliye Mülteci Kampına Düzenlenen Saldırı ve Artan Şiddet Yüzünden Dehşete Düştük'", VOA Türkçe, 1 November 2023.

¹⁶ "Israel Pummels Gaza with Strikes as It Expands Ground Operations", France24, 27 October 2023.

¹⁷ "Israel-Palestine: Gaza Death Toll Passes 5,000 with No Ceasefire in Sight", UN News, 23 October 2023.

¹⁸ "İsrail'in Saldırılarında Gazze Şeridi'nde 40 Bin Konut Tamamen Yıkıldı", Anadolu Agency, 7 November 2023.

¹⁹ "Gaza: Destroying Civilian Housing and Infrastructure is an International Crime, Warns UN Expert", UN Human Rights Office of the High Commissioner, 8 November 2023.

tions include opening fire, killing, injuring, and arresting civilian protesters, disregarding the killing of Palestinians by Jewish settlers, and carrying out an airstrike in the major city West Bank city of Jenin.²⁰ Israel killed more than 150 people in the occupied West Bank as of Nov. 9, 2023.²¹

Israel's actions, including the willful killing or injuring of civilians, inhumane treatment, inflicting serious harm to body or health, forced relocation and the mass destruction of property, amount to war crimes.

Another significant step that Israel has taken against Palestinians in the Gaza Strip was the forced relocation of residents. On Oct. 12, the Israeli authorities announced that the entire population of Gaza's northern section was required to head south within 24 hours. In response to that statement, U.N. officials promptly said that relocation was effectively impossible and could potentially take a heavy toll on the population.²² Likewise, Amnesty International warned against a humanitarian disaster on Oct. 13, urging Israel to rescind its evacuation order.²³

Israel deliberately kills civilians, who must be sheltered from the fallout of war, by targeting

them directly. At the same time, it attacks Gaza's civilian infrastructure to make it impossible for the local population to address their basic needs. Indeed, the country announced on Oct. 12 that it would deprive the Palestinians of water, fuel and electricity until all hostages were freed.²⁴ Furthermore, Israel continues to bomb power plants, solar panels, water pipes, and fuel reserves in Gaza – which address the civilian population's basic needs. Hence, the commissioner-general of the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) announced on Oct. 15 that Gaza was “running out of water” and “running out of life.”²⁵

In this context, another shocking tactic has been to attack Gaza's hospitals and medical facilities. Having willfully targeted Red Crescent ambulances on Oct. 14, Israel bombed the Al-Ahli Baptist Hospital, where thousands of Palestinians had taken refuge, three days later. Moreover, Israeli warplanes struck the Al-Shifa Hospital and the vicinity of Gaza's Indonesian hospital on Oct. 27, before targeting the Turkish-Palestinian Friendship Hospital on Oct. 30. Finally, a convoy of ambulances was attacked on Nov. 3, when the Al-Shifa Hospital was also targeted again.²⁶

According to the World Health Organization (WHO), the Israeli armed forces demanded the evacuation of 21 hospitals in northern Gaza by Oct. 15. Their heavy bombing also knocked out four hospitals, making it impossible for them to treat patients. Furthermore, Israel has been bombing the vicinity of hospitals to intimidate the local population and prevent them from

20 The Israeli border police shot dead two Palestinians in East Jerusalem on 11 October. According to the Palestinian news agency WAFA, the Israeli border police arrested more than 50 Palestinians in the occupied West Bank on 15 October and Israel conducted an airstrike against the Al-Ansar Mosque in Jenin, West Bank on 22 October. See “İsrail Polisi Doğu Kudüs'te 2 Filistinliyi Öldürdü”, Anadolu Agency 15 October 2023.

21 “BM: İsrail Güçleri, 7 Ekim'den Bu Yana Batı Şeria'da 150'den Fazla Filistinliyi Öldürdü”, CNN Türk, 9 November 2023.

22 “BM: İsrail'in Gazze'nin Kuzeyindeki 1 Milyon Sivile 24 Saat Tanınması Dehşet Verici”, Anadolu Agency, 13 October 2023.

23 “Israel/OPT: Appalling Gaza 'Evacuation Order' Must Be Rescinded by Israel Immediately”, Amnesty International, 13 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-appalling-gaza-evacuation-order-must-be-rescinded-by-israel-immediately/>, (Accessed: 13 November 2023).

24 “First Thing: No Power, Water or Fuel for Gaza Until Hostages Are Freed, Israel Says”, The Guardian, 12 October 2023.

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

26 “Şifa Hastanesi'nin Çatısı Bombalandı”, TRTHaber, 6 November 2023.

reaching the facilities.²⁷ Salama Maruf, head of the media bureau of the government in Gaza, reported that Israel had attacked 32 ambulances, inflicting serious damage to 113 medical facilities, and forcing 16 hospitals and 32 medical centers to suspend operations.²⁸

Israel also targeted civilian infrastructure like schools and houses of worship. In addition to bombing multiple mosques, it struck the Greek Orthodox Church of St. Porphyrius on Oct. 19.²⁹ On Nov. 4 alone, the Israeli military targeted multiple schools in Gaza. According to Maruf, 136 mosques were damaged in various ways along with three churches, while 56 mosques had collapsed. Moreover, Israel attacked 237 schools, 60 of which were forced to suspend operations.³⁰

In another kind of attack, Israel has been targeting the U.N., starting with the UNRWA, which assists the Palestinians and aid convoys. Four UNRWA employees lost their lives in Israeli airstrikes on Oct. 10, and two more were killed 10 days later.³¹ In a Nov. 7 press conference, spokesperson for the Gazan authorities Maruf announced that 67 UNRWA employees had died.

Another important point is the death of many journalists in Israeli attacks. On Oct. 15, the Committee to Protect Journalists confirmed

that at least 12 journalists had been killed, eight others had suffered injuries, and two journalists were missing.³² The head of the Gazan media bureau told a press on Nov. 7 that Israeli attacks had claimed the lives of 48 journalists.³³

ISRAEL'S ACTIONS AND VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

With the relevant parts of international humanitarian law and Israel's actions in mind, it is possible to conclude that Israel has committed various war crimes to date. As Article 8 of the Rome Statute stipulates, willful killing, inhumane treatment, willfully causing great suffering or serious injury to body or health, extensive destruction and appropriation of property not justified by military necessity, willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial, unlawful deportation or transfer or unlawful confinement, and taking hostages as war crimes if committed as part of a plan or policy or as part of a large-scale commission of such crimes.

It is important to note that Israel's actions, including the willful killing or injuring of civilians, inhumane treatment, inflicting serious harm to body or health, forced relocation, and the mass destruction of property, all amount to war crimes.

The Rome Statute also identifies the willful targeting of civilians, non-military items, non-military personnel, facilities, materials, and units as well as attacking vehicles providing

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

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

29 "İsrail Ordusunun 'Tarihi Aziz Porphyrius Kilisesi'ni Vurmadığı' İddiası", Anadolu Agency, 24 November 2023.

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

31 Eyad Kourdi and Alex Stambaugh, "At Least 4 UN Relief Workers Were Killed in Airstrikes in Gaza", CNN, 10 October 2023; Seda Sevensan, "2 Additional UNRWA Staff Members Killed, 16 in Total Since Gaza Conflict on set", Anadolu Agency, 20 October 2023.

32 "Gazeteciler için En Ölümcül Savaş", VOA Türkçe, 29 October 2023.

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

humanitarian aid or peacekeeping services under the U.N. Charter and engaging in acts that would cause long-term and serious harm to civilian objects and the environment and deemed clearly excessive when compared against the expected concrete and direct military advantage as criminal conduct.³⁴ In this sense, all of Israel's aforementioned actions largely align with the above-mentioned types of crimes. U.N. Special Rapporteur Rajagopal thus said that carrying out attacks that systematically destroy civilian residences and infrastructure, knowing that those acts shall render a city like Gaza uninhabitable, amounts to a war crime.³⁵

Israel's actions in Gaza would match the crime of ethnic cleansing, which refers to the creation of an ethnically homogeneous area through the forced relocation or mass killing of its civilian population.

It is possible to argue that Israel has been committing crimes against humanity – which are graver than war crimes. Article 7 of the Rome Statute stipulates that any attack carried out as part of a widespread and systematic assault on any given civilian community would amount to a crime against humanity.

There are indeed strong indications that Israel's actions have been part of a widespread and systematic assault on a group of civilians. Whereas the Israeli authorities identified their

objectives as degrading Hamas's military capabilities and ending its control over the Gaza Strip, it is possible to observe that the country seeks to force all civilians to leave the northern parts of Gaza and has systematically taken all relevant steps as part of that plan.³⁶

As a matter of fact, the Israeli army has bombed all residential buildings, unnecessarily causing them to collapse, so as to prevent the local population from returning in the future³⁷. It has also targeted hospitals with patients and civilians seeking refuge, forced the civilian population to leave their homes by a certain deadline, blocked the delivery of humanitarian aid and basic supplies to Gaza, and carried out attacks designed to spread fear (by signaling that no part of Gaza is safe) and forced out the residents, while engaging in bombardments designed to maximize the death toll, and targeted the people of Gaza collectively. Those measures must be considered as strong indications.³⁸

It is also possible to argue that Israel's actions in Gaza would match the crime of ethnic cleansing, which refers to the creation of an ethnically homogeneous area through the forced relocation or mass killing of its civilian population.³⁹ The U.N.'s special rapporteur on human rights in the

³⁴ See Article 8 (2/A) of the Rome Statute.

³⁵ "Gaza: Destroying Civilian Housing and Infrastructure Is an International Crime, Warns UN Expert", OHCHR, 8 November 2023, www.ohchr.org/en/press-releases/2023/11/gaza-destroying-civilian-housing-and-infrastructure-international-crime#:~:text=Carrying%20out%20hostilities%20with%20the,the%20right%20to%20adequate%20housing, (Accessed: 13 November 2023).

³⁶ "İsrail Savunma Bakanı: Hamas'ı Tamamen Bitireceğiz", Rudaw, 22 October 2023.

³⁷ Speaking at a press conference on 8 November, Salama Maruf, head of the media bureau of the government in Gaza, stated that 10000 buildings had been destroyed, 40000 building had completely collapsed and 222000 residences were damaged. "İsrail'in Gazze'ye Yönelik Bombardımanında İki Hastanede Büyük Yıkım Oldu", Anadolu Agency, 7 November 2023.

³⁸ "Gaza: Destroying Civilian Housing and Infrastructure Is an International Crime, Warns UN Expert".

³⁹ "UN Security Council Res. 808", 22 February 1994. Adopted on the Former Yugoslavia, UN Security Council, Statement of President, UN. Doc. S/Prst/1994/14, 6 April 1993. Adopted on the Former Yugoslavia; Case Concerning the Application of the Convention on the Prevention And Punishment of the Crime of Genocide (Bosnia Herzegovina V. Serbia and Montenegro) Merits, Judgement, 26 February 2007, par. 190; "The Practical Guide to Humanitarian Law", The Practical Guide to Humanitarian Law, <https://guide-humanitarian-law.org/Content/Article/3/Ethnic-Cleansing/>, (Accessed: 10 November 2023)

occupied Palestinian territories, Francesca Albanese notably accused Israel of having carried out ethnic cleansing against the Palestinians amid the fog of war and added that the Israeli government was trying to legitimize ethnic cleansing in the name of self-defense.⁴⁰

Moreover, one could describe Israel's attacks as amounting to genocide – not just war crimes or crimes against humanity.⁴¹ Article 6 of the Rome Statute describes the crime of genocide as killing members of a group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part, imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group with the intent to destroy, in whole or part, a national, ethnic, racial or religious group.

Israel's actions in the Gaza Strip result in the death of hundreds of Palestinians every day, inflict serious bodily or mental harm on civilians, and deliberately disrupt the local population's living conditions. It would be possible to argue that the crime of genocide has been committed if Israel could be shown to have taken those measures intending to eliminate Gaza's residents in part, if not entirely. It goes without saying that proving whether Israel's civilian and military officials acted with such intention represents a challenge because the Israelis would be unwilling to acknowledge such intention publicly, and proving their intention would be no easier than proving intentions in any other situation.

Nonetheless, as the International Court of Justice stated in its ruling regarding Bosnia-Herzegovina and Serbia,⁴² it is possible to reach conclusions about one's intentions based on the nature of one's actions. Accordingly, it would be possible and legally credible to establish whether Israel has any genocidal intentions by analyzing the nature of its attacks. In this sense, preventing the delivery of humanitarian aid, food and fuel, while bombing hospitals, among other things, not to mention the bombardment of Palestinians in the southern parts of Gaza, where Israel demanded them to relocate, represents proof of Israel's intention to eliminate at least part of the Palestinian population. It is possible to produce many more pieces of evidence to support that conclusion.

CONCLUSION

The scope of Israel's assault on Gaza exceeds the limits of the right to self-defense and the Israeli offensive remains devoid of any legal basis. Attempts to liberate those territories, which Israel has occupied for decades, do not entitle the country to exercise its right to self-defense. Furthermore, the scope and duration of the Israeli attack severely exceeded the limits of proportionality and therefore rendered it unlawful. In this regard, it is possible to say that Israel continues to engage in acts that contain elements of the crime of aggression.

It is important to note that such attacks, which have no legal basis, also violate the most fundamental principles of international humanitarian law in terms of their form and scope. Indeed, they possibly amount to war crimes, crimes against humanity, and even genocide. At this time, Israel's attacks against civilians and civil-

40 "UN Expert Warns of New Instance of Mass Ethnic Cleansing of Palestinians, Calls for Immediate Ceasefire", OHCHR, 14 October 2023, <https://www.ohchr.org/en/press-releases/2023/10/un-expert-warns-new-instance-mass-ethnic-cleansing-palestinians-calls>, (Accessed: 13 November 2023).

41 "Cumhurbaşkanı Erdoğan: Soykırım Derecesine Varan Saldırının Faillerini Lanetliyorum", TRTHaber, 18 October 2023.

42 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia And Herzegovina V. Serbia And Montenegro), Judgment, I.C.J. Reports 2007, par. 370 et al.

ian infrastructure have already gone beyond war crimes and reached the level of crimes against humanity or even genocide.

All such violations entail criminal liability for the relevant persons, who should first appear before their own nation's courts as a principle. Yet national legal proceedings often do not take place at all and there is reason to believe that Israel would not hold the relevant individuals accountable either. The International Criminal Court was indeed established to hold accountable those individuals, who either did not stand trial or were not tried as required.

The Palestinian government requested in 2014 that the ICC investigate crimes committed in Palestine and those responsible be put on

trial. It strengthened that claim by becoming a party to the Rome Statute in early 2015. It is important to recall that the Court has been investigating crimes committed in the Palestinian territories and that the Israeli attacks since Oct. 7, 2023, too, fall within the scope of its jurisdiction. Indeed, the ICC prosecutors recently stated that the actions of Hamas and Israel were within the Court's purview.⁴³ Accordingly, there is reason to expect the Court to investigate, sue and issue arrest warrants for some of Israel's civilian and military decision-makers in the future.

⁴³ "Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the Situation in the State of Palestine and Israel", ICC, 30 Ekim 2023, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>, (Accessed: 13 November 2023); See "Exclusive: Hamas Attack, Israeli Response Fall Under ICC Jurisdiction, Prosecutor Says", Reuters, 12 October 2023.

ISRAEL'S CRIMES IN GAZA

YÜCEL ACER

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Israel has been engaged in human rights violations in occupied Palestinian territories since 1967, including subjecting hundreds of thousands of Palestinians in the Gaza Strip to a blockade since 2007. In the wake of a series of military assaults by Hamas's military wing, the Al-Qassam Brigades, from the Gaza Strip against Israel on Oct. 7, 2023, the Israeli armed forces launched a large-scale military attack that directly targets the blockaded territory. Thousands of civilians lost their lives or suffered injuries across Gaza, which Israel has been continuously targeting by air and land. Hundreds of thousands of Palestinians were forced to relocate as Israel's pledge to "eliminate Hamas" rendered Gaza uninhabitable. It is crucial to establish whether these severe attacks have any legal basis and which crimes Israel has committed by violating fundamental laws. Even the most general assessments suggest that Israel's unlawful attacks, completely devoid of any legal basis, amount to war crimes, crimes against humanity, and even genocide.

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