

International Criminal Responsibility of Perpetrators of the Crime of Genocide in the Gaza Strip Following the Events of October 7, 2023

المسؤولية الجزائية الدولية على مرتكبي جريمة الإبادة الجماعية في قطاع غزة بعد أحداث 7 أكتوبر 2023

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ملخص:

تهدف الورقة البحثية إلى توضيح جريمة الإبادة الجماعية المرتكبة في غزة، ومدى إمكانية متابعة مرتكبيها وتوقيع الجزاء عليهم، وخلصنا إلى أنّ المسؤولية الجزائية الدولية توقع على مرتكبيها انطلاقاً من تطبيق اتفاقية حظر الإبادة الجماعية عام 1948، وفق نظام روما الأساسي المجرّم للإبادة الجماعية، وقد قدّمت محكمة كل الأدلة التي تثبت إدانة المجرمين، حيث صدر قرار من محكمة العدل الدولية ومذكرة توقيف من المحكمة الجنائية الدولية في حق كل من نتياهو وغالانت، لكنّ الأمر يتطلب التطبيق الفعلي لهذه القرارات، لذلك نوصي بضرورة استحداث آليات تنفيذ لقرارات محكمة العدل الدولية، واقتراح الإدانة بالعقاب وتفعيل آليات المراقبة والمساءلة على الجرائم الدولية، مع اجتهاد المحكمة الجنائية الدولية في إزالة الغموض على إثبات القصد الجنائي الخاص في جريمة الإبادة الجماعية، التي تعتبر من أبشع الجرائم لأنها تقضي على وجود الجماعة من الأساس.

كلمات مفتاحية:

المسؤولية الجنائية الدولية، محكمة العدل الدولية، القصد الجنائي الخاص، الإبادة الجماعية، المحكمة الجنائية الدولية.

Abstract:

This research paper aims to clarify the crime of genocide committed in Gaza and assess the feasibility of prosecuting its perpetrators and imposing penalties upon

them. The study concludes that international criminal responsibility applies to the perpetrators based on the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, in accordance with the Rome Statute, which criminalizes genocide. The court has presented all necessary evidence proving the guilt of the criminals, leading to the issuance of a ruling by the International Court of Justice (ICJ) and an arrest warrant by the International Criminal Court (ICC) against Netanyahu and Gallant. However, the challenge remains in the actual enforcement of these decisions. Therefore, we recommend the establishment of enforcement mechanisms for ICJ rulings, ensuring that convictions are accompanied by appropriate sanctions, activating monitoring and accountability mechanisms for international crimes, and enhancing the ICC's efforts to clarify the element of special intent in genocide, a crime considered one of the most heinous due to its aim of exterminating an entire group.

Keywords: *International Criminal Responsibility; International Court of Justice; Special Intent; Genocide; International Criminal Court*

Introduction:

Throughout history, humanity has witnessed some of the most horrific crimes and international violations, whether perpetrated by states or by individuals in positions of power capable of making such decisions. These acts represent some of the gravest threats to individual rights and disrupt peace and security within societies. Consequently, they have drawn the attention of governments, specialists, and the general public alike. Genocide, in particular, stands out as one of the most serious crimes, posing a threat to groups, individuals, and internationally protected interests. It leaves profound psychological scars on humanity that are difficult to heal. Its severity lies in the potential extermination of an entire group based on race, ethnicity, religion, or tribe.

This reality has prompted the international community to take action in order to establish legal and institutional measures to fight such crimes. In 1948, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force in 1951. Numerous countries, including Palestine and South Africa, have ratified the convention. Additionally, even states that have not ratified it are still subject to its provisions, based on a ruling by the International Court of Justice, which held that the convention has codified customary international law that is binding on all states.

International enforcement is carried out through the implementation of international legal texts in response to serious violations of international public order. However, this process necessitates the existence of international institutions or mechanisms capable of applying these provisions, an objective fulfilled through the

establishment of the International Court of Justice and the International Criminal Court. Effective judicial oversight and the prosecution of international criminals constitute the most successful means of achieving international peace and security, as confirmed by all instruments related to international crimes. To ensure the success of this endeavor, states have collaborated to establish cooperative frameworks sought at tracking and prosecuting international criminals, thereby contributing to the restoration of stability within the international community. (Leila, 2014, p. 3)

When does international criminal responsibility apply to perpetrators of international crimes? Does the crime of genocide apply to the situation in Gaza? To what extent can special intent help assign criminal responsibility for the crime of genocide?

The research paper aims to highlight the conceptual foundation of the crime of genocide and international criminal responsibility against its perpetrators, as well as to identify the key judicial mechanisms involved in prosecuting such crimes and the role of special intent in proving them.

To address the problem statement, this study used a combination of methodologies. The descriptive method was employed to explore the aforementioned concepts, including the challenge of proving special intent in relation to this crime and the roles of the two judicial courts in addressing genocide. The analytical method was applied in the examination of the texts of the Rome Statute.

The study is divided into two main sections. The first section is dedicated to the conceptual foundation of international criminal responsibility and the crime of genocide, while the second section focuses on the judicial mechanisms available to address the crime of genocide in the Gaza Strip.

First Section: Conceptual Foundation of International Criminal Responsibility and Genocide

To regulate international relations on objective, fundamental bases, countries have allowed the inclusion of all nations in their alliances to serve mutual interests. This also contributed to the regularization of international relations aimed at protecting individuals from various forms of violence they may encounter. Consequently, legal consequences arising from the commission of crimes, deemed attacks on international public order, were established, specifically international criminal responsibility.

First: The Concept of International Criminal Responsibility

The commission of international crimes leads to violations of the principles of justice and fairness, which every state should uphold. In cases of such violations, international criminal responsibility arises, as outlined in the following points:

1. Definition of International Criminal Responsibility:

International criminal responsibility is referred to as "any act that causes damage to an individual under international law due to a criminal act, which then leads to the imposition of a specific international penalty, whether punitive or otherwise. It is also the possibility of holding a state accountable for committing an act that is considered

by international law as an international crime, with penalties assigned for the committed international crime". (Fouad, 2022-2023, p. 13)

It is also defined as: "The legal consequence that arises when a crime, acts constituting an attack on the international public order, is committed by individuals acting entirely independently of the state, for which international law recognizes personal criminal responsibility. On the other hand, violations committed by individuals on behalf of the state or under its orders are attributed to the state in accordance with the doctrine of state acts" (Shahata, 1981, p. 95). In this regard, the offender bears liability for his criminal conduct and is subject to the criminal penalties provided by law. (Slimane, 1992, p. 236)

It is defined by Hamed Sultan as : " A legal relationship that arises in the case of a breach of an international obligation and exists between the legal person who breached the obligation and the person against whom the breach occurred" (Youssef, 2013, p. 27). Another definition states that international criminal responsibility for an individual arises when the person performs actions that threaten an interest or value protected by international law. (Mousa, 2009, p. 18)

Based on the above, we can define international criminal responsibility as the accountability or criminal prosecution of anyone who commits an act criminalized and punishable under international law, resulting in the imposition of penalties.

Legally, it was established by the Convention on the Prevention and Punishment of the Crime of Genocide, which necessitates the imposition of penalties on those assigned responsibility. Furthermore, it is defined in Article 23, paragraph 3 of the Statute of Rome as: "Individual responsibility that is confined to the person and his property."

Therefore, it places responsibility on the individual who commits the international crime, which can also extend to the state, even though the Statute acknowledges the court's lack of jurisdiction over cases regarding international criminal responsibility against states. Article 24/4 of the Statute states: "Nothing in this Statute shall affect the responsibility of states under international law."

On this basis, we can say that the requirements of international public order necessitated that the issue of establishing international criminal responsibility for states concerning serious violations of international law be regarded as a crucial principle in international law.

2. The Difference Between Criminal Responsibility and Civil Responsibility:

The issue of distinguishing between civil responsibility and criminal responsibility is related to legal characterization and the process of proof. They differ in terms of the cause. The first pertains to damage caused to the individual responsibility of a specific person or group of persons, while the second relates to damage impacting the rights of society as a whole. In addition to jurisdiction, the first is a civil lawsuit filed by the harmed individual in regular courts, while the second is a public lawsuit owned by the state alongside the harmed individual, acting on behalf of society as a whole. Concerning waiver, the harmed individual may waive the first,

while the second cannot simply be waived because the public prosecutor does not allow for a waiver. Regarding penalties, the first includes compensation or damage repair depending on the act committed, while the second involves criminal penalties, which may include imprisonment or a financial penalty. As for the statute of limitations, in the first case, the limitation period is set and begins from the date the individual becomes aware of the damage incurred. In the second case, it depends on the characterization of the act as a felony, misdemeanor, or violation.

3. Principles of International Criminal Responsibility:

Most legal systems agree on a fixed rule regarding criminalized conduct, which is that "there is no crime and no punishment except by legal text." This text is the basis of criminal responsibility. Based on Article 25 of the Rome Statute of the International Criminal Court, the head of state can be held criminally responsible as a principal perpetrator for issuing orders that lead to the commission of international crimes. Furthermore, military leaders can be held criminally responsible under the principle of command responsibility, where they are accountable for crimes committed by their subordinates under their orders. The Statute of Rome specifically lists the criminal acts for which individuals can be held accountable, focusing on the most serious crimes.

Numerous principles underpin international criminal responsibility, including the disregard of official capacity held by those with decision-making authority within the state, as stipulated in several international criminal law treaties, such as the Convention on the Prevention and Punishment of the Crime of Genocide (Charles, 1980, p. 125) and the Convention on the Suppression of the Crime of Apartheid, adopted in 1973. The statutes of international criminal courts also uphold the principle of disregarding official capacity, as seen in Article 27 of the Rome Statute of the International Criminal Court.

Thus, judicial immunity should not be upheld, as it would undermine the enforcement of the principle of individual criminal responsibility. The International Court of Justice first addressed the specific concept of judicial immunity and related rulings in the case regarding the international arrest warrant issued by Belgium against the Congolese Minister of Foreign Affairs, Yerodia (Ridi, 2025, p. 25). Another fundamental principle underlying individual criminal responsibility is the rejection of the defense of superior orders. A person cannot claim he acted on the instructions of his government or a superior; he remains responsible for the orders he carried out, as stipulated in Article 32 of the Rome Statute of the International Criminal Court.

There is also the rule rejecting the defense of not issuing superior orders, whether the superior is the head of a civil organization or a military commander. International criminal law does not only limit itself to this but also acknowledges the responsibility of a commander or leader who failed to order the commission of international crimes as an presumed responsibility. Even if officers under their command did not plan or personally order the crimes, the commander remains responsible, as they did not take the necessary measures to prevent the crimes from

being committed and to ensure that the perpetrators were punished when the crimes occurred.

From the above, we can conclude that the responsibility arising from the most dangerous crimes threatening international peace and security is dual, applying both to the state and individuals. Anyone who commits such crimes on behalf of the state or for the benefit of a group that exercises actual power in the state, with the intent to fulfill a criminal goal, is held accountable alongside the state, which is responsible for all actions by its organs that did not prevent such criminal behavior. This is confirmed by Article 24 of the Rome Statute of the International Criminal Court.

Second: The Concept of Genocide

Once it was agreed to include the crime of genocide within the subject-matter jurisdiction of the Court, it received broad international consensus and faced no significant controversy concerning its definition or the specification of its constituent acts.

1. Definition of Genocide:

Genocide is considered one of the most heinous crimes against humanity, Gaza being a contemporary and poignant example, because it targets the destruction of a specific group, rather than individuals, through prohibited acts. It threatens not only the fundamental aspects of the group's existence but also the broader fabric of international public order.

The term "genocide" was first introduced during World War II by Polish lawyer Raphael Lemkin in his 1944 book *Axis Rule in Occupied Europe*. He coined the term by combining the Greek word *genos* (meaning "race" or "tribe") and the Latin *-cide* (meaning "killing").

Professor Graven described genocide as one of the most serious crimes committed against humanity, prompting calls for the punishment of its perpetrators through the establishment of an international criminal justice system. These efforts ultimately culminated in the creation of the International Criminal Court, with the Rome Statute granting it jurisdiction over the crime of genocide. This crime was placed at the forefront of the court's mandate due to its dangerous nature, as it includes the total or partial targeting of individuals or groups with the intent to exterminate them based on race, ethnicity, or religion.

The Statute of Rome involves genocide within its core crimes under Article 5 and dedicates Article 6 to defining the crime and specifying its prohibited acts. According to Article 6, genocide is referred to as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group."

The Statute of Rome, in Articles 5 and 6, recognizes genocide as an international crime that endangers the whole world community, even when

perpetrated by a state against its own people. Notably, the Statute does not require that the crime be committed by persons from one state against nationals of another, widening its reach and enhancing human rights protections.

The international community has become more concerned about the enormity of this crime, which breaches one of humanity's most basic rights, the right to life. Several international resolutions have been adopted since the United Nations' inception to criminalize genocide. Nonetheless, international and regional wars have continued to see similar crimes, with the armed conflicts in the Balkans and Rwanda serving as harsh instances of genocide in recent history.

In general, the International Criminal Court's jurisdiction for genocide is supplementary while national criminal tribunals have primary jurisdiction. The court's supplementary jurisdiction over genocide will be based principally on the crimes' national legal characterization.

Article 30 of the Statute of Rome defines the mental element required for criminal responsibility, stating that intent encompasses both knowledge and will. This means that the individual must intend to engage in the conduct and, with respect to the consequences, either seek to cause the result or be aware that it will occur in the ordinary course of events. Furthermore, the individual must recognize that the act constitutes a criminal offense and is punishable under international law, yet still chooses to proceed, fully intending to bring about the prohibited outcome.

Its definition was also adopted from the content of the 1948 Genocide Convention, which received global ratification. Particularly, Article 6 of the Rome Statute of the International Criminal Court directly copied the definition of the crime of genocide found in the statutes of the International Criminal Tribunals for the former Yugoslavia (Article 4) and Rwanda (Article 2). Therefore, this crime became the first international offense to exhibit such legal stability in its definition and the specification of its acts within successive international codifications. (Harb, 2013, p. 440)

Genocide is defined as actions performed with the goal of completely or partially destroying a national, ethnic, racial, or religious group. According to the provisions of the relevant articles, the criminalized acts include: killing members of the group; causing serious bodily or mental harm to members of the group; intentionally inflicting conditions of life calculated to bring about the group's physical destruction; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group. (Salama A. A., 2006, p. 422).

However, the interpretation and enforcement of these acts has often resulted in legal and judicial difficulty, especially given their intersection with crimes against humanity. In such circumstances, the particular purpose component of genocide is critical. According to Professor M. Cherif Bassiouni, "The killing of an individual with this intent is considered genocide, whereas the killing of thousands of people without this intent is simply murder." (M.C.Bassiouni, 1992, p. 222)

2. The Overlap Between Genocide and Other International Crimes:

International crimes often overlap because they threaten human dignity and the fundamental life of humans. When considering crimes against humanity, we mean actions that violate human dignity and the right to life. These crimes are partly associated with genocide, however the latter is defined separately in both the Genocide Convention and the Rome Statute of the International Criminal Court.

In contrast, war crimes seek to destroy and exterminate certain groups. They intersect with genocide because both are illegal and penalized in order to safeguard human rights and dignity, especially when they involve serious breaches of international humanitarian law and the rules and customs of war during armed conflicts. (Jihad, 2009, p. 28). However, unlike war crimes, genocide can also be committed during times of peace.

3. The Issue of Proving the Specific Criminal Intent in Genocide:

Genocide is distinguished from other international crimes by its specific intent, which includes the physical, biological, and cultural destruction of two or more persons, with the intent to exterminate. This specific intent is often the reason for dismissing charges against those accused of committing genocide—i.e., that they did not possess the specific criminal intent required for the crime (Salama A. M., 2005, p. 137). To prove the specific criminal intent, we can refer to the case law of the International Criminal Tribunals for the former Yugoslavia and Rwanda, which have addressed this issue (Nasri, *The Specific Criminal Intent in the Crime of Genocide in Light of the Rome Statute*, 2022, p. 38). These tribunals have considered factors such as the selection of victims based on their membership in a protected group, the size of the exterminated group, and the intent behind the destruction.

Some of the primary criteria and sources of evidence used in international tribunal verdicts and judgements include the overall policy followed in the area where the genocidal actions occurred. This allows us to infer the precise criminal intent necessary for genocide. Such intent can also be demonstrated through the physical targeting of the group or its property, anything aimed at the group's destruction, as well as the scale of the harm inflicted, the number of victims, and the methods used to plan and organize the killings, as these methods facilitate the systematic execution of the crime. (Nasri, 2022, p. 39)

The killing of group members must be purposeful, which means it must be planned, determined, and carried out with determination. To cause substantial bodily or psychological suffering, the harm does not have to be permanent or irreparable; rather, it must go beyond shame, humiliation, or momentary emotional anguish. The damage must cause considerable long-term bodily or mental deprivation. This may involve acts of psychological or physical torture and persecution, sometimes known as "slow death" measures, such as the intentional deprivation of food, medical treatment, and other basic requirements.

Furthermore, acts of incitement to genocide, such as those committed in Rwanda in 1994, when the media and publications were used to instigate the extermination of

the Tutsi people, as well as militias' preparations for massacres to separate and slay them, are important. The entire environment in which genocidal crimes occurred, as well as the accused's actions, such as insults, slander, and words aimed at a national, ethnic, racial, or religious group, all demonstrate the existence of particular criminal intent for genocide.

By "national groups," we mean a group with a common national origin. Here, "nationality" does not refer to citizenship. Numerous countries can share a common national identity, such as the genocide perpetrated by Hitler against the Slavic people in Eastern Europe during World War II. As for "ethnic groups," they are grounded in inherited physical traits in a specific race. One of the most prominent advocates of this idea was the German forces, who followed theories asserting the superiority of the Aryan race over other ethnicities. On the other hand, "racial groups" are based on a shared culture or language among a group of individuals, while "religious groups" are united by religion, regardless of their race or ethnicity. This was exemplified in Cambodia, where the Muslim Cham minority was deported and exterminated in 1995. (Nasser, 2024, p. 12)

From this perspective, we can conclude that proving specific criminal intent in the crime of genocide is a difficult task because it involves the perpetrator's hidden, internal psychological aspect, which complicates the proof process and allows many perpetrators to avoid punishment. As a result, the International Criminal Court strives to prove international crimes as a whole, since they are among the most serious crimes against humanity.

Second Section: Judicial Mechanisms Available to Address the Crime of Genocide in the Gaza Strip

The International Criminal Court and its Statute, along with the International Court of Justice, which resolves disputes between states over the application and interpretation of treaties, including the Genocide Convention, represent a watershed moment in the establishment of criminal accountability for international crimes.

First Sub-section: The Position of the International Court of Justice Regarding South Africa's Lawsuit

First: The Establishment and Mandate of the International Court of Justice

The International Court of Justice was established under the United Nations Charter in 1945, following World War II, after the allied powers (the United States, China, the United Kingdom, and the Soviet Union) issued a joint declaration acknowledging the necessity of creating a general international organization grounded in the principle of equal sovereignty among all peace-loving nations. This organization would be open to all countries, large or small, to ensure international peace and security. This court is regarded as the principal judicial body of the United Nations, and its Statute forms a part of the UN Charter. The multiple aspects associated with its formation, functions, jurisdiction, and procedural rules were organized in Articles 92–96 of the charter and in its statute, along with the court's internal rules adopted in 2001.

The Court includes two types of jurisdiction: the first is judicial, under which it hears cases brought before it only by states. Individuals cannot file lawsuits with the Court, according to Article 14 of its Statute. The second type is advisory jurisdiction, allowing the Security Council and the General Assembly of the United Nations to request advisory opinions on any legal issue. Furthermore, specialized agencies related to the UN and its branches may also request advisory opinions from the Court when authorized by the General Assembly on legal matters falling within their scope of work, as per Article 96 of the Charter (Al-Kashef, 2003, p. 47).

The Court's advisory opinion jurisdiction is restricted to legal matters, not political ones, as opposed to its judicial jurisdiction, which includes legal or broad political conflicts. However, owing to the difficulty and complexity of differentiating between legal and political considerations in many circumstances, the Court does not always decline to hear a case because it is political. Therefore, the Court follows a practice of accepting to express its opinion on all issues brought before it, whether political or legal (Farhati, 2012, p. 69).

Article 34 of the Court's Statute stipulates that the Court's jurisdiction extends to all issues submitted to it by litigants as well as those brought before it under the United Nations Charter or related accords and treaties. Therefore, there is no legal obstacle to presenting arguments about non-compliance with the implementation of the Genocide Convention, specifically Israel's activities against the Palestinian people by depriving them of their human rights.

The use of dehumanizing rhetoric, employed as both a strategy and a result, alongside the relentless blockade, displacement sought at the complete destruction of people's resources, and forcible deportation targeting the total destruction of life sources in the Gaza Strip, leading to a unique and catastrophic humanitarian disaster, prompted the State of South Africa to bring a case before the International Court of Justice.

Second: The Likelihood of Genocidal Acts

South Africa submitted evidence of genocide perpetrated by Israel in Gaza to the International Court of Justice. The Court, considered the United Nations' primary judicial entity with wide jurisdiction, is responsible with adjudicating all disputes brought before it by parties, as well as topics explicitly stated under relevant treaties and accords (Djaalab, 2025, p. 35). It operates as a civil court for resolving interstate issues.

South Africa required to submit evidence proving that Israel's activities and omissions constitute genocide since they want to eradicate a significant portion of the Palestinian ethnic, national, and cultural groups. South Africa cited the idea of "rights concerning everyone" in international law, which refers to basic rules and principles, such as the prohibition of genocide, and represents duties that all governments owe to the international community at large. Violating these commitments is a crime against the international legal order. (Nasser, 2024, p. 12)

Two days of hearings were conducted in The Hague's Peace Palace, where Israel was represented by various lawyers, including Malcolm Shaw. In contrast, South

Africa was represented by a legal team comprised of many lawyers, including Temikango Kaitobi. South Africa's case against Israel is based on the United Nations Convention on the Prevention and Punishment of Genocide, which is backed by a comprehensive dossier of factual material and evidence obtained from many sources. These sources included reports from UN Special Rapporteurs, the UN High Commissioner, credible non-governmental organizations, and journalists reporting from Gaza.

The emphasis was on the elements of the criminal act and the specific intent embodied in the killing of Palestinians, which resulted in various forms of physical and mental harm, as well as physical destruction, forced displacement from their homes, deprivation of food and medical aid, and a lack of access to adequate housing. All of these transgressions, among others, prompted South Africa to demand an immediate halt to Israeli military operations in Gaza. In this case, the Court's authority is invoked to hold governments accountable for the actions of their officials who breach international obligations under the treaty, thereby triggering state responsibility as outlined in Article 9 of the Convention.

Third: The Procedural Path Before the International Court of Justice in the Matter of the Genocide of the People of Gaza

Written submissions were introduced by both parties, who started by establishing their standing in the case. South Africa submitted a request regarding the Gaza dispute, followed by hearings in which both sides presented their arguments. During these hearings, South Africa succeeded in convincing the judges that the situation in Gaza constitutes a case of genocide. This was fulfilled by indicating that the actions attributed to the Israeli entity were supported by credible sources, primarily from the United Nations. UN statistics were employed to substantiate the claim of genocide committed by Israel.

The arguments concluded with a call for a ceasefire, as most of the Court's judges highlighted the impossibility of Israel complying with the Court's orders while its military operations continued. This emphasized Israel's responsibility for violating the Court's orders and, consequently, breaching its obligations under the Genocide Convention. (Al-Basri, *The Rulings of the International Court of Justice in South Africa's Case Against Israel and Their Implications*, 2025, p. 14)

South Africa's appeal was founded on legal grounds, whereas the Israeli entity reacted with political rather than legal justifications, failing to explain the enormous number of casualties, an indicator of intent to exterminate the Palestinian people. (Aljazeera, 2025, p. 5). Despite this, Israel rejected South Africa's claims as frivolous and framed it as an accusation. However, it did not dismiss the claim entirely and was eventually required to continue the legal processes by producing thorough reports on its conformity with international law and the execution of the Court's orders. (Al-Basri, p. 16)

Israel's commitment to the judicial processes, as well as its quarterly reports, suggest that it is fighting a legal struggle in addition to its military effort. This is

especially crucial in view of Israel's assertions that there is no Palestinian people, which the International Court of Justice has refuted by recognizing Palestinians as a protected group under the Genocide Convention. Despite the fact that the Court's decisions are legally binding, the International Court of Justice lacks adequate means to enforce them in reality.

Fourth: Developments in the Case of South Africa Before the International Court of Justice Against Israel

The International Court of Justice said that Ireland, along with Mexico, Libya, Nicaragua, Colombia, Bolivia, Chile, Turkey, the Maldives, Spain, and the State of Palestine, had requested intervention in the case. Professor William Schabas, the former President of the United Nations Human Rights Commission, characterized Ireland's participation as "far from double standards," in reference to the paper it presented addressing the Genocide Convention. This paper emphasized that the legal definition of genocide is the "intent to destroy, in whole or in part, a targeted population group."

Cuba recently filed a statement to intervene in the case involving the execution of the Genocide Convention in Gaza. Invoking Article 63 of the Court's Statute, Ireland and Cuba made reasons that were consistent with those advanced by South Africa and the Palestinian people. A former legal officer of the International Court of Justice praised the interventions, stating that "third-party interventions are valuable when they suggest alternative approaches to the interpretation of the Genocide Convention, which neither party had proposed".

Baker assumes that Ireland's submission concerning how the Court should address the specific intent required to commit genocide "is significant," noting that the International Court of Justice has, in previous jurisprudence, applied a standard that is difficult to meet. From a procedural perspective, Canadian judge Schabas argues the case as still immature and in a very preliminary stage.

In light of the upcoming ceasefire talks in Gaza, Schabas emphasized that "no change will occur in the case even if an agreement is reached, because the case is based on solid and established evidence of genocide." We should not wait till Israel has completed its extermination of Palestinians before filing a lawsuit against it at the International Court of Justice." As a UN institution, he underlined that, although the Court acts in a political atmosphere, it has exhibited impartiality and independence, which were evident in the three rulings made in this case. He also said that the advisory opinion on the occupied Palestinian territories is one of the greatest views given by the Court since its establishment approximately 80 years ago. (Aljazeera, 2025, p. 7)

In the same vein, Professor Michael Baker, a specialist in international human rights law at Trinity College, said that the ultimate judgement might take at least three years since the parties are given enough time to make arguments, present witnesses, and file written declarations. Both international law experts agree that the

case has brought various considerations that have put significant pressure on Israel to change its strategy. However, they do not believe this pressure is adequate to achieve concrete changes. They also recognize that the temporary sanctions did not have the desired effect for South Africa or the Court's intended impact.

Both sides are now working hard to provide memoranda that address the case's main issues, both legally and factually. This will lead the International Court of Justice to convene a separate process to affirm its jurisdiction and the case's admissibility. Professor Schabas noted that the next step would require Israel either to react to South Africa's case, which was presented last October, or to contest the Court's jurisdiction from the start. This could lead to a hearing on the matter by the end of the year, with the Court issuing an initial ruling on some of the legal aspects of the case. Schabas also demonstrated that in the past, there had been strong suppression of discourse surrounding the situation in the occupied territories. "But this changed when the Court's order was issued at the end of January," he said, "which allowed for a level of freedom in discussion that had not existed before". (Aljazeera, 2025, p. 8)

However, the former chair of the Special Investigation Committee does not rule out attempts by both Israel and the United States, under Donald Trump's leadership, to influence the decisions of the International Court of Justice, saying, "We know that Israel attempted to influence the International Criminal Court utilizing dirty tactics through Mossad, and it is unlikely to refrain from employing similar efforts in the future."

Second Sub-section: The Position of the International Criminal Court on the Crime of Genocide in Gaza

The International Criminal Court is a permanent international judicial institution with criminal jurisdiction and its own legal personality. It was established under an international treaty to investigate, prosecute, and try individuals accused of committing "the most serious crimes of international concern." These include the crime of genocide (Article 6), crimes against humanity (Article 7), war crimes, and the crime of aggression (Article 8 bis). This court is a treaty-based institution, binding only on the states that are parties to its founding statute. It is not a supranational authority but rather functions similarly to other international legal entities. Importantly, it does not replace national criminal jurisdictions but complements them, thereby extending the reach of domestic legal systems.

The International Criminal Court has undertaken investigations into the crime of genocide, which is within its jurisdiction. Israel has been accused of perpetrating genocide against the Palestinians by attacking medical institutions, agricultural fields, and water networks. These activities exhibit striking resemblance to previous genocides in Rwanda and the former Yugoslavia, which resulted in the issuance of arrest warrants for individuals involved.

First: Issuance of Arrest Warrants

The Prosecutor of the International Criminal Court requested arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant, claiming their participation in acts against Palestine that resulted in the murder of women and children. In this regard, the Court rendered two significant rulings. The first said that Israel's assent was not necessary since the Court had geographical jurisdiction over Palestine, where the alleged crimes occurred. The second ruling confirmed that the ICC Prosecutor had previously informed Israel of the commencement of the investigation in 2021, which was deemed sufficient, and therefore no additional notification was necessary. (Aljazeera, 2025, pp. 8-9)

On November 21, 2024, the Pre-Trial Chamber of the International Criminal Court issued an arrest warrant for Mr. Muhammad Diab Ibrahim al Masri, known as "al Daif," the supreme commander of the military wing of Hamas, the Izz ad Din al Qassam Brigades. He was charged with crimes against humanity including murder, genocide, torture, rape, and other forms of sexual violence, as well as war crimes such as murder, cruel treatment, torture, hostage taking, outrages upon personal dignity, rape, and other forms of sexual violence. These crimes were alleged to have been committed in the territories of both the State of Israel and the State of Palestine since at least October 7, 2023.

On the same day, the Pre-Trial Chamber of the International Criminal Court issued two decisions rejecting the appeals filed by the State of Israel under Articles 18 and 19 of the Rome Statute. The court also issued arrest warrants for Mr. Benjamin Netanyahu and Mr. Yoav Gallant for crimes against humanity and war crimes committed from at least October 8, 2023, to at least May 20, 2024. Mr. Netanyahu, who was the Prime Minister of Israel at the time of the alleged conduct, and Mr. Gallant, the Minister of Defense, are suspected of having committed war crimes, including starvation as a method of warfare and intentionally directing attacks against civilian populations. They are also accused of crimes against humanity, including murder, persecution, and other inhuman acts. The Pre-Trial Chamber found reasonable grounds to believe that both Netanyahu and Gallant bear criminal responsibility, in their capacity as civilian leaders, for the war crime of intentionally directing attacks against civilian populations.

Second: The Legal Consequences of the International Criminal Court's Decisions Against Israeli Officials Accused of Committing Genocide

The arrest warrants issued by the Court involve charges of committing heinous and serious crimes, holding both Netanyahu and Gallant responsible for directing and escalating attacks in Palestinian territories against unarmed civilians during the military aggression. As international criminal law places liability on the individual, it is essential to impose appropriate penalties to ensure both justice and deterrence. The arrest warrants were not limited to these two individuals; the ICC Prosecutor's Office has demonstrated the possibility of issuing additional warrants if necessary. This reinforces the principle of universality in the application of international law and the

laws of armed conflict, affirming that no party is exempt from accountability and that there is no justification for depriving civilians of the basic necessities of life.

The International Criminal Court's decision, which included the issuance of arrest warrants, paved the way for future investigations into the criminal acts committed in Gaza, potentially including the crime of genocide in subsequent trials before the International Court of Justice or the ICC itself. As a result, the ICC's ruling against Netanyahu and Gallant is obligatory on the 124 state parties to the Rome Statute, requiring them to carry out the arrest orders in compliance with their legal obligations. These governments are expected to surrender the wanted persons anytime they enter their territory, guaranteeing that they are not absolved of responsibility for the most serious crimes perpetrated against the Palestinian people.

If any state violates this, it would be in clear breach of its obligations before the court regarding arrest and surrender under the Statute and may be referred to the Assembly of States Parties, the legislative and oversight body of the ICC, which could decide to refer the state's situation to the UN Security Council.

From the above, we can conclude that the serious crimes committed in Gaza have put the international judicial system (the International Court of Justice and the International Criminal Court) to a real test. Despite the pressure on them, they managed to issue arrest warrants for Netanyahu and Gallant, which are regarded as a groundbreaking precedent in international judicial practices. This encourages the expansion of criminal accountability for soldiers involved in the genocide in Gaza, regardless of their nationality, before their national courts.

Conclusion

It can be concluded that the suffering of the Palestinian people as a result of several crimes committed against them, most recently the crime of genocide aimed at rendering Gaza uninhabitable, constitutes a clear violation of the fundamental principles of international law. These actions cannot, under any circumstances, be legitimized under the pretext of self-defense. Hence, international criminal responsibility arises, as this concept has evolved in response to violations of legal norms that criminalize certain acts and classify them among the gravest international crimes, such as genocide, an ongoing threat to humanity, as demonstrated in Gaza.

The legal framework established by the international community to activate judicial mechanisms, whether through the International Criminal Court or the International Court of Justice, has marked a qualitative transition in the international judicial system. However, fulfilling justice by holding perpetrators of international crimes accountable remains a crucial challenge, especially when those responsible belong to major powers.

The inherent difficulty in proving the specific criminal intent required for genocide, which is a defining feature of the crime, highlights the essential role of both international criminal courts and domestic courts in clarifying this complex legal standard.

Recommendations

•Activating mechanisms associated with monitoring and accountability for international crimes, especially genocide, to stop and prevent their occurrence rather than relying on deterrence after the fact. Preventing harm to people is better than their destruction. This can be fulfilled by creating monitoring and implementation mechanisms, such as the decisions of the International Court of Justice, where the lack of implementation is a significant issue. Merely pronouncing a decision is not enough; it must be enforced so that international criminal responsibility is applied to perpetrators of international crimes, such as genocide in Gaza.

•The need to link condemnation with punishment at both the national and international levels to protect the rights and fundamental freedoms of individuals, as established by international law, in order to achieve full deterrence.

•Palestine's accession to the International Criminal Court to punish those who violate its security, territorial integrity, and the safety of its people requires the development of a clear Palestinian action plan and agenda to fully use this opportunity.

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