



## Legal Appraisal of Renewed Conflict between Israel and Hamas: Analysing the genocide accusations against Israel under International Law

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### Abstract

This paper examines the recent escalation of the conflict between Israel and Hamas, which began dramatically on 7 October 2023. The widespread killings and abductions of Israelis by Hamas precipitated an unprecedented military response from the Israel Defence Forces (IDF), aimed at securing the return of those taken, whether alive or deceased. The IDF's military actions have led to considerable discussion regarding their potential genocidal implications for Palestinians. However, an analysis requires considering whether Israel is solely accountable for genocide, or if Hamas's actions on 7 October also carry genocidal implications for which perpetrators should be held legally responsible. Against this backdrop, this paper investigates the potential culpability of Israel for accusations of genocide and whether Hamas can be absolved of the same offence under international law. Specifically, it traces the historical antecedent of the Israel-Palestine conflict, appraises the international legal framework pertaining to genocide, and scrutinises the accusations of genocide against Israel, alongside Hamas's potential culpability for the same offence. The paper employs a doctrinal method of both, primary and secondary sources to facilitate analysis of issues surrounding genocide accusations against both Israel and Hamas, grounded in established international legal framework. It finds among other things, that both Israel and Hamas bear responsibility for the offence of genocide. The paper recommends, among other things, that Israel and Hamas should be ready to embrace reality on both sides and allow peace and humanitarian aids in Gaza.

**Keywords:** Gaza, Genocide, Hamas, Israel, Palestine

## INTRODUCTION

The abductions and killings of Israelis and foreign nationals by Hamas and its allies on 7 October 2023 represent a significant turning point in the long-standing conflict between Israel and the occupied Palestinian.<sup>1</sup> This date marked the beginning of a deadly assault by Hamas on Israel, which subsequently led to the Israel Defence Forces (IDF) carrying out airstrikes and ground operations in the Gaza Strip.<sup>2</sup> The projected death toll in Gaza is estimated to be over 34,000, though humanitarian organisations caution that the actual figures could be considerably higher.<sup>3</sup> Similarly, the Israeli Ministry of Health reports that more than 1,400 individuals, predominantly civilians, have died in Israel.<sup>4</sup>

The perpetrators initiated a campaign of indiscriminate rocket fire and dispatched armed combatants into southern Israel, committing war crimes through the deliberate targeting of non-combatant civilians and taking hostages.<sup>5</sup> The Israeli military reported that these combatants seized over 200 civilian captives and transferred military hostages to the Gaza Strip.<sup>6</sup> In response, the IDF's retaliatory actions have tragically resulted in the deaths of over 35,000 people and subjected the entire Gazan population to widespread bombings, starvation, disease, displacement, the destruction of infrastructure, and relentless psychological terror.<sup>7</sup> This campaign has been notably brutal, even by historical Israeli military standards, combining indiscriminate lethal violence with exterminationist rhetoric; indeed, even some Israeli voices have condemned the violence.<sup>8</sup>

It is worth noting that media reporting of the conflict between the IDF and Hamas clearly revealed inherent biases in favour of one or other of the warring parties in the Middle East. Al Jazeera, for instance, emphasised narratives supporting Hamas and pro-Palestinian perspectives, consistently highlighting the suffering endured by Palestinian civilians.<sup>9</sup> Conversely, Fox News legitimised Israeli military actions, consistently portraying Hamas as a terrorist organisation that disrupts Israeli lives and promotes anti-Jewish sentiments within the United States.<sup>10</sup>

Furthermore, the BBC predominantly leant towards Israel's perspective, whereas Al Jazeera offered greater context regarding Hamas's actions and motivations.<sup>11</sup> This disparity highlights significant differences in lexical choices, transitivity, and the overall framing of the conflict by these news outlets.<sup>12</sup> It follows that these variations are a consequence of how news agencies influence photographic selections and the implications of strong alignment within proximity-framing for the portrayal of a mediated clash of civilisations in the digital media landscape.<sup>13</sup>

While considerable attention has been directed towards Israel's military response in Gaza, there has been limited scholarly analysis regarding whether Hamas's actions themselves constitute genocide under the

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<sup>1</sup> E Verdeja, *The Gaza Genocide in Five Crises* (Informa UK Limited, Trading as Taylor & Francis Group, United Kingdom, 2025) 2.

<sup>2</sup> S N Bukhari, M B Syed, & S M Dad, 'The Effectiveness of International Criminal Law in Context of Resolving Gaza-Israel Conflict' (2025) 3(2) *Dialogue Social Science Review* 611.

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid* at 614.

<sup>6</sup> J Kuttub, *The International Criminal Court's Failure to Hold Israel Accountable* (Arab Center Washington DC 4 October 2023) 12.

<sup>7</sup> Cf Verdeja (n 1) 2.

<sup>8</sup> *ibid.*

<sup>9</sup> El K Damanhoury, & F Saleh, 'Mediated clash of civilizations: Examining the proximity Visual Framing Nexus in Al Jazeera Arabic and Fox News' coverage of the 2021 Gaza War' (2024) 13 *Digital Journalism* 140.

<sup>10</sup> *ibid.*

<sup>11</sup> F K Mohd, 'Contrasting narratives: A Critical Discourse Analysis of the BBC and Al Jazeera's Coverage of the October 2023 Gaza War' (2025) 17(4) *Search Journal of Media and Communication Research* 57.

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948.<sup>14</sup> One perspective argues that Israel's ongoing and brutal military campaign, coupled with its 'policies of extreme inhumanity against the Palestinian people', is inextricably linked to a State-sanctioned effort to legitimise and normalise its actions in Gaza.<sup>15</sup>

Similarly, the full scope of Israel's assault on Gaza is revealed through its relentless military actions, characterised by indiscriminate violence against women, children, the elderly, and non-combatants.<sup>16</sup> Conversely, another perspective insists that Hamas's systematic targeting of Israeli Jews, combined with its documented ideology and statements, meets the legal threshold for genocide under international law.<sup>17</sup> Furthermore, it is argued that the 7 October attacks were not merely acts of terror or military strategy, but rather the culmination of a systematic policy aimed at the destruction of Israeli Jews as a distinct national, ethnic, and racial group.<sup>18</sup>

This paper critically examines the biased media portrayal of the Israel-Hamas conflict by outlets like Al Jazeera, Fox News, and the BBC, revealing how their distinct framing shapes public perception. It further investigates the under-analysed controversy surrounding whether actions by Israel and Hamas, particularly those on 7 October, constitute genocide under international law. Ultimately, the paper aims to offer readers an informed perspective on these contentious issues by analysing media influence and the complex legal arguments involved.

Against this backdrop, this paper appraises the legal implications of the reawakened conflict between the State of Israel and Hamas, currently governing Palestine. It aims to determine whether or not the State of Israel is guilty of genocide, as portrayed in many quarters. Similarly, this work examines the extent of genocidal commission by Hamas during the 7 October invasion of part of the State of Israel. Specifically, the paper discusses the historical antecedents of the conflict between the State of Israel and Palestine, led by Hamas, before elucidating the legal framework for genocide. Accusations of genocide against the State of Israel also receive attention within the paper. Furthermore, the paper considers Hamas's culpability for genocide against the State of Israel under international law. The paper then presents its findings, offers a series of recommendations, and concludes accordingly.

### **Historical Antecedent of Conflict between the State of Israel and the Palestine**

The current conflict's roots lie in the 1897 First Zionist Congress in Basel, where the idea of a Jewish State, possibly in Argentina, Uganda, or Palestine, was proposed.<sup>19</sup> The Zionist movement gained significant momentum after World War I ended in 1919 and the Ottoman Empire dissolved.<sup>20</sup> Subsequently, Britain took control of historic Palestine under the British Mandate, while Britain and France divided the broader Middle East via the Sykes-Picot Agreement.<sup>21</sup> A key moment was the Balfour Declaration, which supported establishing a Jewish national home in Palestine.<sup>22</sup> This sparked widespread Palestinian opposition, leading to a revolt against British rule to prevent its implementation.<sup>23</sup>

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<sup>14</sup> A R Shalev, 'Hamas' October 7th Genocide: Legal Analysis and the Weaponisation of Reverse Accusations: A Study in Modern Genocide Recognition and Denial' (2025) <<https://ssrn.com/abstract=5183482> or <http://dx.doi.org/10.2139/ssrn.5183482>> accessed 03 June 2025.

<sup>15</sup> G Sussman 'US-Israeli Regime of Despair' (2024) <<https://www.counterpunch.org/2024/07/21/the-us-israeli-regime-of-despair/>> accessed 03 June 2025.

<sup>16</sup> H A Giroux, 'Scholasticide: Waging War on Education from Gaza to the West' (2025) 24(1) *Journal of Holy Land and Palestine Studies* 2.

<sup>17</sup> Cf Shalev (n 14) 2.

<sup>18</sup> *ibid* at 28.

<sup>19</sup> S A Wisam, 'Gaza Genocide and a New Economic Reality' (2025) 6(12) *Journal of Applied Professional Studies* 3.

<sup>20</sup> *ibid*.

<sup>21</sup> *ibid*.

<sup>22</sup> M Vereté, 'The Balfour Declaration and its Makers' (1970) 6(1) *Middle Eastern Studies* 52.

<sup>23</sup> M Hughes, 'The Banality of Brutality: British Armed Forces and the Repression of the Arab Revolt in Palestine' (2009) 124(507) *The English Historical Review* 342.

The Israeli-Palestinian conflict, rooted in the late 19th century, dramatically escalated with the 1947 UN Partition Plan (Resolution 181).<sup>24</sup> This plan aimed to divide British Mandate Palestine into Arab and Jewish States, following Israel's declaration of statehood on 14 May 1948, the first Arab-Israeli War ensued, concluding in 1949 with an Israeli victory.<sup>25</sup> However, this resulted in the displacement of approximately 750,000 Palestinians.<sup>26</sup> Post-war, the region was partitioned into three main areas: the State of Israel, the West Bank, and the Gaza Strip.<sup>27</sup>

Regional hostilities escalated significantly with the Six-Day War in June 1967. Israel launched a pre-emptive strike against Egyptian and Syrian air forces, responding to military manoeuvres by Egyptian President Gamal Abdel Nasser.<sup>28</sup> This swift conflict resulted in Israel gaining control of the Sinai Peninsula and Gaza Strip from Egypt, the West Bank and East Jerusalem from Jordan, and the Golan Heights from Syria.<sup>29</sup> Subsequently, in October 1973, Egypt and Syria launched a surprise attack on Israel from two fronts, aiming to reclaim lost territories.<sup>30</sup> Although no substantial territorial gains were made by the Arab states, Egyptian President Anwar al-Sadat declared it a strategic victory for Egypt. This conflict ultimately paved the way for negotiations regarding the previously relinquished land.<sup>31</sup>

Following cease-fires and negotiations, Egypt and Israel signed the Camp David Accords in 1979 and this landmark treaty ended three decades of belligerency between the two nations.<sup>32</sup> While significantly improving Israeli-Egyptian relations, the Accords left the crucial issue of Palestinian self-determination unresolved.<sup>33</sup> In 1993, the Oslo I Accords provided a framework for addressing the wider conflict, establishing limited Palestinian self-governance in the West Bank and Gaza Strip.<sup>34</sup> The Oslo II Accord, ratified in 1995, further expanded this, mandating Israel's phased withdrawal from several urban and community centres in the West Bank, thereby extending Palestinian autonomy.<sup>35</sup>

Palestine's two main political entities are Fatah (Harakat al-Tahrir al-Filistiniya), meaning 'to conquer', and Hamas (Harakat al-Muqawamah al-Islamiyya), translating to 'zeal'.<sup>36</sup> Following its electoral success, Hamas, influenced by the Palestinian Muslim Brotherhood, took control of the Gaza Strip.<sup>37</sup> However, the United States, European Union, and several other nations did not recognise this victory, having designated Hamas a terrorist organisation since the late 1990s.<sup>38</sup> Hamas's takeover led to direct conflict with Fatah from 2006 to 2011 and unsuccessful peace initiatives and violent confrontations eventually culminated in a reconciliation agreement between the factions.<sup>39</sup>

In summer 2014, a major conflict erupted in the Palestinian territories between Israeli forces and Hamas.<sup>40</sup> Hamas launched over 3,000 rockets at Israel, prompting a significant Israeli military operation in Gaza.<sup>41</sup> By 2015, after intense confrontations, Palestinian President Mahmoud Abbas (Fatah) declared Palestinians

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<sup>24</sup> Cf Bukhari, Syed, & Dad (n 2) 612.

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

<sup>28</sup> M I Handel, 'The Yom Kippur War and the Inevitability of Surprise' (1977) 21(3) *International Studies Quarterly* 467.

<sup>29</sup> *ibid.*

<sup>30</sup> Cf Bukhari, Syed, & Dad (n 2) 612.

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*

<sup>37</sup> Cf Bukhari, Syed, & Dad (n 2) 612.

<sup>38</sup> *ibid.*

<sup>39</sup> R Home, & M S Armia, 'Decolonising Israel/Palestine: An Approach to the Legal History of the Middle East' (2025) 10(1) *Jurnal Kajian Ilmu Hukum dan Syariah* 9.

<sup>40</sup> Cf Bukhari, Syed, & Dad (n 2) 613.

<sup>41</sup> *ibid.*

would no longer be bound by the Oslo Accords' territorial lines.<sup>42</sup> In March 2018, during Gaza-Israel border demonstrations, Israeli forces killed 183 Palestinians and injured 6,000. These incidents occurred as some demonstrators breached the barrier and threw stones amid largely peaceful protests.<sup>43</sup> Over several months, Hamas fired over 100 rockets at Israel, leading to Israeli retaliation strikes on more than 50 sites in Gaza within 24 hours.<sup>44</sup>

In 2021, a crisis erupted in East Jerusalem following a court-ordered eviction of Palestinian residents and protests began, met with force by Israeli police.<sup>45</sup> After days of heightened tensions and clashes, Hamas and other Palestinian militant groups launched rockets into Israel.<sup>46</sup> Israel retaliated with artillery and airstrikes, resulting in over 20 Palestinian deaths and significant damage to infrastructure.<sup>47</sup> An eleven-day ceasefire was declared, with both sides claiming victory.<sup>48</sup> However, the conflict left approximately 250 Palestinians and 13 Israelis dead, nearly 2,000 injured, and 72,000 displaced.<sup>49</sup>

Renewed conflict between Israel and Hamas began on 7 October 2023. Hamas launched extensive rocket barrages into southern and central Israel, while dozens of operatives breached the border fence.<sup>50</sup> In response, Israel's cabinet formally declared war on Hamas, with Prime Minister Benjamin Netanyahu vowing victory in a protracted campaign.<sup>51</sup> Over the following week, Israel imposed a complete siege on Gaza, cutting off electricity, food, water, and fuel, mobilised troops, and commenced an aerial bombardment of militant positions within Gaza.<sup>52</sup>

## LEGAL FRAMEWORK FOR GENOCIDE

The term 'genocide' originates from the Greek word 'genos', signifying 'race', 'tribe', or 'nation', combined with the Latin suffix 'cide', meaning 'killing'.<sup>53</sup> Genocide is understood as the deliberate and systematic annihilation of a group of people, based on their ethnicity, nationality, religion, or race.<sup>54</sup> What distinguishes genocide from other crimes against humanity is the specific intent to destroy, either in whole or in part, a national, ethnical, racial, or religious group.<sup>55</sup> This specific intent differentiates it from historical atrocities, such as the practice of conquering armies executing all males from a defeated populace in antiquity.<sup>56</sup>

The legal definition of genocide extends beyond physical extermination to include acts causing severe bodily or mental harm, deliberately inflicting conditions leading to physical destruction, imposing birth prevention measures, and forcibly transferring children to another group.<sup>57</sup> Historical examples include the 1915 Armenian massacres by the Ottoman Empire, the systematic annihilation of European Jews and

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<sup>42</sup> C A Alind, 'A Short History of Hamas, the Palestinian Militant Group that has Attacked Israel' (2023) <<https://indianexpress.com/article/explained/explained-global/a-short-history-of-hamas-israel-8972553/>> accessed 03 June 2025.

<sup>43</sup> Cf Bukhari, Syed, & Dad (n 2) 613.

<sup>44</sup> *ibid.*

<sup>45</sup> *ibid.*

<sup>46</sup> Cf Alind (n 42).

<sup>47</sup> *ibid.*

<sup>48</sup> Cf Home & Armia (n 39) 11.

<sup>49</sup> *ibid.*

<sup>50</sup> J Zanotti, J M Sharp, C M Blanchard, C Thomas, M C Weed, & R Margesson, *Israel and Hamas October 2023 Conflict: Frequently Asked Questions (FAQs)* (Congressional Research Service, The United States, 2023) 1.

<sup>51</sup> *ibid.*

<sup>52</sup> *ibid.*

<sup>53</sup> S E Ahammad, 'Genocide: Causes Behind a Gravest State Crime' (2023) 8(12) *Jurnal Kajian Ilmu Hukum dan Syariah* 24.

<sup>54</sup> A A Ayman, 'The Concept of Global Jurisdiction in International Law Pertaining to the Crime of Genocide' (2024) 16(3) *Pakistan Journal of Criminology* 311.

<sup>55</sup> N Krisch, 'The Dynamics of International Law Redux' (2012) <<https://doi.org/10.1093/clp/cuab008>> accessed 04 June 2025.

<sup>56</sup> *ibid.*

<sup>57</sup> Cf Ayman (n 54) 311.

Roma by Nazi Germany during World War II.<sup>58</sup> Similarly, the deliberate killing of Tutsis by Hutu extremists during the Rwandan civil war in April 1994 is frequently cited as a paradigmatic example of genocide in the twentieth century.<sup>59</sup>

Since at least the end of the Second World War, genocide has been deemed the 'crime of crimes' and the Genocide Convention formally codified this crime, becoming the first human rights instrument adopted by the United Nations General Assembly.<sup>60</sup> This signified the international community's firm commitment to preventing a recurrence of Second World War atrocities.<sup>61</sup> The United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948 defines genocide as follows:<sup>62</sup>

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

According to Caroline principle on genocide<sup>63</sup>:

The impact of legal recognition, and thus of the legal memory, of the crime of genocide on shaping collective memory and remembrance of the crimes lies precisely in the recognition of the victims. And indeed, by legally qualifying the crime of genocide as genocide, trials would simultaneously acknowledge the status of victims as victims...

Similarly, the jurisprudential stance of the International Court of Justice (ICJ) on genocide offers crucial legal insight into the concept as understood under international law. This was notably demonstrated in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*.<sup>64</sup>

On 27 February 2022, Ukraine initiated proceedings against Russia before the ICJ, seeking provisional measures, including an order for Russia to cease military operations.<sup>65</sup> Prior to and during its invasion, Russia had accused Ukraine of committing genocide against Russian co-ethnics in Ukraine's Donbas region.<sup>66</sup> Ukraine sought an ICJ ruling that, contrary to Russia's claims, no genocide had occurred, and that the Genocide Convention did not authorise Russia's military action to prevent alleged genocide.<sup>67</sup> The Court, having established its *prima facie* jurisdiction over the dispute, subsequently held that:

No evidence had been presented to substantiate Russian allegations of genocide in Ukraine and that it was 'doubtful' whether the Convention authorised the unilateral use of force on the territory of another state to prevent or punish alleged genocide.<sup>68</sup>

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<sup>58</sup> H van Asselt, 'Governing Fossil Fuel Production in the Age of Climate Disruption: Towards an International Law of Leaving it in the Ground' (2021) <<https://doi.org/10.1016/j.esg.2021.100118>> accessed 04 June 2025.

<sup>59</sup> *ibid.*

<sup>60</sup> Cf Shalev (n 14) 20.

<sup>61</sup> *ibid.*

<sup>62</sup> Article II.

<sup>63</sup> F Caroline, *The Crime of Destruction and the Law of Genocide: Their Impact on Collective Memory* (Routledge, 2016) 132-133.

<sup>64</sup> [2007] ICJ GL No 91, 27 February 2007, paras 142-179.

<sup>65</sup> A Kulick, 'Provisional Measures After Ukraine v Russia (2022)' (2022) 13(2) *Journal of International Dispute Settlement* 329.

<sup>66</sup> *ibid.*

<sup>67</sup> ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, Provisional Measures, Order of 16 March 2022, para 2(a)-(b).

<sup>68</sup> *ibid* para 60.

The Court mandated an immediate cessation of Russian military actions, citing the urgency of the situation and the considerable risk of irreparable harm to the civilian population in Ukraine prior to the Court's final adjudication.<sup>69</sup>

Similarly, in July 2022, the ICJ delivered its judgment on the preliminary objections in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* case.<sup>70</sup> This particular decision carries significant implications, as it broadens the understanding of state standing before the ICJ in matters concerning the Genocide Convention.<sup>71</sup> In November 2019, the Republic of The Gambia initiated proceedings against Myanmar, alleging breaches of the Genocide Convention with regard to the Rohingya minority.<sup>72</sup>

The ICJ dismissed Myanmar's assertion that The Gambia had brought the proceedings on behalf of the Organisation of Islamic Cooperation, a non-state actor, which would lack standing before the Court.<sup>73</sup> Furthermore, the Court rejected Myanmar's argument that no dispute existed between the parties, thereby denying the ICJ's jurisdiction; a 'dispute' is fundamentally understood as a disagreement on a point of law or fact, or a conflict of legal views or interests between parties.<sup>74</sup> Most critically, the Court rejected Myanmar's contention that The Gambia was not an 'injured State' and had suffered no direct wrong from Myanmar's alleged violations of the Convention. The ICJ affirmed that:<sup>75</sup>

By committing to the obligations within the Convention, all States parties to the Genocide Convention share a common interest in preventing, suppressing, and punishing genocide. This shared interest means that each party has obligations toward all other parties, known as *erga omnes* partes obligations, implying that each State party has a vested interest in ensuring compliance with these obligations in every instance. Therefore, every State party is entitled to invoke the responsibility of another party for alleged breaches by seizing the Court.

It is imperative to emphasise that the intention to commit genocide is a crucial element in assessing whether such a crime has been perpetrated against a national, ethnic, racial, or religious group under international law. In other words, genocide stands apart from other war crimes and crimes against humanity due to its requirement of *dolus specialis* (a specific or special intent).<sup>76</sup> This means the crime must be committed with the aim of destroying, either wholly or partially, a national, ethnic, racial, or religious group *as such*.<sup>77</sup> This specific intent can often be inferred from the overall context, including the method, pattern, or conduct of the crime's commission.<sup>78</sup>

The International Criminal Tribunal for former Yugoslavia (ICTY), in the *Jelusic* case, held, *inter alia*, that it is precisely the *mens rea* (guilty mind) that imbues genocide with its unique character, differentiating it from ordinary crimes and other offences against international humanitarian law.<sup>79</sup> Similarly, the International Criminal Tribunal Rwanda (ICTY), in the *Akayesu* case, clarified *dolus specialis* as 'the

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<sup>69</sup> *ibid* para 74,

<sup>70</sup> ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary objections, paras 34.

<sup>71</sup> Cf Shalev (n 14) 18.

<sup>72</sup> *ibid*.

<sup>73</sup> ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, Provisional Measures, Order of 16 March 2022, paras 75-76.

<sup>74</sup> *ibid*.

<sup>75</sup> *ibid* para 79.

<sup>76</sup> ICTR, *Prosecutor v Kambanda*, [1998] Judgment and Sentence, ICTR 97-23-S, 4 December 1998, para 16.

<sup>77</sup> *ibid*.

<sup>78</sup> ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* [2015] Cr. Summary of the Judgment of 3 February 2015 ICGJ 470, 11.

<sup>79</sup> ICTY, *Prosecutor v Goran Jelusic*, [2010] Trial Judgment, IT-95-10, para 66.

specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to bring about the act charged'.<sup>80</sup>

This paper contends that the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948 serves as a crucial legal instrument for identifying, prosecuting, and ideally, preventing the most heinous crime under international criminal law. While its application and interpretation have presented challenges and sparked debates over the decades, the Convention nonetheless stands as a robust testament to the international community's unwavering commitment to safeguarding vulnerable groups from systematic destruction.

### **Accusation of Genocide against the State of Israel under International Law**

While the 7 October attacks on Israel undeniably constituted a violation of international humanitarian law, Israel responded with a substantial military campaign which, as of this writing, has reportedly resulted in over 45,000 fatalities.<sup>81</sup> This campaign subjected the entire Gazan population to extensive bombardments, severe food shortages, disease, widespread displacement, the destruction of infrastructure, and persistent psychological distress.<sup>82</sup> A significant characteristic of Israel's military operation in Gaza extends beyond its intense combat actions and the indiscriminate killing of women and children.<sup>83</sup> It also encompasses the persistent suppression of dissent, criticism, and even mild opposition to human rights violations and war crimes, which have garnered international condemnation.<sup>84</sup> Israel's ongoing and intense military campaign, coupled with what has been described as its 'policies of extreme inhumanity against the Palestinian people', is asserted by some to be inextricably linked to a State-endorsed endeavour to legitimise and normalise its operations in Gaza.<sup>85</sup> This includes an ideological campaign of censorship and defamation against any challenge, regardless of its origin.<sup>86</sup>

The campaign has been notably harsh, even by the Israeli military's own historical standards, reportedly combining widespread lethal force with rhetoric described as aiming for extermination; indeed, various Israeli voices have also voiced condemnation of the violence.<sup>87</sup> As the Jewish scholar Judith Butler observes, Israel's far-right leadership has been both public and unreserved in articulating their perceived eliminationist intentions subsequent to the Hamas attack on 7 October.<sup>88</sup> Furthermore, she contended that their objective has consistently been to undermine 'the livelihood, the health, the well-being, and the capacity (of the Palestinians) to persist' in the face of Israel's retaliatory and allegedly disproportionate military offensive.<sup>89</sup>

It is pertinent to highlight that Prime Minister Netanyahu and his cabinet members have remarkably asserted that Israel possesses 'the most moral army in the world'.<sup>90</sup> This claim, however, stands in contrast to reports indicating that Israel's actions have resulted in the deaths of over 40,000 Palestinians.<sup>91</sup> Estimates suggest that more than 15,000 children have been killed by Israel's sustained assault on the Gaza Strip, with

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<sup>80</sup> ICTR, *Prosecutor v. Jean-Paul Akayesu*, [1998] ICTR-96-4-T, 1998, para 498.

<sup>81</sup> Cf Verdeja (n 1) 2.

<sup>82</sup> *ibid.*

<sup>83</sup> Cf Sussman (n 15).

<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> Cf Giroux (n 16) 2.

<sup>87</sup> Cf Verdeja (n 1) 2.

<sup>88</sup> A Goodman, 'Palestinian Lives Matter Too: Jewish Scholar Judith Butler Condemns Israel's 'Genocide' in Gaza' (2024) <[https://www.democracynow.org/2023/10/26/judith\\_butler\\_ceasefire\\_gaza\\_israel](https://www.democracynow.org/2023/10/26/judith_butler_ceasefire_gaza_israel)> accessed 07 June 2025.

<sup>89</sup> *ibid.*

<sup>90</sup> G Shupak, 'Israel May have the Least 'Moral Army' in the World: The Rate of Civilian Death during Israel's Assault on Gaza has Few Precedents this Century' (2024) <<https://canadiandimension.com/articles/view/israel-may-have-the-least-moral-army-in-the-world>> accessed 07 June 2025.

<sup>91</sup> A Mahdawi, 'Nearly 21,000 Children are Missing in Gaza.' (2024) <<https://www.theguardian.com/global/commentisfree/article/2024/jun/27/gaza-missing-children>> accessed 07 June 2025.



approximately 21,000 individuals believed to be missing.<sup>92</sup> In the aftermath of the unexpected Hamas attack, Israeli Defence Minister Yoav Gallant publicly called for a complete blockade of Gaza, stating: 'there will be no electricity, no food, no fuel, everything is closed, we are fighting human animals, and we act accordingly.'<sup>93</sup> This disparity between rhetoric and reported outcomes raises significant questions regarding the operational ethics and accountability within the conflict.

It is noteworthy that human rights experts have voiced alarm over the potential for genocide almost since the outset of Israel's offensive. In October 2023, the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 reported to the UN Human Rights Council that the military campaign constituted 'genocide as colonial erasure.'<sup>94</sup> Similarly, in November 2023, the UN Office of the High Commissioner for Human Rights (OHCHR) issued a warning about the looming threat of genocide through famine.<sup>95</sup> A year later, in November 2024, the UN-backed Integrated Food Security Phase Classification declared an 'imminent and substantial likelihood of famine,' stressing that action was required 'within days, not weeks.'<sup>96</sup>

This paper posits that, in light of the extensive reports concerning the IDF military operations in the Palestinian territories, there are indications of the potential commission of genocide under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide, alongside violations of IHL, ultimately amounting to war crimes. It has been reported that the Israeli government has repeatedly contravened IHL in ways that constitute war crimes, particularly through its attacks on civilian structures including schools, museums, libraries, and hospitals.<sup>97</sup> Furthermore, torture inflicted upon detained Palestinians, including reports of some detainees dying in military custody and others requiring limb amputations due to injuries sustained from prolonged handcuffing are cited as additional evidence consistent with genocide and war crimes.<sup>98</sup> War crimes, it is contended, transcend mere physical destruction; they also erode morality, collective memory, and the ingrained patterns of public consciousness.<sup>99</sup>

The severe impact of Israel's military operations in Gaza is starkly demonstrated by images depicting the bodies of children, dismembered amidst damaged mosques, hospitals, and schools.<sup>100</sup> What is often overlooked, particularly by conventional media outlets, is the contention that Israel's campaign in Gaza constitutes not merely a physical assault, but also an attack on the region's history, collective memory, and cultural institutions.<sup>101</sup> This alleged erasure is portrayed as a deliberate attempt to conceal purported war crimes, intense violence, and a history of settler colonialism, all purportedly veiled 'under the security of

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<sup>92</sup> *ibid.*

<sup>93</sup> S Karanth, 'Israeli Defence Minister Announces Siege on Gaza to Fight 'Human Animals' <[https://www.huffpost.com/entry/israel-defense-minister-human-animals-gaza-palestine\\_n\\_6524220ae4b09f4b8d412e0a](https://www.huffpost.com/entry/israel-defense-minister-human-animals-gaza-palestine_n_6524220ae4b09f4b8d412e0a) > accessed 07 June 2025.

<sup>94</sup> F Albanese, 'Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967' General Assembly, A/79/384, 1 October 2024, <<https://documents.un.org/doc/undoc/gen/n24/279/68/pdf/n2427968.pdf>> accessed 07 June 2025.

<sup>95</sup> Office of the High Commissioner for Human Rights, 'Gaza is 'Running out of Time' UN Experts Warn, Demanding a Ceasefire to Prevent Genocide' (2023) <<https://www.ohchr.org/en/press-releases/2023/11/gaza-runningout-time-un-experts-warn-demanding-ceasefire-prevent-genocide>> accessed 07 June 2025.

<sup>96</sup> Integrated Food Security Phase Classification, 'IPC Famine Review Committee Alert: Gaza Strip' (2024) <[https://www.ipcinfo.org/fileadmin/user\\_upload/ipcinfo/docs/IPC\\_FRC\\_Alert\\_Gaza\\_Nov2024.pdf](https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_FRC_Alert_Gaza_Nov2024.pdf)> accessed 07 June 2025.

<sup>97</sup> K Roth, (2024) 'Crimes of War in Gaza' (2024) <<https://www.nybooks.com/articles/2024/07/18/crimes-of-war-in-gazakenneth-roth/>> accessed 07 June 2025.

<sup>98</sup> *ibid.*

<sup>99</sup> Cf Giroux (n 16) 5.

<sup>100</sup> *ibid.*

<sup>101</sup> *ibid.*

the blanket of historical amnesia.<sup>102</sup> Genocide, manifest not only through the establishment of 'kill zones' where the IDF indiscriminately targets Palestinians and the use of lethal force against non-military objectives like hospitals and schools, but also through the systematic demolition of Gaza's entire intellectual, cultural, and civic infrastructure.<sup>103</sup> This deliberate erosion, characteristic of genocide, purportedly aims to dismantle the very fabric of Gazan society, extending beyond physical violence to encompass the obliteration of its historical and cultural identity.<sup>104</sup>

The ICJ serves as a primary forum for inter-State disputes or for the provision of advisory opinions pursuant to Article 36(1) of its Statute and treaties such as the Genocide Convention, one State may institute proceedings against another.<sup>105</sup> A notable instance is South Africa's legal action against Israel under the Genocide Convention, specifically in the case often referred to as the 'Gaza Genocide case' South Africa's application, filed in 2023, invokes Article 36 and Article IX of the Genocide Convention.<sup>106</sup> Between January and May 2024, the ICJ issued provisional measures, directing Israel to cease specific military actions in Gaza and to take steps to prevent acts of genocide.<sup>107</sup> In March and May 2024, the Court broadened its measures to ensure the delivery of humanitarian assistance, reaffirming its January Orders and unanimously directed Israel to guarantee the 'unhindered provision' of critically needed food, water, electricity, fuel, medical supplies, and other essential provisions to Gaza.<sup>108</sup> On 24 May 2024, the Court additionally ordered a halt to Israel's offensive in the Rafah area and mandated that the Rafah crossing must remain open for humanitarian supplies.<sup>109</sup>

Furthermore, in July 2024, the ICJ determined that Israel's 'continuing presence' in the Occupied Palestinian Territory was unlawful and that its settlement and land policies contravene both IHL and human rights law.<sup>110</sup> The Court affirmed the Palestinian people's enduring right to self-determination and stipulated that Israel must withdraw from the occupied territories and also directed all States not to recognise or provide assistance for violations of these legal principles.<sup>111</sup> The advisory opinion underscored that Israel is obliged to return confiscated land, withdraw settlers, permit displaced Palestinians to return, and provide compensation to victims.<sup>112</sup> While Israel is not legally compelled by the advisory opinion itself to comply, it however, serves as a powerful legal tool for advocacy and a guide for States' conduct, reinforcing the illegality of the situation under international law.

Accordingly, between January and March 2025, three distinct phases of a ceasefire agreement were reportedly achieved between Israel and Hamas, facilitated by mediation from the United States, Qatar, and

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<sup>102</sup>D White, & A Ballas 'Settler Colonialism and the Engineering of Historical Amnesia' (2024) <<https://www.counterpunch.org/2024/07/11/settler-colonialism-and-the-engineering-of-historical-amnesia/>> accessed 07 June 2025.

<sup>103</sup> Cf Roth (n 97).

<sup>104</sup> Gaza Academics and Administrators 'Open Letter by Gaza Academics and University Administrators to the World' (2024) <<https://www.aljazeera.com/opinions/2024/5/29/open-letter-by-gaza-academics-and-universityadministrators-to-the-world>> accessed 07 June 2025.

<sup>105</sup> R A A Janjua & D I Janjua, 'International Legal Avenues for Justice in Gaza: Mechanisms Obligations and State Responsibilities' (2025) <<https://ssrn.com/abstract=5247742>> accessed 07 June 2025.

<sup>106</sup> *ibid.*

<sup>107</sup> International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) – Provisional Measures, Order,' 26 January 2024, paras. 79, 86(3), <https://www.icj-cij.org/node/203447> accessed 07 June 2025.

<sup>108</sup> International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) – Request for the Modification of the Order of 28 March 2024, Order,' 24 May 2024, para. 57, <<https://www.icj-cij.org/node/204091>> accessed 07 June 2025.

<sup>109</sup> *ibid.*

<sup>110</sup> Cf Janjua & Janjua (n105) 4.

<sup>111</sup> *ibid.*

<sup>112</sup> *ibid.*

Egypt.<sup>113</sup> The initial phase saw Hamas release 33 hostages in exchange for Israel releasing approximately 1,900 Palestinian prisoners and permitting the entry of humanitarian aid and other essential goods into the Gaza Strip.<sup>114</sup> The parties had reportedly agreed that negotiations for the second phase would encompass the release of all remaining hostages, as well as a complete withdrawal of Israeli forces from the Gaza Strip, leading to a permanent cessation of conflicts.<sup>115</sup> The subsequent negotiations for the next phase have seemingly made no progress. In response to this *impasse*, Israel imposed a complete halt on all aid entering Gaza, a move that triggered widespread international alarm.<sup>116</sup>

This paper posits that such an action constitutes a contravention of the ICJ's order of January 2024, which explicitly mandated Israel to guarantee the 'unhindered provision' of urgently needed food, water, electricity, fuel, medical supplies, and other basic necessities to Gaza.<sup>117</sup> Consequently, the suffering and extensive loss of lives among the Palestinian population due to IDF actions are reportedly ongoing, with the widespread distress and fatalities in Gaza seemingly failing to deter the IDF from continuing its bombardment and shelling of the Strip.

### **Hamas' Culpability for Genocide against the State of Israel under International Law**

Conversely, it is contended by some that Hamas, rather than Israel, perpetrated acts of genocide against Israelis. Proponents of this perspective argue that the terrorist attacks carried out by Hamas on 7 October were executed with the explicit and direct intent to destroy Israel and annihilate its Jewish population.<sup>118</sup> Hamas, as a non-State entity and an armed group, is therefore deemed responsible for the alleged crime of genocide during its 7 October incursion into the Southern Israel. This aligns with the United Nations Secretary-General's broader descriptions concerning the prevalence of human rights abuses committed by armed groups:<sup>119</sup>

The consequences for civilians have been devastating, as armed groups have often sought to overcome their military inferiority by employing strategies that flagrantly violate international law. These range from deliberate attacks against civilians, including sexual violence, to attacks on civilian objects such as schools, to abduction, forced recruitment and using civilians to shield military objectives.

Consequently, the sheer scale and brutality of the 7 October attacks are argued to establish the physical element of genocide, demonstrated through the killings and severe bodily harm inflicted upon Israeli Jews by Hamas, as an armed group.<sup>120</sup> Evolving from the Palestinian Muslim Brotherhood to become an independent organisation in the 1980s, Hamas has ideologically committed itself to the destruction of Israel and the establishment of an Islamic state across the entirety of historic Palestine.<sup>121</sup> Hamas unequivocally champions jihad and violent struggle as the exclusive means of achieving its objectives.<sup>122</sup> Its core tenets are encapsulated as follows:<sup>123</sup>

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<sup>113</sup>E Nader, 'Why has Israel Bombed Gaza and What Next for Ceasefire Deal?' (2025) <<https://www.bbc.com/news/articles/cq6yp5d5v9jo>> accessed 07 June 2025.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

<sup>116</sup> *ibid.*

<sup>117</sup> International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) – Request for the Modification of the Order of 28 March 2024, Order,' 24 May 2024, para. 57, <<https://www.icj-cij.org/node/204091>> accessed 07 June 2025.

<sup>118</sup> Cf Shalev (n 14) 2.

<sup>119</sup> UN Secretary General, 'Report of the Secretary-General on the Protection of Civilians in Armed Conflict' (2010) <UN Doc S/2010/579> accessed 07 June 2025.

<sup>120</sup> Cf Shalev (n 14) 28.

<sup>121</sup> *ibid* at 30.

<sup>122</sup> Article 13, Hamas Covenant 1988 (1988) <[https://avalon.law.yale.edu/21st\\_century/hamas.asp](https://avalon.law.yale.edu/21st_century/hamas.asp)> accessed 07 June 2025.

<sup>123</sup> M Litvak, 'Martyrdom is Life: Jihad and Martyrdom in the Ideology of Hamas' (2010) 33(8) *Studies in Conflict & Terrorism* 717-718.

In the view of Hamas, the Palestinian–Israeli conflict is not merely a territorial dispute between Palestinians and Israelis: it is first and foremost a ‘war of religion and faith’ between Islam and Judaism and between Muslims and Jews. As such, it is portrayed as an unbridgeable dichotomy between two opposing absolutes—as a historical, religious, and cultural conflict between faith and unbelief, between the true religion that supersedes all previous religions, that is, Islam, and the abrogated superseded religion, Judaism. It is a war between good, personified by the Muslims representing the party of God (Hizballah), and “the party of Satan” (*hizb al-shaytan*) represented by the Jews. Consequently, the conflict is considered an ‘existential battle, rather than a dispute over borders’ (*ma ‘rakat wujud wa-la hudud*)

The alleged genocidal nature of Hamas's actions on 7 October was widely perceived as shocking and unprecedented globally. For instance, at the Re'im music festival, at least 347 civilians were reportedly massacred, with numerous others forcibly abducted into Gaza.<sup>124</sup> Furthermore, at Kibbutz Be'eri, Hamas operatives entered homes and brutally killed entire families; it was also reported that 80% of the recovered bodies displayed signs of torture.<sup>125</sup> Similarly, in the small town of Sderot, Hamas militants, utilising motorcycles and trucks, killed civilians on the streets, on buses, and within vehicles.<sup>126</sup>

It is noteworthy that the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948 mandates a high evidential standard for proving the intent to destroy a group. It is imperative to state that Hamas allegedly carried out intentional direct attacks against the civilian population, deliberate assaults on vehicles involved in humanitarian assistance (ambulances), and acts of murder and wilful killing.<sup>127</sup> Furthermore, actions such as forcible transfer and deportation, unlawful confinement and imprisonment, torture, rape, ethnic persecution, enforced disappearance and inhumane acts were perpetrated.<sup>128</sup>

Other wilful acts causing great suffering including; the taking of hostages, mutilation, outrages upon personal dignity and degrading treatment, and the use of civilian shields; are all cited as methods employed by Hamas in the purported destruction of Jews.<sup>129</sup> This paper contends that these atrocities meet the evidential threshold to suggest the commission of genocide by Hamas against Israelis on 7 October, thereby establishing Hamas's culpability for genocide. For instance, rape has been described as a potent weapon in the hands of armed groups, employed for the humiliation and destruction of targeted populations by the ICTR, in its *Akayesu*<sup>130</sup> where the judgment states that:

...solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or other public places, and often by more than one assailant. These rapes resulted in the physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole

There is considerable evidence suggesting that Hamas employed widespread and systematic sexual violence and rape on 7 October indicate that the corpses of women were discovered naked and displayed signs of genital abuse.<sup>131</sup> During the Nova music festival, approximately one hundred men in military attire subjected Israeli women to a horrific ordeal, passing them amongst themselves 'like an assembly point',

<sup>124</sup> Mapping the Massacres, ‘The October 7th Geo-visualization Project’ (2024) <<https://oct7map.com/>> accessed 07 June 2025.

<sup>125</sup> Special Announcement, ‘The Hamas Atrocities Documentation Center (HADDC)’ (2023) <[www.memri.org/reports/special-announcement- %E2%80%93-hamas-atrocities-documentation-center-hadc](http://www.memri.org/reports/special-announcement-%E2%80%93-hamas-atrocities-documentation-center-hadc)> accessed 07 June 2025.

<sup>126</sup> *ibid.*

<sup>127</sup> Cf Shalev (n 14) 41-42.

<sup>128</sup> *ibid* at 42.

<sup>129</sup> *ibid.*

<sup>130</sup> ICTR, *The Prosecutor v. Jean-Paul Akayesu*, [1988] Trial Judgement, ICTR-96-4-T, 2 September 1998, para 731.

<sup>131</sup> Cf Shalev (n 14) 43.

stabbing them whilst raping them, severing breasts, and beheading victims.<sup>132</sup> This paper contends that the merciless killing of Israelis aligns perfectly with Article II of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948 and therefore renders Hamas culpable for genocide. Shortly after the events of 7 October, a statement was attributed to Mohammed Deif, a Hamas military commander, where he declared that:<sup>133</sup>

This is the day that you make this criminal enemy understand that its time is up. [The Quran says:] "Kill them wherever you may find them"... I say to our people in occupied [pre-1967 Israel] – in the Negev, the Galilee, the Triangle, Haifa, Jaffa, Acre, Lod, and Ramla: Torch the earth under the feet of the plundering occupiers – kill, burn, destroy, and shut down roads. Make the cowardly occupiers understand that the Al-Aqsa Deluge is bigger than they think.

This paper posits that this suggests premeditated acts of genocide, which were subsequently executed on 7 October. The statement attributed to Mohammed Deif is considered both insightful and genocidal in its nature, directly contravening the provisions of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948.

### **Findings of the Genocide Commission in the recent Israel-Palestine Conflict**

The attacks led by Hamas on 7 October 2023, and Israel's subsequent responses, are both considered by a United Nations (UN) Independent International Commission to constitute war crimes. Based on that, the findings of this paper will be discussed under the following sub-headings:

#### **Culpability for Genocide: The State of Israel and Hamas**

The killings of Israelis by Hamas on 7 October are widely considered to be highly reprehensible, callous, and, it is argued, genocidal in nature, drawing widespread international condemnation. The subsequent response by the State of Israel has been equally severe, and this conflict remains ongoing. Consequently, the protracted strife and unrest have piqued significant interest within the global community regarding the dynamics between the two entities.<sup>134</sup> Hamas's egregious actions on 7 October, coupled with the military response from the IDF, have prompted the involvement of the International Criminal Court (ICC), whose jurisdiction encompasses the prosecution of individuals for genocide.<sup>135</sup>

It is worthy of note that the primary objective of the ICC is to conduct investigations and, where necessary, prosecute individuals accused of the most egregious crimes, such as genocide, war crimes, crimes against humanity, and the crime of aggression, given their significant implications for the global community.<sup>136</sup> Evidence suggests that individuals within the State of Israel and certain Hamas officials may be liable for prosecution for genocide at the ICC. For instance, in October 2023, the ICC Prosecutor sought arrest warrants against senior Hamas officials, including Mohammed Deif, Hamas's military chief, for crimes related to the 7 October attacks, such as kidnapping and torture of hostages.<sup>137</sup> Similarly, on 21 November 2024, the ICC's Pre-Trial Chamber issued warrants for Israeli Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant, charging them with war crimes and crimes against humanity, notably for allegedly deliberately depriving Gazan civilians of food, water, medicine, and fuel.<sup>138</sup>

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<sup>132</sup> J Gettleman, A Schwartz & A Sella, 'Screams without Words: How Hamas Weaponized Sexual Violence on Oct. 7'(2023) <[www.nytimes.com/2023/12/28/world/middleeast/oct-7-attacks-hamas-israel-sexual-violence.html](https://www.nytimes.com/2023/12/28/world/middleeast/oct-7-attacks-hamas-israel-sexual-violence.html)> accessed 07 June 2025.

<sup>133</sup> Middle East Media Research Institute, 'Hamas Military Commander Mohammed Deif Announces Launch of Operation Al-Aqsa Deluge, Calls on Palestinians in West Bank, Jerusalem, and Israel Proper to Attacks with Guns, Knives, Vehicles' (2023) <[www.memri.org/tv/hamas-military-commander-deifoperation-aqsa-deluge-calls-palestinian-carry-out-attacks](https://www.memri.org/tv/hamas-military-commander-deifoperation-aqsa-deluge-calls-palestinian-carry-out-attacks)> accessed 07 June 2025.

<sup>134</sup> Cf Mohd (n 11) 56.

<sup>135</sup> Article 12, Rome Statute.

<sup>136</sup> Cf Bukhari, Syed, & Dad (n 2) 615.

<sup>137</sup> Cf Janjua & Janjua (n105) 5.

<sup>138</sup> *ibid*.

Despite the State of Israel not being a party to the Rome Statute, while Palestine acceded to the Statute in 2015, this paper concludes that the ICC decision to pursue prosecutions against high-ranking individuals from both Hamas and the State of Israel, in connection with the 7 October attack on Israelis and the IDF bombardment of Gaza, indicates that both parties bear culpability for genocide.

### **The Role of the International Community in the Current Israel-Palestine Conflict**

The fundamental role of the Contracting Parties to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948 is to criminalise and facilitate the prosecution of instances of genocide. Article V of the Convention stipulates that:<sup>139</sup>

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

It therefore follows that parties to the Genocide Convention, and indeed all States, are bound by a duty to criminalise and facilitate the prosecution of genocide cases, given that the Genocide Convention has achieved the status of Customary International Law (CIL).

This paper identifies that, despite the ICC arrest warrants issued against certain high-ranking Hamas military officials in connection with the 7 October massacre of numerous Israelis, some States continue to offer sanctuary and hospitality to these individuals. For instance, Qatar, a non-State party to the Genocide Convention, reportedly hosts several senior Hamas officials, including Khalil al-Hayya, Head of Hamas' Communications Department, and Khaled Mashal, former politburo head and Chief of Hamas' Diaspora Office.<sup>140</sup> This paper argues that, even though Qatar is not a signatory to the Genocide Convention, it is nevertheless bound by CIL to arrest and facilitate the prosecution of these top-ranking Hamas officials.

Similarly, despite Iran not being a signatory to the Genocide Convention, it is nevertheless bound by CIL, a status which the Convention has attained. Consequently, Iran is obligated to execute any ICC warrants for the arrest of these high-ranking Hamas military officials within its territory. Instead, it is reported that approximately five hundred Hamas and Palestinian Islamic Jihad militants underwent specialised combat training in Iran. Furthermore, the tactics and technology employed by Hamas, including aerial drones and motorcycle attacks, are considered to be influenced by Iran.<sup>141</sup>

This paper ascertains that the State of Israel has significantly benefited from the unwavering support of the United States, a permanent member of the United Nations Security Council (UNSC). This backing has, arguably, emboldened Israel to intensify its military operations against the Palestinian territories in Gaza. A case in point is the United States' recurrent use of its veto power within the UNSC to block resolutions perceived as detrimental to Israel's interests, including proposals for ceasefires or referrals to international bodies.<sup>142</sup> It therefore follows that the actions of these States have, to no small extent, contributed to the violation of the Genocide Convention by both the State of Israel and the Palestinian factions led by Hamas.

### **The Role of the Media in the Current Israel-Palestine Conflict**

The media, with many outlets adopting partisan stances and shaping public opinion, plays a critical role in reporting on the ongoing Israel-Palestine conflict.<sup>143</sup> Sensationalism and prejudiced reporting have

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<sup>140</sup> D Ackerman, '10 Things to Know about Hamas and Qatar' (2023) <[www.fdd.org/analysis/2023/12/19/10-things-to-know-about-hamas-and-qatar/](http://www.fdd.org/analysis/2023/12/19/10-things-to-know-about-hamas-and-qatar/)> accessed 07 June 2025.

<sup>141</sup> S Said, B Faucon & S Kalin, 'Iran Helped Plot Attack on Israel over Several Weeks' (2023) <[www.wsj.com/world/middle-east/iran-israel-hamas-strike-planningb07b25](http://www.wsj.com/world/middle-east/iran-israel-hamas-strike-planningb07b25)> accessed 07 June 2025.

<sup>142</sup> Cf Janjua & Janjua (n103) 6.

<sup>143</sup> Z Ibrar & M Khan, 'Framing and Media Bias in Conflict Reporting: A Comparative Analysis of Al-Jazeera, CNN, and Global Times During the 2023 Palestine-Israel Conflict' (2025) 2(3) *Interdisciplinary Media and Communication Studies* 44.

intensified the divisive nature of the conflict, thereby complicating efforts to achieve a peaceful resolution.<sup>144</sup> Anglophone Western media frequently frame Middle East conflicts through a pro-Western or pro-Israel perspective, while Middle Eastern outlets and those aligned with the Global South tend to offer alternative narratives that highlight the predicament and agency of Arab/Muslim actors.<sup>145</sup>

Al-Jazeera, a prominent Pan-Arab media outlet, frequently highlights narratives of Palestinian resistance and resilience, presenting the conflict as a struggle against colonial oppression and for self-determination.<sup>146</sup> This approach is consistent with Pan-Arab ideological foundations, where the Palestinian cause is seen as integral to Arab identity and cohesion.<sup>147</sup> Al-Jazeera's employment of emotionally charged terminology, such as 'resistance' and 'martyrdom', aims to foster empathy and unity amongst its Arab viewership.<sup>148</sup> Conversely, CNN, embodying a Western capitalist viewpoint, typically frames Palestinians through a securitised lens, utilising terms such as 'militants' or 'terrorists', concurrently presenting Israeli actions as primarily defensive.<sup>149</sup>

In contrast, the Global Times, operating as a State-affiliated Chinese media outlet, adopts a more neutral yet strategically calculated position, consistent with China's diplomatic interests.<sup>150</sup> This implies that Chinese media frequently present themselves as proponents of diplomatic resolution, employing 'neutral' framing, such as 'conflict' and 'war', to avoid overtly favouring either side.<sup>151</sup> This approach aligns with China's broader geopolitical strategy of positioning itself as a mediator in international disputes, whilst simultaneously critiquing Western hegemonic narratives.<sup>152</sup>

While Al-Jazeera amplifies narratives of resistance, CNN reinforces Israeli-centric reporting, and the Global Times advocates a neutral, diplomatic position.<sup>153</sup> Such disparities not only reflect underlying ideological biases but also significantly influence global perceptions of the Israel-Palestine conflict.<sup>154</sup> This paper asserts that sectional reporting of the Israel-Palestine conflict in the media has served as a catalyst, further entrenching the parties in the commission of genocide against each other. Instead, conflict reporting in the media should consistently adhere to ethical professionalism, addressing fundamental problems and proposing enduring conflict resolution mechanisms that are devoid of any incitement to commit genocide.

## RECOMMENDATIONS

As Israel-Palestine conflict lingers, this paper recommends the following as a path towards resolution. While acknowledging the profound trauma and devastating impact of the 7 October attacks, it is crucial for the State of Israel to genuinely re-evaluate its strategic approach to the ongoing conflict. For a sustainable cessation of hostilities and the cultivation of long-term stability, there is a compelling need to transition from extensive military operations that result in widespread civilian casualties and infrastructural

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<sup>144</sup> *ibid.*

<sup>145</sup> F Shahzad, T. A., Qazi & R Shehzad 'Framing of Israel and Palestine Conflict in RT news, Al-Jazeera, CNN & BBC News' (2023) 4 *Global Digital & Print Media Review* 12.

<sup>146</sup> H AlSamrin, 'A Comparison of News Coverage on the Arabic and English Versions of the Al Jazeera Websites (2018) <<https://doi.org/10.17918/etd-7757>> accessed 09 June 2025.

<sup>147</sup> Cf Ibrar & Khan (n 143) 48.

<sup>148</sup> J Kincheloe, & S R Steinberg *The Mis-education of the West: How Schools and the Media Distort our Understanding of the Islamic World* (Bloomsbury Publishing, USA, 2004) 21.

<sup>149</sup> M Sharmeen, 'The Israeli-Palestinian conflict in News Media' (2023) 30 *Professional Development Reading* 23.

<sup>150</sup> Cf Ibrar & Khan (n 143) 48.

<sup>151</sup> S I Zhang, & A Y Peng., *China, Media, and International Conflicts* (Taylor & Francis Group, Oxfordshire, United Kingdom, 2023).

<sup>152</sup> S I Zhang, & S I Zhang, 'Covering the Palestinian-Israeli Conflict. Chinese War Correspondent' (2016) 21 *Covering Wars and Conflicts in the Twenty-First Century* 160.

<sup>153</sup> Cf Ibrar & Khan (n 143) 49.

<sup>154</sup> *ibid.*

destruction towards highly targeted security measures. Such operations must rigorously adhere to international humanitarian law, particularly concerning the principles of proportionality and distinction.

For the sake of the Palestinian people and the stability of the wider region, it is essential that Hamas pragmatically accepts the reality of the State of Israel's existence and commits unequivocally to a path of peaceful coexistence. This acceptance would align with the diplomatic recognition extended by several Arab nations, including Egypt, Jordan, the United Arab Emirates, Bahrain, Sudan, and Morocco, which have established formal relations with Israel. Such a fundamental shift necessitates Hamas abandoning armed struggle and terrorism as its primary means of achieving political objectives, given that violence only perpetuates suffering and significantly impedes the prospect of a viable Palestinian state. Instead, Hamas should fully commit to and participate constructively in a unified Palestinian political process, striving for self-determination through non-violent, diplomatic means. An immediate and unconditional release of all remaining hostages is also a critical prerequisite, as their continued captivity exacerbates suffering and severely hinders efforts towards de-escalation and peace.

The international community, particularly those States that have historically supported either side in this enduring conflict, bears a substantial responsibility in fostering peace and upholding the tenets of international law. Nations that have consistently supported Israel, such as the United States and the United Kingdom, must leverage their considerable diplomatic and economic influence to robustly encourage Israel's strict adherence to international humanitarian law. Israel's compliance with ICJ rulings, and its genuine commitment to a comprehensive political resolution. Crucially, their support could be made contingent upon Israel's demonstrable adherence to human rights and international legal obligations. Conversely, States that have provided support to Hamas, including Iran and Lebanon, must cease all forms of material, financial, and ideological assistance to armed non-State actors, whose actions had already destabilised the region.

Given the media's profound influence on public perception and the shaping of conflict narratives, it is imperative for all media houses to uphold the highest standards of journalistic ethics. Both Arab news media, such as Al-Jazeera, and Western media outlets, including CNN and BBC News, must strive for balanced, impartial, and accurate reporting, moving away from sensationalism and overt bias that can exacerbate tensions. This commitment to fairness necessitates providing diverse perspectives from both Israeli and Palestinian civilians, victims, and commentators.

## **CONCLUSION**

This paper critically appraises the renewed conflict between the State of Israel and Palestine by Hamas, with a particular focus on the commission of genocide in the ongoing conflicts. It commences with an introduction before tracing the historical antecedents of the conflict between Israel and Palestine. The discussion then moves to an examination of the legal framework pertaining to genocide, subsequently assessing the potential culpability of both parties for the crime of genocide. This paper concludes by presenting its findings and offering recommendations tailored for the State of Israel, Hamas, the international community, and media organisations.

The enduring conflict between the State of Israel and the Palestinian territories, steeped in complex historical antecedents and persistent politico-legal contentions, continues to pose a formidable challenge to international peace and security. The recent resurgence of conflicts has precipitated commission of genocide against both the State of Israel and Hamas, thereby triggering the invocation of fundamental principles of international law and the jurisdiction of international judicial mechanisms, such as the ICJ and the ICC.