



**Arab American University**  
**Faculty of Graduate Studies**

**In light of the Convention on the Prevention of Genocide:  
The Legal Qualification of Israeli Military Operations in the  
Gaza Strip After October 7**

By

**Mahmoud Husam Mahmoud Fashafsha**

Supervisor

**Dr. Sania Abu Amro**

**This thesis was submitted in partial fulfillment of the  
requirements for the Master's degree in International law  
and Diplomacy**

**March/2025**

**© Arab American University – 2025. All rights reserved.**

## Thesis Approval

### **In light of the Convention on the Prevention of Genocide: The Legal Qualification of Israeli Military Operations in the Gaza Strip After October 7**

By

**Mahmoud Husam Mahmoud Fashafsha**

This thesis was defended successfully on 01/03/2025 and approved by:

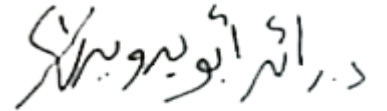
Committee members

Signature

1. Prof. Sania Faisal El-Husseini: Supervisor



2. Dr. Raed Abubadawia : Internal Examiner



3. Dr. Abd Alhalim Attia : External Examiner



## Declaration

I, undersigned student, Mahmoud Husam Fashafsha , under the student number 202012303 , hereby grant the Arab American University authorization for the printing of my master's thesis titled "*In light of the Convention on the Prevention of Genocide: The Legal Qualification of Israeli Military Operations in the Gaza Strip After October 7.*" This authorization is given with the understanding that the printed material will be used for academic and educational purposes in accordance with the regulations and instructions of the Arab American University. This authorization shall maintain my intellectual property. Any reproduction or distribution beyond the scope of the university's academic requirements is strictly prohibited without my explicit consent. The final version of this thesis was officially submitted on March 1st 2025.

The Name of The Student : Mahmoud Husam Mahmoud Fashafsha

ID: 202012303

Signature: Mahmoud Husam Mahmoud Fashafsha

Date: 20.7.2025

## **Dedication**

To those who are more generous than all ... who presented the precious and precious  
for Palestine to remain in the right place

(The martyrs of the Palestinian national duty)

To the person who provided me with giving, strength, and dignity

My dear father (Abu Firas)

To the person who provided me with love, tenderness, giving, and loyalty

My dear mother (Um Firas)

To my support, my life, My dear brothers and sisters

.(Firas, his wife, Faris, his wife, Minas, and Hala)

To the pleasures of the liver and the sons of our hearts

(Hossam, Bana and Ezz)

To my other half who has been my support at all times

To all my friends, relatives, and everyone who believes in my abilities and  
.encouraged me to achieve my ambition

To my honorable Doctors, who were guided in the way of knowledge and knowledge,  
I dedicate my scientific research to you.

## **Acknowledgment**

I am the undersigned and the author of the letter

I acknowledge that the contents of this thesis are the result of my effort, except as referred to where mentioned, and that this thesis as a whole or any part thereof has not previously been submitted to obtain any degree or scientific or research title at any other educational or research institution.

## **Abstract**

International law explicitly criminalizes genocide through the Rome Statute, in addition to the elaboration of a convention on the prevention and criminalization of the crime of genocide in rights conventions, in addition to the fact that the commission of this crime constitutes a violation of international instruments and treaties such as the Universal Declaration of Human Rights and others. "This crime consists of a physical and moral component, where the material component is based on several elements mentioned in the Genocide Convention, namely the killing of members of the group, the total or partial destruction, the subjection of the group to difficult living conditions, the use of materials or weapons leading to incidents of infertility, or the taking of children from the group's position in another group's intention to destroy the group to its detriment. This intention can be established by statements by the perpetrator indicating the intention to commit this crime. crime," the international community had been alerted to the seriousness of the crime and had established the International Criminal Court to try and hold accountable anyone who committed the crime of extermination.

## Table of Contents

Thesis Approval.....	I
Declaration.....	II
Dedication.....	III
Acknowledgment.....	IV
Abstract.....	V
Table of Contents.....	VI
Introduction: .....	IX
Terminology of the Study .....	X
First Concept: Genocide: .....	X
The Second Concept: International Criminal Responsibility: .....	X
Literature Review .....	XI
Research Problem .....	XIII
Significance of the Study .....	XIV
Objectives of the Study.....	XV
Scope of the Study .....	XV
Research Methodology .....	XVI
Study Outline .....	XVI
1. Chapter One: The Nature of the Crime of Genocide.....	1
1.1 Section One: The Crime of Genocide in International Law .....	2
1.1.1 Subsection One: The Concept of the Crime of Genocide.....	5
1.1.2 Subsection Two: The Elements of the Crime of Genocide.....	12
1.2 Section Two: The Specific Nature of the Crime of Genocide .....	18
1.2.1 Subsection One: The Distinctive Characteristics of the Crime of Genocide.....	18
1.2.2 Subsection Two: Distinguishing the Crime of Genocide from Crimes Against. Humanity and Ethnic Cleansing .....	24
2. Chapter Two: The Criminalization of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (1948). .....	29
2.1 Section One: The Convention on the Prevention and Punishment of the Crime of Genocide .....	30
2.1.1 Subsection One: Causes and Motives of Genocide .....	31
2.1.2 Subsection Two: Criminal, Civil, and International Responsibility of the Perpetrators of Genocide.....	35
2.2 Section Two: Addressing the Crime of Genocide .....	39

2.2.1 Subsection One: Addressing the Crime of Genocide at the Level of International Criminal Courts Before the International Criminal Court .....	40
2.2.2 Subsection Two: Addressing the Crime of Genocide at the Level of the International Criminal Court.....	44
2.2.3 Subsection three : South Africa’s Case in Confronting the Crime of Genocide Before the International Court of Justice and Israel’s Arguments Before the Court:..	49
2.3 Section Three: The Crime of Genocide in the Palestinian Context .....	54
2.3.1 Subsection One: The Crime of Genocide in Rwanda and Bosnia and Herzegovina, and its Comparison to the Events in Gaza. ....	55
2.3.2 Subsection Two: The Jurisdiction of the International Criminal Court in Palestine .....	59
Conclusion: .....	64
Results.....	64
Recommendations: .....	65
References.....	66
ملخص الرسالة .....	73

**Introduction:**

The United Nations General Assembly adopted the text of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948. After obtaining the twenty necessary ratifications in accordance with Article XIII, the Convention entered into force in 1951.

The term "genocide" was first used by the jurist Raphael Lemkin in his book *Axis Rule in Occupied Europe*, published in 1944. Although this term appeared at various stages during the drafting of the Charter of the International Military Tribunal, the final formulation of that legal text used a similar phrase, namely "crimes against humanity," to refer to the persecution and physical destruction of national, ethnic, and religious minorities.

The Convention on the Prevention and Punishment of the Crime of Genocide defines Article I the crime of genocide as: "The commission of any of the acts mentioned in Article I of the Convention with the intent to destroy, in whole or in part, a group based on nationality, ethnicity, race, or religion." The acts constituting genocide vary between killing, inflicting psychological or physical harm, or transferring children.

This crime poses an extremely serious threat to human society and its ethnic diversity. The attempt to eliminate a specific group within the same country or another country during armed conflicts is considered a violation of human rights and the rules of war.

Throughout history, numerous genocides have been committed against specific minorities. During the Holocaust, six million European Jews were exterminated by Germany and its allies. In Rwanda, nearly 800,000 people were killed in 1994 by Hutu tribes. In Bosnia and Herzegovina, around 8,000 Muslims were killed by Serbian forces.

What occurred in the Gaza Strip recently, where the Israeli occupation killed more than 50,000 Muslims, are massacres that left the world stunned, prompting belated efforts to punish the perpetrators of these crimes and seek justice for the victims through the International Criminal Court.

Despite the fact that the crime of genocide is criminalized under an international convention and is considered a flagrant violation of international humanitarian law, it is unfortunately being perpetrated in a blatant manner at present, as evidenced in the Gaza Strip. Therefore, it is imperative to take measures to halt this crime and prevent its commission, as it affects not only the state upon which it is committed but also the international community as a whole. Such actions undermine the belief in the strength of international law and its capacity to protect human rights. To avoid this outcome, it is necessary to turn to international courts and activate their role in eradicating this crime by prosecuting the perpetrators responsible and imposing the maximum penalties upon them, in order to achieve general deterrence and prevent the recurrence of such acts. In particular, if this is not done and the criminals are not prosecuted, it will open the door for future offenders to commit this crime with impunity, for one who is exempt from punishment behaves with impunity.

## **Terminology of the Study**

### **First Concept: Genocide:**

Genocide is a planned system aimed at destroying the essential and vital foundations upon which human life is based" <sup>1</sup> It is the denial of the right to exist for entire human groups. It is a crime under international law, and its perpetrators are punished, whether they are principal offenders or accomplices, regardless of whether they are public officials or ordinary individuals.<sup>2</sup>

### **The Second Concept: International Criminal Responsibility:**

**Responsibility, in general, means the condition of a person who has committed an act that requires accountability. The law determines accountability in cases of legal responsibility by stipulating a penalty for anyone who commits an act deemed unlawful<sup>3</sup>.**

---

Mabkhout, Belkacem: **International Criminal Responsibility for the Crime of <sup>1</sup> Genocide**, Master's Thesis, Faculty of Law and Political Science, University of Ziane Ashour, Djelfa, 2019, p. 17.

Genocide was first introduced within the framework of the United Nations by the <sup>2</sup> General Assembly during its first session in 1946 and defined by Regulation No. 96/01 of December 11, 1946.

<sup>3</sup> Abbas Hashem Al-Saadi: **The Criminal Responsibility of the Individual for International Crime**, University Press, Egypt, 2001, p. 201.

## International Criminal Responsibility:

It is the legal system under which individuals are punished for committing serious acts that affect the entire international criminal community, as defined by the Statute of the International Criminal Court.<sup>1</sup>

## Literature Review

Several studies have addressed this topic directly or indirectly, and they are considered fundamental references for this study. Among them are two key studies:

1. **The Crime of Genocide in Jurisprudence**, by Aouina Samira, University of Haj Faraj, Algeria, 2012-2013:

This study primarily focused on the crime of genocide and the role of international criminal justice in dealing with this crime. It discussed the penalties imposed under the international legal system. The researcher addressed the crime from the perspectives of terminology, origin, and history, as well as the stages it went through in the international community until a comprehensive and inclusive definition was reached in the *Convention on the Prevention and Punishment of the Crime of Genocide*. The study also examined the elements of the crime and the specific acts constituting it in detail. Additionally, it covered special international criminal tribunals, such as the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the Former Yugoslavia, and, finally, the International Criminal Court.

This study is related to the current research in that it discussed and focused on the crime of genocide, as well as addressed the criminal jurisdiction responsible for prosecuting those who commit this crime. Likewise, this study shares with the present research a discussion of the elements of genocide and

---

<sup>1</sup> Omar Yahyaoui: **The Law of International Responsibility**, Second Edition, Dar Houma for Printing, Publishing and Distribution, Algeria, 2010, p. 15.

the acts that constitute genocide. It also examined the specialized courts in Rwanda and Yugoslavia, in addition to the International Criminal Court.

2. **The Crime of Genocide in International Law: An Analytical Study**, by Jude Adnan Daheliyah, Master's Thesis, An-Najah National University, Faculty of Graduate Studies, 2021:

This study dealt with the criminalization of genocide in international law. It defined genocide and discussed the forms and elements of the crime. The study also addressed civil and criminal liability for committing genocide and tackled efforts to combat genocide in the cases of Yugoslavia and Rwanda. What distinguishes my study from previous ones is its primary focus on the crimes committed by Israeli occupation forces in the occupied Palestinian territories (Gaza), comparing them with past genocides.

This study is connected to the present research in that both studies discuss the definition of genocide and its elements. They also address the civil and criminal liabilities arising from the commission of genocide, in addition to examining the courts in Yugoslavia and Rwanda.

3. **The Genocide Case in Gaza Filed by South Africa Against Israel at the International Court of Justice:**

This case was filed on December 29 of last year. South Africa submitted an 84-page written argument in English, presenting evidence of Israel's violations as the occupying power of its obligations under the United Nations Charter and its involvement in committing acts of genocide against the Palestinian people in the Gaza Strip. In its application, South Africa requested the International Court of Justice to indicate provisional measures to protect against further serious and irreparable harm to the rights of the Palestinian people under the Genocide Convention and to ensure Israel's compliance with its obligations under the Convention to prevent, prohibit, and punish genocide. This study is connected to the present research in that it discussed the lawsuit filed by South Africa against Israel before the International Court of Justice, in addition to presenting the evidence provided by South Africa indicating the commission of genocide in the Gaza Strip against the Palestinian people.

4. *The Crime of Genocide in International Law* by: **Dahiliyya, Jude Adnan**

*An Analytical Study*, Master's Thesis, An-Najah National University, 2021. This study addressed the definition of the crime of genocide, the status of the victims in such crimes, and the international nature of genocide. It also discussed the elements of the crime and the acts that constitute genocide, as well as the criminal and civil liabilities resulting from its commission. Furthermore, it examined how this crime has been addressed by international courts prior to the establishment of the International Criminal Court (ICC), such as the courts for Yugoslavia and Rwanda.

In addition, the study explored how to confront the crime of genocide before the ICC, including the Court's territorial, temporal, and subject-matter jurisdiction. It also touched upon the crime of genocide within the Palestinian context, with particular emphasis on the ICC's jurisdiction in Palestine.

This study is connected to the current research in that both addressed the definition and elements of genocide, the means of confronting the crime before the ICC, and the Court's jurisdiction in relation to Palestine. Moreover, it discussed how previous international tribunals, such as those for Rwanda and Yugoslavia, dealt with this crime.

5. *The Crime of Genocide in Light of the Jurisprudence of the International Criminal Tribunal for Rwanda* by **Zouina Al-Waleed**, Master's Thesis, University of Algiers, Faculty of Law, 2012–2013.

This study addressed the concept of the crime of genocide and examined the role of international judicial bodies in prosecuting those responsible for the genocide committed against the Tutsi population. It also discussed the constitutive elements of the crime of genocide.

This study is connected to the present research in that it focused on the genocide that occurred in Rwanda, specifically on how international justice addressed the prosecution of perpetrators of the Tutsi genocide. Furthermore, it explored both the legal definition and elements of the crime of genocide.

## **Research Problem**

The main question of this study is: *Do the Israeli military operations in the Gaza Strip constitute a crime of genocide? And does the legal classification of "genocide" apply in light of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide?*

This central question gives rise to several sub-questions:

1. To what extent does the Israeli military conduct conform to the elements of the crime of genocide?

2. Does what is occurring in Palestine (Gaza) constitute genocide?
3. What are the legal foundations on which South Africa based the case it filed against Israel?
4. What are the similarities between the Palestinian case (the war on the Gaza Strip) and previous international cases such as Rwanda and Yugoslavia?

### **Significance of the Study**

The significance of this study stems from its focus on one of the most important and dangerous crimes: genocide. What distinguishes this crime is that it is committed against a specific group or ethnicity based on a premeditated policy rooted in racial discrimination based on color, ethnicity, or religion. The global effort to combat the crime of genocide reflects the international community's desire to eliminate racial discrimination and, consequently, prevent the extermination of people based on such discrimination.

The significance of this study is divided into two main aspects:

#### **1. Theoretical Significance:**

The theoretical importance of this study lies in defining the legal nature of this crime within international legal texts and conventions. It clarifies the mechanisms that have been referenced in addressing this crime since the early attempts to regulate it legally, including the *Convention on the Prevention and Punishment of the Crime of Genocide*, the *Rome Statute*, and the charters establishing special criminal tribunals. The study seeks to answer key questions such as: What are the elements of this crime? What are its forms? What actions constitute this crime? And what are the civil, criminal, and international responsibilities resulting from committing such a crime?

#### **2. Practical Significance:**

The atrocities committed during the Holocaust, as well as in Rwanda and the former Yugoslavia, prompted the international community to take action for the first time to implement the *Convention on the Prevention and Punishment of the Crime of Genocide*. This led to the establishment of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia, which represented the first practical applications of the convention's provisions. Regarding the crime of genocide in the Gaza Strip, the topic of the International Criminal Court is particularly sensitive for Israelis, as it relates to the post-Holocaust trials against the Nazis. This issue will be discussed in detail in this study.

## Objectives of the Study

The study aims to:

- Identify the legal framework governing the crime of genocide within international legal texts and conventions, particularly the *Convention on the Prevention and Punishment of the Crime of Genocide*.
- Define the material and moral elements of the crime.
- Examine the criminal responsibility of perpetrators before international courts.
- Assess the applicability of genocide-related legal frameworks to real-world cases that occurred in various conflict zones around the world, such as the Holocaust and the ongoing situation in the occupied Palestinian territories (Gaza).
- Provide a clear picture of how international judicial systems handle such crimes by exploring the approaches adopted by international criminal courts in dealing with genocide in armed conflict areas.

## Scope of the Study

The scope of the study includes:

1. **Legal Scope:** The study is limited to the international legal instruments governing the crime of genocide, namely the *Convention on the Prevention and Punishment of the Crime of Genocide* of 1948, and the *Rome Statute* of the International Criminal Court adopted in 1998.
2. **Temporal Scope:**  
The study addresses the Israeli military offensive on Gaza that began on October 7, 2023.
3. **Geographical Scope:**  
The study focuses on the territorial boundaries of the Gaza Strip.

## **Research Methodology**

This study relies on the **descriptive-analytical** and **comparative** approaches to determine international criminal responsibility for committing the crime of genocide. It describes the foundations and mechanisms adopted by the international community to establish international criminal accountability for the crime of genocide and to punish its perpetrators. Additionally, it analyzes previous cases of genocide (Rwanda, Bosnia and Herzegovina) to understand how these crimes were classified as genocide and compare them to the events in Gaza to assess whether what is happening in Gaza can be considered an act of genocide.

## **Study Outline**

### **Chapter One: The Nature of the Crime of Genocide**

#### **1.1 Section One: The Crime of Genocide in International Law**

- **Subsection One:** The Concept of the Crime of Genocide
- **Subsection Two:** The Elements of the Crime of Genocide

#### **1.2 Section Two: The Specific Nature of the Crime of Genocide**

- **Subsection One:** Distinctive Characteristics of the Crime of Genocide
- **Subsection Two:** Distinguishing the Crime of Genocide from Crimes Against Humanity and Ethnic Cleansing

### **Chapter Two: The Criminalization of Genocide within the Convention on the Prevention and Punishment of the Crime of Genocide (1948)**

#### **2.1 Section One: The Convention on the Prevention and Punishment of the Crime of Genocide**

- **Subsection One:** Causes and Motives of Genocide
- **Subsection Two:** Criminal, Civil, and International Responsibility of Perpetrators of Genocide.

## **2.2 Section Two: Addressing the Crime of Genocide**

- **Subsection One:** Addressing Genocide through Pre-International Criminal Court Tribunals
- **Subsection Two:** Addressing Genocide within the International Criminal Court Framework.
- **Subsection three :** South Africa's Case in Confronting the Crime of Genocide Before the International Court of Justice and Israel's Arguments Before the Court.

## **2.3 Section Three: The Crime of Genocide in the Palestinian Context**

- **Subsection One:** The Crime of Genocide in Rwanda and Bosnia and Herzegovina Compared to the Events in Gaza.
- **Subsection Two:** The Jurisdiction of the International Criminal Court in Palestine

## 1. Chapter One: The Nature of the Crime of Genocide

International criminal law has recognized and established a set of international crimes, ranked in order of precedence as follows: first, the crime of genocide; second, war crimes; third, crimes against humanity; and fourth, crimes of aggression.

It is important to note that these crimes are often difficult for many to distinguish from one another. Many legal scholars have pointed out the difficulty in differentiating them on numerous occasions because they all share the same objective, which is the protection of human rights and the criminalization of violations of these rights. However, as a researcher, I will attempt in my study to clarify the concept of the crime of genocide as well as distinguish it from other crimes.

In general, there are several points that genocide shares with some other international crimes. The similarities between the crime of genocide and other crimes are represented in the following:

Firstly, the perpetrators of this crime. In ordinary crimes, they are committed by ordinary individuals within the state, while international crimes are committed by individuals who hold high positions in the state, such as heads of state, ministers, and military leaders.

Secondly, these crimes also share the objective of their criminalization, which is the protection of civilians in general, in addition to military personnel when they lose their status.

Thirdly, the number of victims. These crimes are characterized by a large number of victims. The Rwanda Tribunal confirmed that for a crime to be considered a crime against humanity, genocide, aggression, or a war crime, the number of victims should not be limited to one or two individuals, as this would be considered an ordinary crime and not an international crime.<sup>1</sup>

---

Al-Batravi, Abdel Wahab Omar, **in the crime of genocide is an international crime**, Journal of Legal and Economic Research, Beni Suef University, Faculty of Law, Volume 15, Issue One, 2001, page 279.

The crime of genocide has existed since the beginning of human history, as killing has been present and directed at hundreds of people by groups of individuals, whether they were official or unofficial persons. Mass killings were often driven by motives that were either ethnic, religious, or otherwise. In addition to these acts, there were other crimes such as subjecting people to slavery and servitude.

However, with the significant development of human rights in the international community, there arose a need to establish special international protection for individuals and to criminalize assaults against them. The crime of genocide is considered one of the most severe crimes committed against individuals. Many legal scholars have described it as the "crime of crimes" because it threatens individuals' lives and health, driven by motives that may be religious, ethnic, or otherwise.

The crime of genocide aims to destroy individuals' lives, health, or even their biological identity, through methods such as the use of substances that lead to sterilization or affect human reproduction, causing diseases like infertility or miscarriage..<sup>1</sup>

The researcher has divided this chapter into two sections as follows:

**Section One:** The Crime of Genocide in International Law.

**Section Two:** The Specific Nature of the Crime of Genocide.

### **1.1 Section One: The Crime of Genocide in International Law**

The crime of genocide is considered one of the most serious crimes affecting the international community because it leaves severe consequences that impact the security and stability of societies. Genocide is among the gravest crimes, and unfortunately, it has been widely committed in third-world countries, especially under the presence of many authoritarian regimes.

---

<sup>1</sup> Kazim, Shereen Muhammad, **Genocide: A Sociological Study**, University of Human Development and University of Baghdad, College of Arts, Vol. 1, 2022, p. 522.

Since the crime of genocide is classified as an international crime, we will first define *international crime* and then address genocide as one of these crimes.

An international crime refers to committing an act that is criminalized or failing to perform an act for which the law imposes a penalty for omission. International crimes are committed in the name of international groups, and they represent a violation of the rules of international law. Additionally, international crimes cause harm to interests protected by law, with any violation considered an act that warrants punishment.

International crime is regarded as an assault on interests safeguarded by international legal rules. Another definition of international crime is that it includes acts committed by a state or acts permitted by a state, which constitute violations of international law and, therefore, warrant punishment for the perpetrators.<sup>1</sup>

Even though the crime of genocide has been committed since ancient times, the term *genocide* was coined after World War II. The first person to introduce this term was the Polish lawyer **Raphael Lemkin**, who referred to genocide as "*Genocide*." Lemkin, a Jewish survivor of Hitler's Holocaust—the Nazi genocide—was the sole survivor of his family, which consisted of approximately fifty people who were all killed. After escaping to the United States, he coined this term.

Lemkin was a Polish Jew who created the term from two parts: "*geno*," meaning *group* (derived from Greek), and "*cide*," meaning *killing* (derived from Latin). Combining these two parts results in the term *genocide*, meaning *the killing of groups*. He was the first to introduce this term and launched an extensive campaign to establish it within legal discourse and to create a convention that criminalizes genocide.

His efforts were eventually successful, and on **December 9, 1948**, the *Convention on the Prevention and Punishment of the Crime of Genocide* was adopted shortly after the Universal Declaration of Human Rights. The convention was widely welcomed and ratified by most countries, which granted it significant importance in international law,

---

Al-Saghir, Souissi Mohamed, **The crime of genocide, its motives and forms**, Kasdi <sup>1</sup> Merbah University of Ouargla, Faculty of Law and Political Science, volume and number six, 2012, p. 216.

making it an integral part of it—especially since the convention contains *peremptory norms (jus cogens)*, which are legally binding.

Afterward, the term *genocide* began to be frequently used in the media, reinforcing and emphasizing the recognition of the crime of genocide. However, like everything, this had both positive and negative consequences. Many states started using the term *genocide* as a pretext to intervene in the affairs of smaller countries, claiming it as a justification for such interventions.

To address this issue and prevent major powers from interfering in smaller nations under the pretext of preventing genocide, many legal scholars worked to precisely define the concept of this crime and its elements. Their goal was to curb the misuse of the term as a tool for intervention under the guise of maintaining international peace and security.<sup>1</sup>

The researcher believes that despite the establishment of criteria by legal scholars to define and clarify the elements and components of the crime of genocide, major powers still intervene in smaller countries under the pretext of stopping genocide and maintaining international peace and security.

For example, the United States has intervened in weaker and smaller states under the pretext of protecting human rights or putting an end to war. This was evident in the case of Iraq, where the U.S. justified its intervention by claiming to search for weapons of mass destruction and to protect human rights. However, it became clear that there were underlying political objectives concealed behind this intervention.

The researcher has divided this section into two subsections as follows:

- **Subsection One:** The Concept of the Crime of Genocide.
- **Subsection Two:** The Elements of the Crime of Genocide.

---

Craz, Muhammad Mustafa, **The crime of genocide: A comparative study between<sup>1</sup> the 1948 Genocide Convention and the Rome Statute of 1998**, and the provisions of the Syrian Penal Code, Tishreen University for Research and Scientific Studies, Tishreen University, Volume 43, Issue Three 2021, page 238.

### 1.1.1 Subsection One: The Concept of the Crime of Genocide

The crime of genocide, also referred to by other terms such as *the crime of extermination* or *the crime of racial annihilation*, all convey the specific meaning related to genocide. The concept revolves around the perpetrators committing acts of mass killing against a group of people without any legitimate justification, driven by motives that may be religious, nationalistic, or even ethnic.

Thus, the crime of genocide does not target an individual but rather seeks to destroy an entire group. This group is often bound by specific connections such as religious, ethnic, or national ties..<sup>1</sup>

Legal scholars have developed the term *genocide*. In **1959**, the jurist **Peter Drost** defined genocide as the deliberate destruction of the lives of a group of people because they belong to a specific human group targeted for annihilation. In **1976**, **Irving Louis** defined genocide as the destruction of the private lives of a group of innocent people affiliated with a particular state.

All these definitions refer to the crime of genocide. However, there is a definition adopted by the **United Nations**, which served as the basis for the *Convention on the Prevention and Punishment of the Crime of Genocide* in **1948**, where genocide is defined as:

*"An act committed with the intent to destroy, in whole or in part, a human group based on their national, ethnic, or religious origins."*

This is represented either through deliberate killing or even physical or psychological assaults on these groups. The term genocide also includes the complete or partial

---

<sup>1</sup> Rabie, Ziad Muhammad, **The Crime of Genocide**, Journal of Legal Sciences at the University of Baghdad, Volume 30, Issue 1, 2015, page 41.

annihilation of a group of people or even the forcible transfer of children from one group to another..<sup>1</sup>

Article II of the United Nations Convention, issued on December 9, 1948, defined the crime of genocide as including:

First mass killing.

Second, inflicting harm, whether physical or psychological, on a specific group.

Third, placing this group in difficult conditions to cause material harm to them, either wholly or partially.

Fourth, genocide also includes acts aimed at preventing this group from reproducing, such as the use of substances that cause sterility.

Fifth, genocide also includes the transfer of children from one group to another to which they do not belong..<sup>2</sup>

The United Nations General Assembly, in **1946**, addressed the issue of the crime of genocide and described it as a denial of the right of a group of people to security and stability.

The crime of genocide aligns with the crime of intentional murder in that both result in depriving a person of a fundamental right, which is the **right to life**. In both crimes, the **human being is the target**, whether through the complete or partial destruction of the group..<sup>3</sup>

The crime of genocide is not limited to the loss of human lives but extends to causing devastating material and physical losses to nations. Additionally, genocide represents a

---

<sup>1</sup> Abed, Ammar Salim, **Genocide from a Sociological Perspective: The Speicher Crime**, University of Human Development and University of Baghdad, College of Arts, Volume and Issue One, 2023, page 90.

<sup>2</sup> Al-Azzawi, Zainab Muhammad Salih, Anthropology of Genocide, Arab American Academy of Science and Technology, Volume 8, Issue 26, 2019, Page 188.

<sup>3</sup> Morsi, Mohamed Khalil, The Crime of Genocide in International Criminal Justice, Security and Law Magazine, Dubai Police Academy, Volume 11, Issue One, 2003, page 203.

denial of a fundamental human right—the **right to life**—and constitutes a blatant violation of the rules of international law. Its negative impact is not confined to the state where it is committed; rather, it affects the **international community as a whole**.

Among the most prominent cases of genocide committed against populations are:

- The **Hutu and Tutsi massacres** in Rwanda.
- The genocide committed in **Bosnia and Herzegovina** against Muslims in the former Yugoslavia.
- The genocide perpetrated by **American and British forces in Afghanistan**.

Due to these massacres, the international community was compelled to establish courts to prosecute those responsible for these crimes as quickly as possible. As a result, **criminal tribunals** were formed to punish the perpetrators of massacres and genocide, particularly in Yugoslavia.

This remained the case until the issuance of the **Rome Statute of the International Criminal Court (ICC)** in **1998**, which established the ICC as a specialized court responsible for handling cases related to genocide. The court is also competent to address other crimes, including **crimes against humanity, war crimes, and crimes of aggression**.<sup>1</sup>

Based on what has been mentioned, we can examine the suffering of the Palestinian people under Israeli occupation in Palestine and the massacres they have endured to determine whether the previously discussed terms apply to what has happened in **Gaza** or not.

The **International Criminal Tribunal for the former Yugoslavia (ICTY)** ruled in **2001** that the **Srebrenica massacre** of **1995** constituted a crime of genocide. In its decision, the court confirmed that the crime committed was indeed genocide because it involved a **systematic attack** against a specific group, namely the **Bosnian Muslims**. As a result of this attack, thousands of Muslims were forcibly displaced from the

---

<sup>1</sup> Freiha, Hussein, **The crime of genocide and international criminal justice**, Kuwait University Scientific Publishing Council Volume 38 Second Issue 2014 page 589.

country. The attacking party was **armed units from Bosnia** that carried out the assault on the **Srebrenica region in Bosnia and Herzegovina**.<sup>1</sup>

The specific nature of the crime of genocide is **international**, meaning it is an **international crime by its very nature**. The responsibility it entails is **dual**, as both the **state** that committed the crime and the **individuals** who carried it out bear separate responsibilities.

This crime is **not bound by specific conditions**, meaning it can be committed **during wartime or in times of peace**. It is not a requirement for genocide to occur only during war for it to be considered a crime of genocide.

Moreover, genocide does not necessarily have to target a group that shares a specific belief or faith. It can be committed against a group that does **not share a common creed**.

The crime of genocide is **not a political crime**, which effectively **closes the door** for states that are parties to international agreements to evade justice by **harboring individuals wanted for genocide**. Since genocide is **not classified as a political crime**, states are **obligated to extradite** those accused of committing it and cannot justify their refusal on the grounds that it is a political offense..<sup>2</sup>

The foundation of the crime of genocide lies in the clear and explicit intent to annihilate, eradicate, or destroy a specific group, either completely or partially, regardless of the bond that connects the members of this group. It also includes transferring the group to

---

<sup>1</sup> . site BBC, an article entitled: **Srebrenica massacre: what happened to Muslims in Bosnia** , the article was published July 11, 2024 and the article is published at the following link: <https://www.bbc.com/arabic/articles/c6p2dk57xgxo>

<sup>2</sup> Al-Rahali, Nisreen, **The Crime of Genocide in International Criminal Justice**, Mediterranean Journal of Legal and Judicial Studies, Volume and Issue One, 2016, p. 428.

living conditions that lead to their destruction, cutting off their lineage, or transferring their children to other groups.<sup>1</sup> .

The crime of genocide, as previously mentioned, has existed since ancient times. However, nations have now become more sophisticated in committing it, especially with the development of weapons of mass destruction, which are now used to perpetrate this crime. A clear and vivid example of this is what the Israeli occupation forces are doing in the Palestinian territories, committing horrific massacres. They have committed genocide multiple times, starting from the **Sabra and Shatila massacre** to the present day, where Gaza has been destroyed, and countless innocent civilians—who bear no responsibility for the war—have been killed. The occupation forces have annihilated them, destroyed their homes, and eradicated them completely.

A clear example is the **bombing of Al-Ahli Baptist Hospital** in Gaza. When referring to the elements of the crime of genocide, it is evident that they apply to what is happening in the **Gaza Strip**, in addition to the forced displacement of hundreds of residents from their homes, leaving many homeless, with the occupation forces even bombing **tents** and **shelter schools**.

By comparing what happened in the **Rwanda** and **Yugoslavia** tribunals, both courts ruled that genocide had occurred, despite the differing circumstances. In Yugoslavia, which included a variety of nationalities and different countries such as **Croatia, Macedonia, Bosnia and Herzegovina, Montenegro, and Serbia**, the **Serbs** sought to dominate the republic. This ambition led to conflicts and wars, resulting in massacres and armed conflicts that caused thousands of Muslim victims at the hands of Serbian forces.

This prompted the international community to establish the **International Criminal Tribunal for the former Yugoslavia (ICTY)** to investigate the crimes committed. The

---

<sup>1</sup> Duhailiya, Joud Adnan, **The Crime of Genocide in International Law: An Analytical Study**, Master's Thesis at An-Najah National University at the Faculty of Graduate Studies 2021, p. 86..

tribunal was established under **UN Security Council Resolution 808** to prosecute those responsible for these crimes. According to its charter:

- **Article 6** specifies that the tribunal has jurisdiction over natural persons only.
- **Article 7** discusses individual responsibility for prosecuting those who committed genocide before the tribunal.
- Under **Article 2**, the tribunal has jurisdiction over **premeditated murder**.
- **Article 3** extends its jurisdiction to violations of the laws of war.
- **Article 4** covers the crime of genocide.
- **Article 5** grants the tribunal the authority to consider **crimes against humanity**.

The ICTY ruled in **2001** that the **Srebrenica massacre** of **1995** constituted genocide. The court confirmed in its decision that the crime committed was genocide because it involved a **systematic attack** against a specific group—**Bosnian Muslims**. This led to the forced displacement of thousands of Muslims outside the country. The attack was carried out by **armed units from Bosnia** targeting the **Srebrenica** region in Bosnia and Herzegovina.

In **Rwanda**, the armed conflict began between the **Hutu tribe** and the opposing **Tutsi tribe**. International attempts to resolve the conflict peacefully failed, especially after the **Rwandan president's plane was shot down**, resulting in his death. This event escalated the conflict, leading to large-scale massacres that caused millions of casualties.

In response, the international community established the **International Criminal Tribunal for Rwanda (ICTR)** to address the genocide committed and to create a judicial mechanism for holding perpetrators accountable. The ICTR's charter states:

- **Article 5** limits the tribunal's jurisdiction to natural persons only.
- **Article 6** emphasizes individual criminal responsibility for prosecuting those involved.
- **Article 2** grants the tribunal jurisdiction over the crime of genocide.
- **Article 3** covers crimes against humanity.
- **Article 4** addresses violations of the **Geneva Conventions** and the **Additional Protocol**.

The tribunal convicted **Jean-Paul Akayesu** of genocide and crimes against humanity due to the criminal acts committed by the **Tutsi group**. He was sentenced to **life imprisonment**.<sup>1</sup>

Referring to the crimes committed by the Israeli occupation against the Palestinian people, especially during the events of **October 7** in **Gaza**, it is evident that these acts clearly constitute violations of the **Fourth Geneva Convention of 1949**, as well as breaches of the rules of **international humanitarian law**.

The **destruction of civilian objects**, including hospitals and residential neighborhoods, falls under **war crimes** as stipulated in **Article 8 of the Rome Statute**. Additionally, the crimes committed by Israel in Gaza are considered acts of **aggression**, which resulted in the killing of **hundreds and thousands of children, women, and the elderly**. These crimes were accompanied by the use of **internationally prohibited weapons** against the Palestinian people, including **biological, nuclear, and weapons of mass destruction**. Furthermore, **assassination operations** were carried out, which also violate the rules of international law and constitute a **crime of genocide**.

Since **Palestine is a member of the International Criminal Court (ICC)**, it has the right to approach the ICC and file a case against Israel. The ICC is a court specialized in examining **individual criminal responsibility** for war crimes, crimes against humanity, and genocide. Therefore, Palestinians can submit a case to the ICC regarding the crimes committed in Gaza.

Referring to the **elements of the crime of genocide**, they clearly apply to what is happening in the **Gaza Strip**, as these acts constitute **genocide** under the jurisdiction of the ICC according to **Article 5 of the Rome Statute**. These acts also represent violations of **international law**, especially the **Universal Declaration of Human Rights**, which explicitly states the fundamental **right to life**, as well as the right to **freedom and security**.

---

<sup>1</sup> Previous reference, Duhayliyah, Joud Adnan, **The crime of genocide in international law, an analytical study**, Master's thesis at An-Najah National University at the Faculty of Graduate Studies 2021, page 44.

Thus, Israel has **blatantly violated Article 3** of the **Universal Declaration of Human Rights (1948)**, in addition to violating **Article 6** of the **International Covenant on Civil and Political Rights (1966)**.<sup>1</sup>

### 1.1.2 Subsection Two: The Elements of the Crime of Genocide

The crime of genocide, like other crimes, consists of two elements, the material element and the moral element. Some legal scholars, in order to distinguish this crime from ordinary national crimes, have added the international element, considering it a reflection of Article 6 of the Rome Statute, which is the same as the legal element.

Article 6 of the Rome Statute considered that the crime of genocide is committed either against a national, ethnic, or religious group. The material element in the crime of genocide is based on an act committed by the perpetrator, whether this act is positive or even negative, intending to achieve the criminal purpose that is based on ethnic, religious, or national backgrounds.

Referring also to Article 3 of the Convention on the Prevention of Genocide, we find that it talked about the material element and described it as consisting of five elements, which are either committing acts of killing a group, or even placing these groups in harsh living conditions, or physically or spiritually torturing this group, or causing this group to contract a disease that impedes childbearing and causes infertility, or even transferring children from this group to other groups. .<sup>2</sup>

We will present the elements of the **material element** of the crime of genocide gradually, as it consists of several forms. The **first form**, according to **Article II of the Convention on the Prevention of the Crime of Genocide**, is the **killing of members**

---

<sup>1</sup> Al Jazeera Website, Hanafi, Mahmoud, **Legal consequences for Haniyeh's assassination**The article was published on 4-8-2024, and the article is published on the following link: <https://www.aljazeera.net/opinions/>

<sup>2</sup> Previous reference, Duhailiya, Joud Adnan, **The crime of genocide in international law, an analytical study** at An-Najah National University, Graduate Faculties, 2021, page 19.

**of the group.** This does not refer to the killing of just one individual from the group; rather, it involves the killing of **multiple people**, and the act of genocide is fulfilled whether the group is completely eradicated or a certain number of its members are killed. This act can occur either **positively** or even **negatively**.

The **second element** and the **second form** of the material element involve **causing physical or mental harm** to members of the group. Here, we are not referring to minor harm but rather to **serious harm** that significantly affects the existence of the group, whether this harm is caused by **physical** or **psychological** means. This can be carried out through **beatings**, the practice of **severe torture**, or the use of substances that cause **sterility** and prevent reproduction.

The **third form** consists of **placing the group in living conditions** described as harsh, with the intent of **destroying** them either **completely or partially**. An example of this is subjecting a specific group to live in an area **without water**, where they cannot use the land for agriculture, under **extremely harsh climatic conditions**, or forcing them to live in an area **full of diseases** without any assistance.

The **fourth form** involves **acts aimed at depriving the group of the ability to reproduce**, such as the use of substances that cause **sterilization of women**, giving them medications that result in the **loss of reproductive ability**, or, in cases of pregnancy, **forcing or coercing women to have abortions**.

The **fifth form** consists of the **forcible transfer of children** from one group to another. This act leads to the **destruction of the children's culture** by transferring them from their **original culture** to another culture. .<sup>1</sup>

It is important to point out that the material element in the crime of genocide is based on the commission of acts that constitute the conduct described in Article II of the Convention on the Prevention of Genocide. These specified acts are exhaustive, and therefore not mentioned as examples. The destruction, whether complete or partial, of

---

Rabie, Ziad Muhammad, **The Crime of Genocide** , Journal of Legal Sciences at <sup>1</sup> the University of Baghdad, College of Law, Volume Thirty, Issue One, 2015, page 41.

the group does not necessarily have to be through positive actions, but can also occur through negative actions as a result of failing to perform an act that should have been carried out to prevent the crime of genocide, especially if such an act was mandatory and required.

Thus, the crime of genocide can be committed either positively, represented by genocide through killing, causing severe physical or mental harm, or transferring children from one group to another, or negatively, represented by refraining from taking action. This was confirmed by the International Criminal Tribunal for Rwanda, where the court affirmed that the Prime Minister of Rwanda committed the crime of genocide negatively by failing to stop the massacres committed in Rwanda and not fulfilling his duty to protect children and civilians.

Therefore, his omission led to the fulfillment of the material element of the crime of genocide because he was legally obligated to stop these massacres. This was confirmed by paragraph 2 of Article 6 of the Statute of the International Criminal Tribunal for Rwanda, where the court stated that the president bears responsibility in cases of genocide when such acts are committed by those under his authority if he fails to take the necessary measures to stop or prevent them.

However, the court clarified that to prosecute the president, it must be proven that he had knowledge of these acts, meaning he was aware of what was being done. This intent is proven by establishing whether he had knowledge of the actions and conduct of those under his authority. <sup>1</sup>

As for the **moral element** of the crime of genocide, it is based on **knowledge and intent**, with the requirement of **specific intent** in addition to knowledge and will. This means that the perpetrator commits the criminal act **knowing** that it is punishable, and their **will** is directed towards committing this act with the desire to achieve the criminal outcome.

---

<sup>1</sup> Morsi, Mohamed Khalil, **The Crime of Genocide in International Criminal Justice**, Journal of Security and Law, Dubai Police Academy, Volume 11, Issue One, 2003, page 203.

Regarding the **specific intent** that characterizes the crime of genocide, **Article 6 of the Rome Statute of the International Criminal Court** addresses it, stating that the perpetrator's intention must be directed towards the **destruction** of a **national, ethnic, racial, or religious group**, either **in whole or in part**. This is the specific intent that must be fulfilled for the crime of genocide to be established.

As for the **perpetrator**, it is not required that they possess specific characteristics. Thus, the crime of genocide can be committed by **high-ranking state officials** or **subordinates**, whether by rulers or the ruled. If it is committed by senior state officials, they **cannot escape punishment** under the pretext of **immunity**.

Regarding the **victims**, for the crime of genocide to be fully constituted, the law requires that the victims belong to a **specific group** bound by certain connections, whether **strong, ethnic, or religious** ties..<sup>1</sup>

Regarding the **proof of the moral element**, meaning the **general intent** (knowledge and will) and the **specific intent** required by the crime of genocide, there may often be no **direct evidence** to prove the crime. To establish this, the **International Criminal Court** relies on **circumstantial evidence** surrounding the commission of the crime to infer intent.

For example, in the **Rwanda Tribunal**, the **criminal intent** was inferred from the defendant's **approval of a decision** aimed at destroying a **church** to kill everyone inside. The defendant also directed the bulldozer driver to target the **weaker side** of the church to ensure its destruction, knowing in advance that the church contained approximately **1,500 members of the Tutsi group**.

It is obvious that the destruction of this church would lead to the **killing of these individuals**, thus providing proof of the **specific intent** required for this crime.

---

<sup>1</sup> Al-Rahali, Nisreen, **The Crime of Genocide in International Criminal Justice**, Mediterranean Journal of Legal and Judicial Studies, Volume and Issue One, 2016, p. 428.

Furthermore, the **Rwanda Tribunal** clarified that the **moral element** can also be inferred by examining the **behavior of individuals** when such behavior is **systematically directed** against a specific group.

The court may also deduce **criminal intent** from the **atrocities of the acts committed**—the **greater the severity and number of acts**, the stronger the evidence of the commission of the crime of **genocide**.<sup>1</sup>

The **International Criminal Tribunal for Rwanda (ICTR)** and its **Appeals Chamber** have established several points, by way of example and not limitation, that can be relied upon to infer the specific intent required by the crime of genocide. These points are as follows:

First, the acts constituting the crime of genocide are directed in a systematic way against a specific group, whether this crime was committed by a single perpetrator or multiple perpetrators. Second, the criminal intent can also be inferred through the study of the scale of the atrocities committed. Third, the general nature of the crime can be considered. Fourth, studying whether the crime was committed in a specific area or even in a particular country. Fifth, examining how the group targeted by the crime was selected. Sixth, the process of excluding other groups. Seventh, the repetition of brutal acts against this group.

The **Trial Chamber** of the ICTR clarified that the criminal intent and the moral element must be present **before the crime is committed**. However, this ruling was later **overturned**, and the court ruled that it is **not required** for the moral element to exist before the crime is committed. Instead, it is required that it be present **at the time of committing the crime**, but not necessarily beforehand.<sup>2</sup>

---

<sup>1</sup> Makki, Omar, Elements of International Crimes: An Applied Study on the Law of International Crimes UAE, ICRC 2022, p. 10.

<sup>2</sup> The site of the practical dictionary of humanitarian law is an article entitled **Genocide** The date of the site visit is 30/10/2024 and the article is published on the following link: <https://ar.guide-humanitarian-law.org/content/article/5/bd-jm-yw/>

By reviewing the events that occurred in Gaza and the extent to which the provisions of the crime of genocide apply to the Gaza Strip, we find that all forms of the material element have been met in Gaza.

The first form, which involves the killing of members of the group, has been clearly fulfilled, as Israel has killed thousands of innocent Palestinian civilians through indiscriminate bombings.

The second form has also been fulfilled, which involves inflicting physical and mental harm on the group. This has been realized by harming Palestinians, where thousands of Palestinians have had their limbs amputated, and many have lost their minds due to the horrors of war, in addition to the numerous cases of panic and fear experienced by the children of Gaza during the war.

The third form of the material element has also been fulfilled, which is subjecting the group to difficult living conditions. This has been achieved through Israel's prevention of the arrival of food and medical aid to Palestinians, leading to harsh living conditions for them, and causing the spread of diseases throughout the Gaza Strip.

The fourth form of genocide has also been fulfilled through the use of weapons that cause infertility among Palestinian women, depriving them of the ability to reproduce. This was evident through Israel's use of internationally prohibited weapons, as well as the destruction of health centers and hospitals, such as the bombing of Al-Ahli Baptist Hospital and many other hospitals, which has clearly affected the ability of Palestinian women to reproduce.

Regarding the fifth form, which involves the transfer of children from the environment in which they live to another environment different from their culture and environment, this has also been fulfilled through Israel's abduction of infants and taking them away from their families. This has been witnessed during the war on Gaza.

As for the moral element, it has also been fulfilled through the statements made by many Israeli leaders about their intention to exterminate the Palestinian people completely and eliminate the Palestinians.

## **1.2 Section Two: The Specific Nature of the Crime of Genocide**

The specific nature upon which the crime of genocide is based makes it a crime rooted in the fact that the perpetrator has a clear and explicit intent to harm a specific group, whether by destroying it, annihilating it, or even eliminating it completely or partially, regardless of this group, whether it is based on religion, ethnicity, nationality, or race.

The crime of genocide involves several acts committed by the perpetrator or a group of individuals, which are exclusively listed in international law, as previously mentioned. These acts include killing, inflicting physical or mental harm, subjecting members of the group to living conditions intended to cause their destruction, preventing reproduction using chemical substances that affect their reproductive ability and deprive them of the right to reproduce in the long term, or even forcibly transferring children belonging to this group to another group.<sup>1</sup>

**The researcher has divided this section into two subsections as follows:**

- **Subsection One: The Distinctive Characteristics of the Crime of Genocide.**
- **Subsection Two: Distinguishing the Crime of Genocide from Crimes Against Humanity and Ethnic Cleansing.**

### **1.2.1 Subsection One: The Distinctive Characteristics of the Crime of Genocide**

#### **First: The International Nature of the Crime of Genocide**

One of the primary characteristics of the crime of genocide is its **international nature**. Genocide is classified as an international crime that has existed throughout history and has driven states to cooperate in efforts to eliminate and prevent it. This is because it constitutes a clear and explicit violation of human rights and the principles of international law. The impact of such a crime is not limited to the state where it occurs, but extends to the international community as a whole.

---

<sup>1</sup> Nasser, Montaser Dar, **The Crime of Genocide in Palestine from the Perspective of International Law**, Diwan of the Official Gazette, General Directorate of Legislation, Department of Studies and Research, 2024, page 6.

Genocide is considered a **barbaric act**, committed with the deliberate intent of the perpetrator, often carried out by individuals or groups acting on behalf of a state. As such, it results in the violation of rights that international law seeks to protect. This international character is affirmed in **Article I of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide**, which declares that genocide is an international crime, regardless of whether it is committed during peacetime or wartime.

The **International Court of Justice (ICJ)** also confirmed this principle in its **Advisory Opinion issued on May 28, 1951**, wherein it held that the principles enshrined in the Genocide Convention are binding on all states, even in the absence of specific consent or treaty obligations. These principles are considered **peremptory norms (jus cogens)** of international law, which all states are obliged to respect. There is no need for the conclusion of treaties or conventions to establish these obligations, as they are derived from fundamental human rights, such as the **right to life**.

Conversely, genocide represents a direct violation of this right and, by extension, a breach of peremptory norms of international law. The international nature of the crime of genocide means that it concerns **all peoples globally**, without discrimination. Protection against genocide applies universally to **all individuals**, regardless of nationality, ethnicity, or geography<sup>1</sup>.

## **Second: Genocide Is Not a Political Crime**

This characteristic **closes the door** for countries that may refuse to **extradite criminals** under the pretext that genocide is a political crime. This principle is affirmed in **Article 7 of the Convention on the Prevention and Punishment of the Crime of Genocide**, which explicitly states that **genocide is not considered a political crime**, especially regarding the **extradition of criminals**.

Therefore, **states are obligated** to comply in cases where genocide has occurred, and the perpetrators have **fled to other countries** and sought refuge there. If there are legal proceedings against these criminals, **states must commit to extraditing** these individuals and **cannot withhold** them under any circumstances.

---

<sup>1</sup> Freja, Hussein, **The Crime of Genocide and International Criminal Justice**, Journal of Law at Kuwait University, Scientific Publishing Council, Volume 38, Second Issue 2014, p. 589.

As a result, a country **cannot claim** that genocide is a political crime to justify **refusing the extradition** of perpetrators. Instead, it is required to **hand them over to the relevant authorities** as soon as possible. <sup>1</sup>

### **Third: The Crime of Genocide Is Subject to National and International Jurisdiction**

This is confirmed in **Article 6 of the Convention on the Prevention and Punishment of the Crime of Genocide**, which states that **perpetrators of these crimes are subject to accountability**. This is ensured through a **fair trial** that guarantees the accused all the rights of defense before **national courts** of the countries to which the individuals belong (i.e., the courts of their nationality), or through prosecution before the **state where the crime of genocide was committed**, or before **international courts** that have jurisdiction over genocide crimes and whose authority has been recognized by the states involved.

Here we find that **Article 6 of the Convention on the Prevention of the Crime of Genocide** establishes a **hierarchical structure in the judiciary** to ensure the accountability of criminals and to prevent them from escaping justice. **National courts** are given **primary jurisdiction** in prosecution, as the legislator has given them priority in trials.

If the **country of the perpetrator's nationality** does not prosecute, the right to prosecute is given to the **state where the crime occurred**. If that state also does not prosecute, **international jurisdiction** applies, such as the **International Criminal Court (ICC)**.<sup>2</sup>

---

<sup>1</sup> Al-Rahali, Nisreen, **The Crime of Genocide in International Criminal Justice**, Mediterranean Journal of Legal and Judicial Studies, Volume and Issue One, 2016, p414.

<sup>2</sup> Dahliyah, Jude, **The Crime of Genocide in International Law: An Analytical Study**, Master's Thesis at An-Najah National University at the Faculty of Graduate Studies in Palestine 2021, page 17.

#### **Fourth: The Crime of Genocide Is an Intentional Crime**

The crime of genocide is considered an **intentional crime**, meaning it is committed with **premeditation**, involving **prior knowledge** and the **will** to destroy a specific group, whether **in whole or in part**.

It **cannot be conceived** that this crime would occur **by mistake**, as the perpetrators of genocide have a **pre-planned strategy** to commit it, aiming to destroy a particular group either **physically** or **morally**.

Thus, genocide is not an act that happens accidentally; rather, it involves a **deliberate and intentional plan** to carry out the crime. .<sup>1</sup>

#### **Fifth: Committing the Crime of Genocide Leads to the Lifting of Immunity and Equality in Punishment**

This principle is confirmed in **Article 7 of the Convention on the Prevention and Punishment of the Crime of Genocide**, as well as in the **Rome Statute of the International Criminal Court (ICC)**. **Article 27** of the Rome Statute states:

*"Immunities or procedural rules that may be linked to the official capacity of a person, whether as a head of state or a commander in the armed forces, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."*

The **main reason and motivation** for **excluding genocide from political crimes** is to prevent perpetrators from **escaping justice**. Many states' constitutions grant them the authority to **refuse the extradition of political prisoners**, which could allow states to claim that genocide is a political crime to avoid extraditing criminals.

However, this loophole was **closed** by explicitly **not classifying genocide as a political crime**.

---

<sup>1</sup> Sharif, Karim, **Genocide and the Strategy to Confront it from an Islamic Perspective**, University of Human Development and University of Baghdad, College of Arts, Volume and Issue Two 2023, page 277

Furthermore, **paragraph 1 of Article 27** of the Rome Statute affirms that **anyone who commits this crime will be prosecuted**, and the statute applies **to all individuals without discrimination**, regardless of whether the perpetrator is a **head of state, government official, parliament member, or public servant**.

Such **official status does not exempt** individuals from **criminal responsibility** nor does it **reduce the severity of the punishment**. Therefore, **all individuals are equal before the ICC** in terms of prosecution and punishment. <sup>1</sup>

#### **Sixth: The Collective Nature of the Victims of the Crime of Genocide**

This characteristic refers to the fact that the **crime of genocide targets a specific group** of victims who are connected by a **common bond**. It **cannot be conceived** that this crime would occur against a **single individual** or a **small number of individuals** who do not belong to a particular group.

If the act is committed against an individual or a small number of people, it would be considered **mass murder, not genocide**.

Genocide specifically involves acts aimed at the **destruction of a group**—whether defined by **ethnicity, nationality, race, or religion**—rather than isolated individuals <sup>2</sup>

#### **Seventh: It Is a Crime Committed by Natural Persons**

The meaning of this characteristic is that the crime of genocide is a crime committed by individuals because when establishing criminal responsibility in the crime of genocide, the individuals who committed it are held accountable, even if it was

---

<sup>1</sup> Guitari, Abdelkader, **The Crime of Genocide in International Criminal Law**, Journal of Historical and Social Studies at the University of Nouakchott, Vol. 36 2019, p. 45.

<sup>2</sup> Skan, Ismail, The crime of genocide and the role of international criminal courts in addressing it, Journal of Law and Business at Hussein I University, Volume and Issue 82, 2022, page 98.

committed by a head of state. The person is held accountable in their personal capacity, and the criminal responsibility of the state is not considered.

The person or group of individuals who committed this crime are held accountable as individuals, not in their capacity as heads of state. Criminal responsibility applies to the person who actually and directly committed this crime, whether they did so with their own hands or through giving orders in their capacity as a leader or ruler to individuals of lower rank. They were able, through the authority granted to them by law, to force soldiers or subordinates under their command to carry out the crime.

The Rome Statute, as mentioned earlier, confirms that the official capacity of a head of state or others does not exempt them from criminal responsibility, but rather they are held accountable if they commit this crime.<sup>1</sup>

#### **Eighth: The Crime of Genocide Does Not Fall Under the Statute of Limitations**

The term **statute of limitations** refers to the passage of a specific period that leads to the **inability to hear a case**, resulting in the **termination of legal proceedings** and the expiration of the punishment. However, **international crimes** are **not subject to the statute of limitations**, meaning they **do not expire over time**. This serves as a guarantee to protect the **rights of individuals** and prevents **criminals from escaping punishment**, regardless of how much time has passed.

This principle has been affirmed by the **International Criminal Court (ICC)**, which considers the **crime of genocide** an **exception to the statute of limitations** because such crimes pose a **threat to the international community**. They **cannot be forgotten**, nor can the **impact they have left behind** be ignored.

This is a crucial measure to **prevent perpetrators from evading justice**, especially since such crimes are often committed by individuals with **power and authority within the state**, giving them significant capability to **escape and remain hidden**.

---

<sup>1</sup> Idris, dear Adam Mohammed, **The crime of genocide in Sudanese law and international conventions and covenants**, Master's thesis at Al-Neelain University in Sudan 2017, page 38..

If these individuals could rely on the statute of limitations to have their crimes dismissed, they would exploit this loophole. However, the **legislator has closed this door** by classifying genocide as a crime that **does not fall under the statute of limitations**, ensuring that perpetrators remain **liable for prosecution** no matter how much time has passed..<sup>1</sup>

### **1.2.2 Subsection Two: Distinguishing the Crime of Genocide from Crimes Against Humanity and Ethnic Cleansing**

In the beginning, the crime of genocide was previously, before the establishment of the United Nations Convention on the Prevention of Genocide, considered a form of crime against humanity. However, after this convention, it became an independent crime with its specific elements and became distinguished from other crimes.

Crimes against humanity are defined as a systematic plan aimed by the perpetrator to undermine the social, political, and cultural foundations, as well as national sentiments, destabilize security, and degrade the dignity and health of individuals. They also include murder, deportation, and any inhumane act committed against civilians.

Therefore, the difference between the crime of genocide and crimes against humanity is that the goal intended by the perpetrator in the crime of genocide is the annihilation of a specific group, either completely or partially, while crimes against humanity are a set of crimes committed against a specific group of people.

The Nuremberg Tribunal clarified that the difference between crimes against humanity and the crime of genocide is that genocide does not have to occur during wartime, meaning it can occur during war or peace.

---

<sup>1</sup> Previous reference, Idris, dear Adam Mohamed, **The crime of genocide in Sudanese law and international conventions and covenants**, Master's thesis at Al-Neelain University in Sudan 2017, page 38.

Another key difference is the examination of specific intent, where the judge investigates the specific intent in the crime of genocide to distinguish it from crimes against humanity and other crimes.

In the ruling issued by the Yugoslavia Tribunal, the court decided to acquit the accused of the crime of genocide because the specific intent was not established, even though the accused had carried out indiscriminate killings. The court specified that the crime of genocide is based on the killing of individuals from one group located in a specific geographical area, even if the number of victims is small, as the goal is to destroy this group.

Therefore, if the judge finds that the perpetrator of the crime aims to destroy this group, whether wholly or partially, it is considered a crime of genocide. <sup>1</sup>

Thus, the clear difference between crimes against humanity and the crime of genocide is that crimes against humanity target the population regardless of the affiliations or connections that bind them, while the crime of genocide focuses on the group, whether it is ethnic, racial, or religious.

Therefore, to prove crimes against humanity, it is sufficient to identify the number of victims as civilians, whereas for the crime of genocide, it must be proven that it was committed against a specific group with the aim of destroying it wholly or partially.<sup>2</sup>

Likewise, the founding statutes of international criminal courts distinguished between the crime of genocide and crimes against humanity. Among the most prominent of these statutes are the Statute of the International Criminal Tribunal for Yugoslavia and Rwanda, as well as the Rome Statute of the International Criminal Court, where the

---

<sup>1</sup> Al–Abadi Ziad Ahmed Mohamed, **The Role of Special International Criminal Tribunals in Determining the Crime of Genocide**, Master's Thesis at the Middle East University 2017, page 55.

<sup>2</sup> Craz Muhammad Mustafa, **The crime of genocide, a comparative study between the Genocide Convention, the Rome Statute and the provisions of the Syrian Penal Code**, Tishreen University Journal for Research and Scientific Studies, Volume 43, Issue Three 2021, page 238.

crime of genocide is considered an independent crime from crimes against humanity, even though it was previously considered a form of crimes against humanity.

Furthermore, the distinction between the two crimes lies in the reasons for criminalization, where the aim of criminalizing genocide is to protect the group regardless of the connections that bind them, whether ethnic or racial, thus protecting the group from total or partial destruction.

On the other hand, the basis for criminalization in crimes against humanity focuses on protecting civilian populations from any attacks that may be committed against them.

.<sup>1</sup>

The **Rwanda Tribunal** issued judicial rulings that distinguished between **crimes against humanity** and the **crime of genocide**. The Rwanda Tribunal applied the **personal criterion** in determining the crime of genocide, considering that if the **victim belongs to a specific group**, whether **ethnic, racial**, or otherwise, it qualifies as a **crime of genocide**.

This was clearly demonstrated when applying this criterion to the **Tutsi case**, where the tribunal ruled that the crime committed against them was **genocide** because they constituted an **ethnic group**.

Similarly, the **Yugoslavia Tribunal** adopted this criterion in one of its rulings, stating that if the **target is specific groups**, the crime qualifies as **genocide**. This is referred to as the **personal criterion**.<sup>2</sup>

As for **ethnic cleansing**, this term has not been addressed in the **Rome Statute**, nor is there any **convention or treaty** that criminalizes ethnic cleansing. **International law** has not provided an independent definition for it, and there is also no clear and explicit

---

<sup>1</sup> Guitari, Abdelkader, **The Crime of Genocide in International Criminal Law**, Journal of Historical and Social Studies at the University of Nouakchott, Vol. 36, 2019, p. 61.

<sup>2</sup> Sadara, Mohamed, **Distinguishing between the crime of genocide and crimes against humanity in international law**, Algerian Journal of Legal, Economic and Political Sciences, Faculty of Law, Bank of Canaan, p. 256.

definition of the concept of ethnic cleansing or the actions that constitute ethnic cleansing.

However, **ethnic cleansing** can be defined as an attempt to make a specific geographical area inhabited by a certain **ethnic group only**, and to work on the **expulsion of individuals** who belong to **ethnic groups** different from the ethnic group present in the specific geographical area, and to work on **removing all traces** related to the group targeted for expulsion, by eliminating everything related to this group, such as **places of worship, cemeteries, monuments**, and others.

The difference between the definition of **genocide** and **ethnic cleansing** is that genocide is committed through several acts specified in the **Convention on the Prevention and Punishment of the Crime of Genocide**, which include the **complete or partial destruction** of a specific **national, ethnic, or racial group**, whether through **killing, causing harm, subjecting this group to difficult living conditions**, or **transferring children** from this group to another group.

In contrast, **ethnic cleansing** aims to create a society containing only one ethnic group, while the **crime of genocide** does not aim to create a single-ethnic society; rather, its goal is to **destroy this group**, either **completely or partially**.

During the **Bosnian and Herzegovinian massacres**, the term **ethnic cleansing** was widely used..<sup>1</sup>

Based on the above, it can be concluded that **ethnic cleansing** is a term that has been widely used, but it is **not classified as a distinct international crime**. Despite its continued usage, there is **no specific international convention** dedicated to ethnic cleansing, nor are there any **explicit international legal provisions** that define or criminalize it as such.

According to the principle of "**no crime and no punishment without a legal provision**", acts constituting ethnic cleansing cannot, in themselves, be considered an

---

<sup>1</sup> The Independent website, Abu Daqqa Mariam, an article entitled "Ethnic cleansing differs from genocide according to the intention of the perpetrator", the date of the site is visited 5/11/2024 and the article is published at the following link: <https://www.independentarabia.com/node/531191/%D8%B3%D9%8>

international crime in the absence of clear legal texts. Ethnic cleansing remains a **descriptive term** rather than a legally codified offense.

Nevertheless, there is hope that the international community will work toward drafting a **specific international convention** addressing ethnic cleansing, thereby criminalizing it explicitly and providing a clear legal framework for holding perpetrators accountable.

## **2. Chapter Two: The Criminalization of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (1948).**

The term "**genocide**", as previously mentioned, was first introduced by the **Polish lawyer Raphael Lemkin**, who survived **Hitler's Holocaust** during **Nazi Germany**. Raphael Lemkin was the first to coin this term after **World War II**, and he subsequently worked tirelessly to **promote this term** on the international stage.

As a result of his efforts, he succeeded in establishing the term through the **adoption and ratification of the Convention on the Prevention and Punishment of the Crime of Genocide**, which took place in **1948**. This convention was adopted shortly after the **Universal Declaration of Human Rights**.

Once this convention was adopted by countries, it became an **integral part of international criminal law** and is considered **binding on states** because it contains **peremptory norms (jus cogens)**. Subsequently, the global media played a significant role in **promoting and advocating** for the adoption of this convention worldwide.

However, unfortunately, some countries **exploited this convention** as a **pretext to intervene** in the **internal affairs of other nations**, using it as a justification to claim that certain states were committing acts of genocide, even when such claims were **unfounded**.<sup>1</sup>

.The researcher has divided this chapter into Three sections as follows:

- **Section One:** The Convention on the Prevention and Punishment of the Crime of Genocide.
- **Section Two:** Combating the Crime of Genocide.
- **Section Three :** The Crime of Genocide in the Palestinian Context

---

<sup>1</sup> Previous reference, Kriz, Muhammad Mustafa, **The crime of genocide, a comparative study between the 1948 Genocide Convention, the Rome Statute of 1998, and the provisions of the Syrian Penal Code**, Tishreen University Journal for Research and Scientific Studies, Volume 43, Third Issue 2021, page 238.

## **2.1 Section One: The Convention on the Prevention and Punishment of the Crime of Genocide**

The **Convention on the Prevention and Punishment of the Crime of Genocide** was adopted in **1948**. **Article II** of the convention defines **genocide** as an act or a series of acts committed with the intent to **destroy**, in whole or in part, a group identified by its **national, ethnic, or religious** characteristics.

One of the key features that distinguishes this convention is that it is **applicable in both times of peace and war**, ensuring that the crime of genocide is universally punishable **regardless of the circumstances** in which it occurs..<sup>1</sup>

The **Convention on the Prevention and Punishment of the Crime of Genocide** is the **first human rights convention** adopted by the **United Nations General Assembly**. Under this convention, an **obligation** was imposed on the **international community** to ensure that **genocidal crimes committed prior to this convention are not repeated**.

The convention also provides a **clear definition of the crime of genocide** and establishes the **duty of the state parties** to actively work towards **preventing** this crime and **ensuring it does not occur**.

This convention consists of **19 articles**, outlining the legal framework, responsibilities of state parties, and mechanisms for prosecution and prevention of genocide.<sup>2</sup>

**This section has been divided by the researcher into two subsections as follows:**

- **Subsection One:** Causes and Motives of the Crime of Genocide.

---

<sup>1</sup> Al–Abadi, Osama Nazim Saadoun, **International Legal Guarantees for the Protection of Human Groups under the Convention on the Prevention and Punishment of the Crime of Genocide**, University of Basra, Journal of Literature of Basra, Volume and No. 48, 2001, p. 415.

United Nations website, an article entitled: **What is the Convention on the Prevention of the Crime of Genocide Seven basic points**, the article was published January 11, 2024, and the article is published at the following link: <https://news.un.org/ar/story/2024/01/1127587>

- **Subsection Two:** Criminal, Civil, and International Responsibility of the Perpetrators of Genocide.

### 2.1.1 Subsection One: Causes and Motives of Genocide

The term **motives** refers to the **reasons** that led to the commission of this crime. The crime of genocide is considered one of the most dangerous international crimes that threaten human life, as it is committed by humans against other humans.

The most prominent motives behind this crime are:

- **Religious Motives:** Religious motives, including differences in religions and divine beliefs, play a significant role in committing this crime. Examples include:

The **Zionist movement in Israel**, which used genocide against the **Palestinians**, where it practiced genocide against Palestinians with the aim of **increasing the number of Jews in Palestine, eliminating Palestinians, and reducing their population.**

Another example is the **genocide committed by the Crusaders** against **Muslims** in the **late 15th century**, as well as the **divisions that occurred in Europe.**

It is important to point out that despite the **United Nations** enacting and legislating the **Convention on the Prevention of Genocide**, genocidal crimes continued to be committed even after the adoption of this convention. Examples include:

- What happened in **Bosnia**, as well as in **Yugoslavia** against **Muslims**, where **ethnic cleansing policies** were practiced.
- The events in **Algeria** in **1995** and **1994**, where **horrific massacres** were committed during that period, along with **mass rapes**, subjecting these groups to **harsh living conditions**, in addition to the **killing operations carried out by France in Algeria.**

All of this falls under the crime of **genocide**..<sup>1</sup>

When applying the **motives that lead to the commission of the crime of genocide** to what happened in the **Gaza Strip during the events of October 7**, it becomes evident that **religious motives** played a significant role in **guiding the Israeli army** and pushing it toward extensive **destruction** and **inflicting severe harm** on Gaza.

During the **October 7 period**, **key positions of power in Israel** were held by individuals affiliated with **Zionism**, particularly its **religious** factions. As a result, **military leaders were heavily influenced by religious hatred** toward the **Palestinian people**. This **religious bias**, prevalent among Jewish leaders, drove the Israeli forces to commit **heinous crimes** against the Gaza Strip, rooted in **religious ideologies** embraced by many Israelis.

One of these ideologies is the belief that the establishment of a "**Greater Israel**" requires the **complete elimination of the Palestinian people**. When the war on Gaza began, **religious texts** were invoked, calling for the **killing of Palestinians**, including **inciting violence against unborn children**, with claims that they might grow up to fight against Israel. .<sup>2</sup>

Religious motivation plays a major role in directing the Israeli army and pushing it towards destruction and inflicting great harm on the Gaza Strip, especially since during the period of October 7, those who held high-ranking positions in Israel were from the Zionist Jews. Accordingly, the military leaders were filled with religious hatred towards the Palestinian people. Thus, the religious tendency that dominated the Jewish leaders pushed them to commit the most heinous crimes against the Gaza Strip, based on religious beliefs they adhere to, which

---

Al-Saghir, Souissi Mohamed, **The crime of genocide, its motives and forms**,<sup>1</sup> Journal of Studies and Research at the University of Djelfa, Volume and Issue VII 2012, p. 266.

<sup>2</sup> Al Jazeera website An article entitled **Religious motives behind Israel's commission of crimes against Gaza** Article published on 26/8/2014 The article is published at the following link:

<https://www.aljazeera.net/news/2014/8/26/%D8%AF%D9%88%D8%A7%D9%81%D8%B9-%D1%D8%A7%D8%A6%D9%8A%D9%84-%D8%AC%D8%B1%D8%A7%D8%A6%D9%85>

claim that for the establishment of Greater Israel, it is necessary to eliminate the Palestinians completely. Furthermore, when the Jews launched the war on Gaza, they began using religious texts that call for the killing of Palestinians, including texts inciting the killing of fetuses in their mothers' wombs so that they do not grow up and fight Israel.

## **Second: Social and Political Motives**

The **United Nations Convention on the Prevention and Punishment of the Crime of Genocide** addresses the topic of motives behind committing the crime of genocide in **Article II, Paragraph 1**, where it states that the motives for committing this crime may be **religious, racial, national**, and in some cases, **ethnic**. The convention clarifies that the **motive** is the **reason** behind the perpetrators committing this crime, which arises due to **differences in race or national origin**.

An example of **political motives** is **racial discrimination**, known as **apartheid**, which occurred in **South Africa**. Its essence was to impose **oppressive restrictions** on **non-white individuals**, where restrictions were placed on their **freedom of movement, political rights, social rights**, and others. Another example of committing the crime of genocide under political motives is what was carried out by the **Zairean army forces** in an area called **Zaire**, where around **163 people** were executed in **1994** without being tried. Unfortunately, the policy of committing the crime of genocide has been frequently used in **African countries** under political motives, where many opponents were executed **outside the framework of the judiciary** or even placed in prisons and subjected to **harsh living conditions**, including **torture, cruel treatment**, and **starvation until death**.

An example of this is the **death of a secretary affiliated with the Organization of African Unity**, who **died in Guinean prisons** without being provided with a **fair trial** or **decent living conditions**.<sup>1</sup>

The **political motives** behind committing some of the most heinous crimes in the Gaza Strip after the events of **October 7** were to **maintain and preserve Israel's dominance**

---

<sup>1</sup> Previous reference, Al-Saghir, Souissi Mohamed, The crime of genocide, its motives and forms, Journal of Studies and Research w University of Djelfa, Volume and Issue Seven 2012 page 266.

in the Middle East region, particularly aimed at **securing control over as much Palestinian land as possible** and incorporating it into Israel.

The political motives behind October 7 also include taking revenge on Hamas and maintaining Israel's military dominance over Gaza. This was confirmed by Israeli analyst Yagil Levy, who stated that Israel aims to penetrate and control geographical areas in the Gaza Strip and to deploy military forces and equipment there. Israel's war on Gaza also seeks revenge against Hamas for attempting to undermine Israel's security. Another political goal is the complete elimination of Hamas. Yagil Levy emphasized that these objectives are not limited to Netanyahu alone, but are shared by all Israelis.

The researcher believes that the crime of **genocide** is committed for various motives, whether **political, economic, or social**. However, the researcher argues that **political motives** are the most significant drivers of this crime. It is committed **against opponents of the state**, as well as between states, such as what **Israel** did in **Palestine**, aiming to control large areas of land, and what **Hitler** did against the **Jews**, driven by political motives. The researcher therefore concludes that **political motives** are the **primary driving force** behind the commission of genocide.

Regarding the **genocide** committed by **Israel** against the people of Gaza, the researcher believes that the motives are both **religious and political**. The **religious motive** stems from Israel's desire to annex larger areas and ensure **Jewish religious dominance** over Arab and Palestinian territories, while the **political motive** is rooted in the ongoing conflict with **Hamas**, which Israel considers a **terrorist organization** and seeks to eliminate, thus enabling complete **political control** of Palestinian land by Israel.

In **2022**, the **International Court of Justice** issued an **advisory opinion** regarding the **Palestinian issue**, in which it clarified that the actions carried out by the **occupying forces** constitute a **violation of international law**, representing a **clear breach of**

**international law** and an **assault on the rights of Palestinians**. The Court also called on **Israel** to cease its **illegal actions** against the Palestinian people..<sup>1</sup>

### **2.1.2 Subsection Two: Criminal, Civil, and International Responsibility of the Perpetrators of Genocide**

- **Criminal Responsibility:**

The responsibility borne by those who commit the crime of genocide is **individual criminal responsibility**, as recognized and adopted by the International Criminal Court (ICC). This principle is based on **Article IV of the Convention on the Prevention and Punishment of the Crime of Genocide**, which explicitly states that any person who commits genocide—regardless of their status, whether an ordinary citizen, a member of the ruling class such as a president or minister, or a government official—shall be held accountable and subject to punishment.

Furthermore, **Article VI of the same Convention** affirms that anyone who commits the crime of genocide must be brought to trial.

The **Rome Statute of the International Criminal Court** also emphasizes individual criminal responsibility in cases of genocide. **Article 27** of the Statute affirms this principle, with **paragraph 1** stating that in the event of genocide falling under the jurisdiction of the Court, all perpetrators shall be equally subject to prosecution, without any distinction. Official capacity or immunity does not shield individuals from criminal responsibility; whether the accused is a head of state, an ordinary citizen, or a public official, they are equally liable. Such capacities or immunities do not exempt them from punishment nor serve as grounds for mitigation of the penalty.

When the International Criminal Court (ICC) begins exercising its jurisdiction over the crime of genocide, it applies its founding legal instrument, the **Rome Statute**, followed by the sources of international law such as treaties that must be applied, then the principles established by international law, and thereafter, the general principles of

---

<sup>1</sup> BBC website , Marie Jose, an article entitled **What are the most prominent legal decisions issued since October 7 and are they enforceable? The** date of publication of the article is October 7, 2023 and the article is published at the following link: <https://www.bbc.com/arabic/articles/c77xz48xm47o>

national laws—provided that these national legal principles do not contradict the Rome Statute. Therefore, these legal sources are applied in order, in accordance with **Article 21 of the Rome Statute**: first, the Statute itself; second, the principles and rules of international law; and third, the general principles of national law.

After the commission of the crime of genocide, the judicial phase begins—i.e., holding the perpetrators accountable before the courts. This raises the issue of whether **national courts** have jurisdiction or whether **international justice** has priority. This matter was addressed in the **Rome Statute** of the ICC under **Articles 1 and 17**, which establish that national jurisdictions always have **primacy** in prosecution. Article 17 of the Rome Statute states that the ICC shall deem a case inadmissible if it is being investigated or prosecuted by a state with jurisdiction, and is willing and able to carry out the proceedings. Conversely, the ICC may intervene if the national judiciary is **unwilling or unable** to investigate or prosecute genocide—for example, if the state is in a state of war or if its ruling regime has been overthrown by a coup.

In the case of **Palestine**, and particularly in **Gaza**, following the **atrocities committed by Israel**, **South Africa** filed a case before the **International Court of Justice (ICJ)**, alleging that Israel's actions constituted the **elements of the crime of genocide**. South Africa argued that the acts committed were directed against a **national, ethnic, racial, or religious group**, namely the Palestinian people, which under international law amounts to the **crime of genocide**. South Africa requested the Court to find Israel guilty of committing genocide. Unfortunately, the Court's position was negative, as it did **not issue any ruling** to stop the aggression or ceasefire, despite South Africa's request.

Regarding the **judicial proceedings**, the first step involved the **ICJ declaring its jurisdiction** to hear the case, based on **Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide**, wherein the Court affirmed its authority to examine the matter. It began evaluating the arguments and claims presented by South Africa against Israel. The **statement of claim** submitted by South Africa alleged that **Israel committed mass atrocities** against the Palestinian people and requested the Court to hold Israel accountable. South Africa relied on **Article 2 of the Genocide Convention**, which defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, including:

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting conditions of life calculated to bring about its physical destruction;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transferring children of the group to another group.

The Court began examining whether the acts committed by Israel met the **legal definition of genocide**, including looking into the **number of victims**, and called upon **witnesses** such as the **UN Under-Secretary-General for Humanitarian Affairs**, the **Relief Coordinator**, the **World Health Organization**, and the **Commissioner-General of UNRWA**. After reviewing the facts and evidence, the Court unfortunately did not issue a ruling obligating Israel to cease-fire.

On the other hand, the International Criminal Court (ICC) has taken positive steps toward achieving justice regarding what is happening in Gaza. It issued arrest warrants for **Benjamin Netanyahu**, the Israeli Prime Minister, and **Yoav Gallant**, the Israeli Minister of Defense, on **November 21, 2024**, as well as for **Mohammed Deif**, a senior leader in Hamas, in order to begin their prosecution for **war crimes and crimes against humanity**.

The Court stated that there is **no need for Israel to accept the Court's jurisdiction**, as there are clear and reasonable grounds indicating that Netanyahu and the Minister of Defense committed crimes against civilians in the Gaza Strip, including the use of **starvation, killing**, and many other inhumane acts.

There was significant **international response** to this decision. **The Netherlands** offered its assistance in executing the arrest warrants. The **EU foreign policy chief** emphasized that the ICC's decision must be respected and that the arrest warrant for Netanyahu should be enforced. Likewise, **the UK** affirmed that the ICC is an independent body and its decision must be respected. In a special statement, the UK even described Israel as being far from ethics and democracy, and labeled it as a **terrorist organization**.

The **French Ministry of Foreign Affairs** also declared its commitment to abide by the ICC's decision. Similarly, **Italy's Minister of Defense** stated that Italy would comply with the Court's decision regarding Netanyahu's arrest. **Ireland's Prime Minister** described the matter as important and stressed the need for implementation.

However, **the United States** unfortunately **rejected the ICC's decision** and the accusations made against Israel.

- **Civil Responsibility :**

At the outset, **compensation is considered the foundation of civil liability**, as every individual, according to the law, is required to provide compensation if they cause harm to another person through an act or a series of acts—regardless of whether these acts are legal or illegal. If harm is inflicted, the person responsible is obliged to compensate the victim. International law has adopted and affirmed this principle, considering it a binding obligation on states that violate international law or cause harm to another state, requiring them to provide appropriate compensation.

This principle was affirmed by the **International Court of Justice (ICJ)** in its ruling, stating that any state which breaches its obligations under international law bears the responsibility to provide compensation. This obligation does **not require the existence of a specific treaty**. The court also affirmed in another ruling that **compensation is due** once a state has been found liable for its actions. International law has established that a state must provide **appropriate compensation** if an act of genocide is committed by one of its nationals—whether an ordinary citizen, a head of state, or an official.

Compensation for the **crime of genocide** can take the following forms:

1. **Restitution:** Returning the situation to what it was before the genocide. For example, if children were forcibly separated from their families, they must be returned, or if a group was subjected to inhumane living conditions, those conditions must be remedied.
2. **Financial Compensation:** Providing monetary payments to the victims of the genocide. This is the most common form of compensation used by states.

3. **Satisfaction (Symbolic Compensation):** Involves the perpetrating state offering an official apology to the state or people against whom the genocide was committed.

As for **individual responsibility**, international law obliges individuals to provide civil compensation once they are found criminally liable for committing genocide. This is emphasized in **Article 77 of the Rome Statute**, which requires the convicted person to pay **finances**, and **Article 146**, which states that if imprisonment is imposed, the fine is determined based on the **financial capacity** of the individual. The court may also resort to **confiscation of assets**, investigate **the profits gained from the crime**, and the **motives** behind committing it. It then sets the financial amount to be paid, evaluates the **extent of damages and injuries**, and grants the individual a specific period to pay. If the fine is not paid, **the court may extend the prison sentence**.

## **2.2 Section Two: Addressing the Crime of Genocide**

International crimes, in general, when committed, do not only affect the state in which they occur, but also cause disruptions in the international system as a whole. These crimes impact both the **interests** of the state where the crime took place and the interests of other countries. To prevent this, a set of laws has been established to **criminalize** these acts and prevent them from happening again. To ensure that criminals do not escape punishment, **international courts** were created to prosecute anyone who commits such crimes.

The **global judiciary** is responsible for prosecuting individuals who commit the crime of genocide. International courts base their trials on the **Convention on the Prevention and Punishment of the Crime of Genocide**, where the court when a genocide occurs, investigates the **material, mental, and juridical elements** of the crime and the **international jurisdiction**. If these elements are met, the court proceeds with **accountability** and **prosecution** of the perpetrators<sup>1</sup>.

The researcher has divided this section into two required as follows

**Subsection One: Addressing the Crime of Genocide at the Level of International Criminal Courts Before the International Criminal Court.**

## **Subsection Two: Addressing the Crime of Genocide at the Level of the International Criminal Court.**

### **Subsection Three: South Africa's Case in Confronting the Crime of Genocide before the International Court of Justice and Israel's Arguments before the Court .**

#### **2.2.1 Subsection One: Addressing the Crime of Genocide at the Level of International Criminal Courts Before the International Criminal Court**

The term **addressing the crime of genocide at the level of international criminal courts before the International Criminal Court** refers to the international courts established before the current **International Criminal Court**. Several courts were established for specific purposes before the establishment of the **International Criminal Court**, and I will mention some of these courts and how they addressed the crime of genocide and dealt with it.

One example of the **international criminal courts prior to the current International Criminal Court** is the **International Criminal Tribunal for the former Yugoslavia**. This court was established in **1993** to prosecute war criminals who had committed **genocide** in **Yugoslavia**. This was a result of the **United Nations Security Council's issuance of Resolutions 808 and 827**, which authorized the court to begin its work in **1994**. The war lasted for about 10 years, especially after the end of **World War II**, which led the international community to recognize the need for a **judicial body** to try war criminals and prevent them from escaping justice.

It is important to point out that the **Yugoslav Tribunal** was not the first international court established before the International Criminal Court. Prior to it, there were other international criminal courts. However, what distinguishes the **Yugoslav Tribunal** is that it was established by the **international community**, while the **Nuremberg** and **Tokyo tribunals** were established by the **victorious powers of World War II**.<sup>1</sup>

---

<sup>1</sup> Al-Midani, Muhammad Amin, The International Criminal Tribunal for the Former Yugoslavia, An Overview of the Tribunal's System and the Circumstances of its

.The researcher believes that the **Yugoslav Tribunal** and the **Rwandan Tribunal** who **international community**, which is crucial for ensuring justice. This is in contrast to the **Tokyo** and **Nuremberg Tribunals**, which were established by the **victorious powers** of **World War II**. Therefore, there could be potential **bias** in these tribunals towards the victorious parties in the war, as opposed to the **Yugoslav** and **Rwandan Tribunals**, which were created by a **neutral party**, making them closer to achieving justice.

The **Yugoslav War Crimes Tribunal** examined the **details** and **facts** of the armed conflict that occurred against the **Muslims** by the **Yugoslav army**. Initially, the conflict was between the **Serbs** and **Croats**, as well as **Muslims**, and could be described as a **civil war** or an **internal war**. However, the conflict escalated as **Serbia** and **Montenegro** intervened against the Muslims, leading to **Massacres** and violations of **international humanitarian law**, prompting the international community to intensify efforts to establish an international **criminal court** to **prosecute war criminals**.

As a result, the **Yugoslav Tribunal** was established, and it began its work to **prosecute those responsible for genocide** by issuing **arrest warrants** for many suspects. A total of **163 arrest warrants** were issued, including one for the **President of Serbia**. The tribunal began exercising its jurisdiction and charged the suspects with committing various crimes, including **crimes against humanity**, **war crimes**, and **genocide**. The tribunal's jurisdiction encompassed all these crimes. When the tribunal began its trials, it relied on the **1949 Geneva Conventions**.

The tribunal also addressed the issue of the armed conflict and concluded that, for a conflict to be considered an **armed conflict**, certainly **weapons** were used by the **Yugoslav forces** against the Muslims, and confirmed that **international law** had been violated. It also emphasized that there was a violation of **Article 3** of the tribunal's statute, which relates to the **laws, rules, and customs of war**, as these violations included all crimes that form the elements of the **genocide** crime.

The tribunal also affirmed **individual criminal responsibility**, meaning that the tribunal does not hold **legal entities** responsible, but instead focuses on the **individual**. It emphasized that it would prosecute **natural persons** and not **legal entities** or **organizations**. For the tribunal to hold a **head of state** accountable, it required that there be a connection between the **acts committed** and the **head of state**. Furthermore, the tribunal stated that the head of state must be aware that **criminal acts** had been committed under **international law** and could be prosecuted if they failed to take the necessary measures to **stop the crimes**. If the head of state did not take the necessary measures, they would be held **criminally responsible** before the tribunal. <sup>1</sup>

Another example of international criminal courts that preceded the International Criminal Court is the **Rwandan Tribunal**, which addressed the crime of **genocide** and other crimes, such as **crimes against humanity**. This was demonstrated through the trial of **Jean-Paul Akayesu**, who led a coup against the regime, being a member of the opposition party and holding the position of the village leader where he lived. After the **genocide in Rwanda**, Akayesu initially managed to maintain control over his village for a short period of time. Later, he joined in the ongoing genocide, and there were eyewitnesses to this. These witnesses testified that Akayesu encouraged the population to commit **murder** and **torture**.

The tribunal then opened an investigation into this matter, leading to his arrest in **1995**. He was convicted by the court for **genocide**, marking the first time the court had convicted someone for this crime. He was sentenced to **life imprisonment**. The court relied on the facts and circumstances of the crimes he committed and based its ruling on the testimonies of eyewitnesses, who testified before the court that he had encouraged the population to kill. More than one witness confirmed this. After

---

<sup>1</sup> Khalafallah, Sabrina, **The Contribution of the International Criminal Tribunal for the Former Yugoslavia to the Interpretation and Development of International Humanitarian Law and its Violations**, Journal of Humanities, University of Constantinople, Vol. 47, 2017, p. 254.

confirming that the **elements of genocide** were met—specifically the **mental element** (both general and specific intent) and the **physical element** (incitement to murder, as he was the village leader)—the court concluded that he was deserving of punishment.

The **Rwandan Tribunal**, as a **temporary international criminal court**, examined cases of **genocide, crimes against humanity, and violations of Article 3 of the four Geneva Conventions**. Therefore, for the court to have jurisdiction over such a crime, the crime must fall within these categories. However, there are several conditions for the court to review a case, including that the crime must have been committed **after 2012**, it must fall within the court's **jurisdiction**, and that the **national courts** must not have already started investigating the crime. The **Rwandan Tribunal** concluded its work in **2015**.<sup>1</sup>

As for the **Yugoslav Tribunal**, it is responsible for **war crimes, crimes against humanity, and genocide**, and was established before the **Rwandan Tribunal** in **1993** with the aim of prosecuting those responsible for committing these crimes. It is important to note that both the **Rwandan** and **Yugoslav Tribunals** were established by resolutions passed by the **Security Council**, and these courts have direct authority over states.

Regarding the **jurisdictional conditions** of the court, it has the authority to prosecute when states are unable to conduct trials and prosecute individuals who have committed crimes within its jurisdiction. It also has the authority if the **Security Council** imposes its jurisdiction on a particular state.

One of the key features that distinguish this court from others is that it does not allow for **trials in absentia**, unlike the **International Criminal Court (ICC)**, which allows for trials in the absence of the accused. The **Yugoslav Tribunal** specifically deals with the prosecution of individuals on a **personal and individual basis** according to **Article 6** of its statute, which it shares with the **Rwandan Tribunal** under **Article 5**. Additionally, the **Yugoslav Tribunal** is responsible for prosecuting anyone who has violated **international humanitarian law**, as outlined in its **statute**. The tribunal also

---

<sup>1</sup> Al-Midani, Muhammad Amin **Field of Tolerance** Publications of the Ramallah Center for Studies and Human Rights Issue 52 2016, page 110.

emphasized that even if the individuals who committed these crimes hold **high-ranking positions**, this does not exempt them from **criminal responsibility**..<sup>1</sup>

The researcher believes that the courts which preceded the **current International Criminal Court** were temporary tribunals created for specific purposes, such as addressing particular crimes that occurred in certain regions, as in **Yugoslavia** and **Rwanda**, as well as the **Tokyo** and **Nuremberg** tribunals. All of these courts had one common goal: to prosecute criminals who committed **genocide**, **crimes against humanity**, or **war crimes**. These tribunals were specifically competent to handle the **crime of genocide**, and they addressed this crime by issuing judgments against individuals convicted of **genocide**.

These courts emphasized several principles during their consideration of these cases, such as **individual criminal responsibility**, meaning that the courts focused on prosecuting **natural persons** rather than states. They even prosecuted **heads of state** if it was determined that they were involved in the commission of these crimes—such as having knowledge of the ongoing conflict and failing to take the necessary measures to stop the violence, among other criteria.

However, the researcher finds that the **International Criminal Court** today is better than the previous tribunals, as it is a **permanent court** that addresses **genocide** and does not limit its jurisdiction to just one crime. The **ICC** remains active and is empowered to continue its work indefinitely.

### 2.2.2 Subsection Two: Addressing the Crime of Genocide at the Level of the International Criminal Court

The **International Criminal Court** (ICC) serves as a judicial body protecting **human rights** and **freedoms** from serious crimes, such as **genocide**. It does this through **deterrence**, both specific to individuals and general to those planning to commit **genocide**. The Court prosecutes those responsible for these crimes and provides an

---

International Criminal Tribunal for the Former Yugoslavia and International <sup>1</sup> Criminal Tribunal for Rwanda, <https://ar.guide-humanitarian-law.org/content/article/5/lmhkm-ljnyy-ldwly-lywgslyfy-lsbq-wlmhkm-ljnyy-ldwly-lrwnd/>

opportunity for victims and their families to achieve **justice** by holding perpetrators accountable. This is especially important because **genocide** is one of the most heinous crimes that affects the **international community**, threatening the very existence of international relations.

In order to eliminate and reduce this crime, the Court was established with the competence to prosecute **natural persons** who have committed the crime of **genocide**. The ICC does not only impose punishment on those who commit genocide, but also works on **preventing** and **limiting** the occurrence of such crimes. Since **genocide** is a collective crime, it is not enough to simply impose appropriate penalties. There must also be preventive measures put in place to stop its occurrence.

When the ICC starts the process of prosecuting individuals charged with the crime of **genocide**, it looks at whether the **elements** of the crime have been met, specifically the **material** and **mental** elements. As previously mentioned, the **material element** includes causing **physical harm** to a group, subjecting a group to **inhumane living conditions** that gradually lead to their destruction, either totally or partially, or using substances or medications that cause **infertility**. The crime can also be committed by transferring children from one group to another.

The Court also examines the **mental element**, which involves the **knowledge** and **intent** to commit the act, as well as the **specific intent** to destroy the group, either wholly or partially. Additionally, the Court considers the **international element**, which involves the involvement of **state actors** or **high-ranking officials** in the commission of the crime, or if individuals acting under the direction of a **head of state** were involved in carrying out the crime..<sup>1</sup>

Regarding the jurisdiction of the **International Criminal Court (ICC)**, an important principle related to the prosecution of **genocide** has been established due to its classification as a crime that poses a significant threat to the **international community**. This principle is the **universal jurisdiction principle**, which stipulates that if a

---

<sup>1</sup> Belkheir, Khouil, **The Role of the International Criminal Court in Combating the Crime of Genocide** , Journal of History and Science, Volume and Issue One, 2017, p. 213

**genocidal crime** is committed against citizens or within the territory of any state, that state has the right to approach the **ICC** and file a lawsuit. This is because **genocide** is a crime that affects humanity as a whole and constitutes a danger to all of mankind.

Moreover, the principle requires that other states cooperate with the **ICC** in aiding the **extradition** of criminals, especially when the court is certain that the individuals have committed **genocide** or are suspected of doing so. States cannot justify their refusal to cooperate by citing **domestic laws** or claiming that the accused have **immunity**. Furthermore, this principle results in the **abolition of amnesty systems**, meaning that if the **ICC** issues a penalty for an individual, no other head of state can grant amnesty for this penalty.<sup>1</sup>

Before approaching the **International Criminal Court (ICC)** as the judicial body responsible for prosecuting individuals for **genocide**, there is a key prerequisite: **national courts** must not have expressed a desire to prosecute. This means that the national courts should either be **unable** to prosecute or have explicitly shown a lack of interest in pursuing the case. The **primary jurisdiction** belongs to the **national courts**, so if they choose not to proceed with prosecution, the jurisdiction shifts to the international courts.

Once the case is brought before the **ICC**, the court will begin to pursue the accused. The **ICC** may cooperate with national **police** forces and can issue **arrest warrants**. After starting the trial and determining that the accused has committed the crime of **genocide**, the **ICC** can issue an appropriate penalty. According to **Article 77** of the **ICC Statute**, penalties may include **imprisonment** for a maximum of **30 years**, the imposition of **fines**, or the **forfeiture of proceeds** or assets derived from the crime. In some cases, **property** acquired through the commission of the crime may also be seized..<sup>2</sup>

---

<sup>1</sup> Al-Maliki Rani Abdul Rahman, **The Role of the International Criminal Court in Addressing the Crime of Genocide** Middle East Journal for Scientific Publishing Volume Four Issue Three 2021 Page 139.

<sup>2</sup> The website of the Strategic Forum for Public Policies and Development Studies: An article **entitled The crime of genocide and violation of international laws**

At the outset, there is a distinction between the **International Court of Justice (ICJ)** and the **International Criminal Court (ICC)**. The ICJ deals with cases where the parties involved are **states**. In contrast, the ICC prosecutes **individuals** who have committed crimes within its jurisdiction, such as **war crimes, genocide, crimes against humanity, and aggression**. Therefore, in the **ICJ**, the parties to the case are **states**, whereas in the **ICC**, the parties are **individuals**, not states.

Regarding the **Palestinian issue** and what happened in **Gaza**, **South Africa** approached the **International Court of Justice** as a **state** filing a complaint against another state, namely **Israel**. On the other hand, the **International Criminal Court** deals with **individuals** who have committed crimes falling within its jurisdiction, such as **genocide, war crimes, and crimes against humanity**, with the parties being **individuals** rather than states. <sup>1</sup>

By applying the principles of **genocide** to what happened in **Gaza** on **October 7, 2024**, we see that the **elements of genocide** are clearly met. This is what led **South Africa** to approach the **international courts** and file a lawsuit related to **genocide**. Israel was conducting attacks against the Palestinian people, specifically against the Palestinian groups within the **Gaza Strip**, through **deliberate killings** of Palestinian groups. This resulted in **physical harm** to these groups, leading to their **destruction**, either **totally or partially**. Additionally, Palestinians were placed under **inhumane living conditions**, which further contributed to their **destruction**, either fully or partially. This

---

**Gaza as a model** Article published April 1, 2024. And stay posted at the following link: <https://draya-eg.org/2024/04/01/%D8%AC%D8%B1%D9%8A%D9%85%D8%A9D8%A7>

<sup>1</sup> Misbar website, an article entitled: **What is the difference between the International Criminal Court and the International Court of Justice** : <https://www.misbar.com/qna/2024/08/04/%D9%85%D8%A7-%D9%87%D9%88-%D8%A7%D9%84%D9%81%D8%B1%D9%82-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D9%85%D8%A7%D9%84%D8%B9%D8%AF%D9%84-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A%D8%A9>

falls within the **elements** of the crime of **genocide**, as stated by **South Africa** before the **International Court of Justice**.

Moreover, Israel was accused of **killing numerous children and infants** in **hospitals** and **refugee shelters**, using **forced displacement** as a tactic, and destroying **schools** and **homes**. The Israeli army also prevented the delivery of **humanitarian aid** to the population. All of these actions fall under the **elements** of the crime of **genocide**. South Africa emphasized the necessity for **states** to cooperate with the court in **extraditing** the criminals responsible for committing these atrocities, and the importance of taking rapid action to **prevent** the escalation of this crime and to **stop it** as soon as possible<sup>1</sup>.

The **International Court of Justice (ICJ)** issued a decision calling for an immediate cessation of the military attacks on **Gaza**, which included a directive for **Israel** to halt its military operations. The decision also obligated Israel to allow investigation or fact-finding committees regarding the charges raised against it, including **genocide**. However, Israel ignored this decision, continuing its attacks on Gaza despite the court's directive.

While the ICJ ordered Israel to stop actions that could lead to **inhumane living conditions** that would result in the **physical destruction** of the Gaza Strip, either fully or partially, it became evident that the **ICJ** was unable to enforce its rulings. This was clear when the court issued decisions to halt Israel's attacks on Gaza, yet Israel paid no heed to them and continued its military strikes, particularly in **Rafah**. Moreover, the court did not escalate the matter to the **Security Council** to take the necessary legal

---

<sup>1</sup> Jad Huff, Leela, Ravi Catherine, Hinduson James, Patel Wanessa, Article entitled **The Case of the Gaza Genocide Comprehensive View South Africa's legal battle against Israel at the International Court of Justice** Article published January 10, 2024 The article is published at:  
<https://law4palestine.org/ar/%D9%82%D8%B6%D9%8A%D8%A9-%D8%A7%D9%84%D8%>

measures. Consequently, the court's decisions remained ineffective, as Israel failed to comply with the rulings. .<sup>1</sup>

### **2.2.3 Subsection three : South Africa's Case in Confronting the Crime of Genocide Before the International Court of Justice and Israel's Arguments Before the Court:**

At the outset, there is a distinction between the International Court of Justice (ICJ) and the International Criminal Court (ICC). The ICJ handles cases where the parties are states. In the case of Palestine and what happened in the Gaza Strip, South Africa approached the ICJ as a state filing a lawsuit against another state, which is Israel. On the other hand, the ICC prosecutes individuals who have committed crimes under its jurisdiction, such as war crimes, genocide, crimes against humanity, and the crime of aggression. Therefore, the parties in ICC proceedings are individuals, not states.

By applying the provisions related to genocide to the events that occurred in Gaza on October 7, 2024, it becomes evident that the crime of genocide is established. This prompted South Africa to approach international courts and file a lawsuit related to genocide. Israel was launching attacks on the Palestinian people, specifically targeting Palestinian communities in the Gaza Strip. These actions included the intentional killing of Palestinian groups in Gaza, causing bodily harm that led to their destruction in whole or in part, and placing Palestinians under dire living conditions that resulted in their partial or total annihilation. All these acts fall within the elements of the crime of genocide. This was what South Africa presented before the ICJ.

Additionally, Israel killed many children and infants in hospitals and shelters, relied on forced displacement, destroyed schools and homes, and prevented humanitarian aid from reaching the victims. All of these acts fall under the components of genocide.

---

<sup>1</sup> BBC website An article titled **The decision of the International Court of Justice to stop the Rafah operation does not restrict Israel, but it must give priority to the humanitarian situation** The date of publication of the article is May 25, 2024 and the site is published at the following link:  
<https://www.bbc.com/arabic/articles/cjmm0x7eexyo>

South Africa also emphasized the obligation of states to assist the court in surrendering perpetrators of these crimes and to take steps to prevent the escalation of this crime and stop it immediately.

The court noted that Israel evaded responsibility for its actions in the Gaza Strip and rejected the charges brought against it by the ICJ. Israel claimed that it was trying to resolve the food crisis and argued that Hamas had colluded with South Africa in filing the lawsuit. South Africa requested the court to issue urgent provisional measures and called for legal proceedings to be initiated against Israel for committing the crime of genocide.

The researcher believes that the crime of genocide was committed in Gaza and that all its elements have been fulfilled. However, unfortunately, international law is weak in terms of enforcement. Despite South Africa filing a case against Israel before the International Court of Justice (ICJ) and presenting evidence of Israel committing the crime of genocide, the court did not even issue a decision to cease fire, despite the massacres that have been committed and are still being committed in the Gaza Strip. Moreover, the legal proceedings before the ICJ are extremely slow, which is inconsistent with the fact that international crimes are being committed in Gaza. Trials should be conducted as quickly as possible to issue decisions to stop this war, as delayed justice is considered a form of injustice.

According to analysis by human rights experts on the position of the ICJ regarding the genocide crimes committed in Gaza, Israa Ahmed, a former member of a Human Rights Center and a practicing lawyer in Palestine, sees that this delay is due to the weakness of international law in terms of enforcement. This is because Israel enjoys U.S. support and is seen as America's favored child. Therefore, any measures taken by any court, whether the ICJ or the ICC, are met with rejection by the United States and other major powers. As Palestinians, we are waiting for countries to stand by us against the United States and boycott it by exposing the crimes of the occupation to all peoples so that public pressure can be exerted on their leaders, since their governments support the occupation. This is one of the flaws of international law regarding its implementation.

As for the position of the International Criminal Court (ICC) regarding the Palestinian issue, especially what happened in Gaza, it is worth mentioning that the ICC opened an investigation in 2019 into what Israel committed in the Gaza Strip, but no decision has been issued regarding Gaza or the Palestinian cause. Even after the events of October 7, no decision was made, which clearly proves the weakness of international law in terms of enforcement.

The researcher believes that, according to the decisions of the International Court of Justice (ICJ) and the International Criminal Court (ICC), any state that violates the law is obligated to provide compensation to the states that have suffered damage. Therefore, applying this principle to the actions committed by Israel in the Gaza Strip, it is obliged to restore the situation to what it was before—this includes the reconstruction of Gaza. Furthermore, since many families have been displaced, the occupying state is also obligated to reunite those families. Additionally, financial compensation must be provided to children, civilians, and women who lost their family members during the war or suffered injuries. Israel is also required to offer an apology after providing financial support to help rebuild Gaza. This obligation is in accordance with Article 77 of the Rome Statute of the ICC, in addition to the criminal responsibility of the perpetrators, which includes imprisonment and the imposition of fines.

South Africa based its case before the International Court of Justice on several grounds accusing Israel of committing the crime of genocide. These were based on the large-scale destruction in Gaza and the brutal killings of Palestinians, which resulted in physical and psychological harm. The Israeli army intentionally created conditions that aimed to cause complete physical destruction of Palestinians. This was evident from several statements made by Israeli officials about Gaza, in which they expressed their intention to commit genocide against the Palestinian people. South Africa also explained to the Court that Israel deliberately bombed areas where civilians were taking shelter, such as hospitals, refugee centers, and UNRWA facilities, and blocked humanitarian aid from reaching Palestinians, which created harsh living conditions and deprived them of basic services.

In 2022, the International Court of Justice issued an advisory opinion. An advisory opinion is a legal consultation usually issued by the ICJ and presented to the United

Nations. In this advisory opinion regarding the Palestinian issue, the ICJ clarified that the actions of the occupying authorities constitute violations of international law, a clear breach of international law, and an infringement of Palestinian rights. The court also called on Israel, last year, to cease its unlawful practices against the Palestinians.

South Africa based its case before the International Court of Justice (ICJ) on the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide, specifically Article 9 of the Convention. This article states that disputes concerning the interpretation, application, or fulfillment of the Genocide Convention shall be submitted to the ICJ for adjudication, thereby allowing any state party involved in a dispute to bring a case to hold another state accountable for the crime of genocide.

South Africa also relied on a previous ICJ ruling which confirmed that any member state with an interest in halting genocide may bring a case before the Court, even if it is not directly involved in the conflict. Furthermore, South Africa grounded its claims on Article 2 of the Genocide Convention, which defines the crime of genocide. The South African government argued that the elements of the crime were present in the events that took place in Gaza.

The legal proceedings began with South Africa reiterating the contents of its formal complaint. The country then proceeded to prove the occurrence of genocide by demonstrating that Israel's assault on Gaza constituted a systematic attack against a group—namely, the Palestinian people—with the intent to destroy them in whole or in part. South Africa submitted statistics collected by UN agencies as evidence to the Court to support its claims of genocide.

South Africa then moved to demonstrate the fulfillment of the elements in Article 2 of the Genocide Convention. It provided proof that Israel had committed mass killings of Palestinians, with death tolls reaching thousands of civilians, including children, women, and the elderly. It also demonstrated the physical and psychological harm inflicted on the Palestinian population (Article 2(b)), and the imposition of life conditions intended to destroy them, such as forced displacement from north to south Gaza and the denial of humanitarian aid (Article 2(c)).

In response, Israel claimed that it had acted in self-defense, but it failed to convincingly prove that its actions met the criteria of lawful self-defense—especially given the large-scale killing of innocent civilians. Israel's legal team also tried to present photos to argue that Hamas had used hospitals for military purposes, leading to civilian casualties. However, it failed to substantiate this claim. The Israeli representatives even attempted to shift the blame for genocide onto Hamas but were unable to provide evidence for this accusation.

South Africa requested the Court to order an immediate ceasefire, relying on Article 41 of the ICJ Statute, which allows the Court to impose provisional measures to prevent further harm while a case is pending. South Africa also requested the Court to compel Israel to preserve all evidence and refrain from destroying it.

Importantly, South Africa succeeded in convincing the ICJ that it had jurisdiction to hear the case—an important and positive step. However, it's crucial to note that the ICJ does not have enforcement powers for its rulings. Therefore, the party in whose favor a judgment is issued must turn to the United Nations Security Council to enforce it. Unfortunately, these decisions can be blocked by veto power, which the United States has exercised on multiple occasions.

The arguments presented by Israel in an attempt to evade its responsibility for the war centered around the claim of **the right to self-defense**. However, this justification does **not apply** to the situation in the Gaza Strip. What Israel committed in Gaza does **not fall under the legal definition of self-defense**, but rather under **war crimes, crimes against humanity, and genocide** against the Palestinian people.

Thousands of Palestinians were killed, displaced, and injured—among them **children, women, and the elderly**—which clearly falls outside the scope of legitimate self-defense. According to international law, self-defense is permissible only when **one state is attacked by another state** in a way that poses a **real and immediate threat** to its **national security** or **existence**.

This is **not the case** in Gaza, especially considering that the **resistance in Gaza does not constitute a state**, and the Israeli attacks were **primarily directed at civilians**,

not military targets. Therefore, these actions cannot be justified under the pretense of self-defense.

Additionally, an important point raised by **Dr. Raed Abu Badwiya** emphasizes that **even if** Israel had the right to self-defense, it **does not grant** the right to commit **crimes against humanity or genocide**, especially when **the majority of the targets were civilian**, not military. Hence, the actions taken by Israel, including **bombing homes, hospitals, and refugee shelters**, go far beyond what is legally permissible under the concept of self-defense.

### 2.3 Section Three: The Crime of Genocide in the Palestinian Context

Israel has committed numerous crimes in **Palestine**, particularly in **Gaza**, including **genocide**. Referring to the elements of the crime of **genocide** as outlined in **Article 6** of the **International Criminal Court (ICC) Statute**, it is evident that these elements are fulfilled. The actions Israel has taken in **Gaza** constitute both the **material** and **mental** elements of the crime, as well as the **specific intent**, which is the destruction of Palestinian groups and the infliction of harm upon them.

The actions carried out by Israel in **Gaza** align with the material elements specified in **Articles 2 and 3** of the **Genocide Convention**. Israel carried out the **killing** of members of Palestinian groups and inflicted **physical** and **psychological harm** upon them. These actions included **deliberate bombing** of civilians in their homes, as well as targeting **medical teams** and **refugee shelters**. Additionally, Israel subjected Palestinians to harsh living conditions by **starving** them and preventing the delivery of humanitarian aid, with the siege on **Gaza** lasting over a year. This also violates **Fourth Geneva Convention**, specifically **Article 55**, which mandates that the occupying power must provide necessary **food** and **medical assistance** to the occupied population.<sup>1</sup>

The researcher has divided this section into two subsections as follows:

---

<sup>1</sup> Al-Ayeb, Jamal, **Legal adaptation of the crime of genocide in the Gaza Strip after the Al-Aqsa flood operation 10-7-2023**, Algerian Journal of Political Rights and Science, Volume VI, Issue One, 2024, page 1210.

## **Subsection 1: The Crime of Genocide in Rwanda and Bosnia and Herzegovina, and its Comparison to the Events in Gaza.**

## **Subsection 2: The Jurisdiction of the International Criminal Court in Palestine.**

### **2.3.1 Subsection One: The Crime of Genocide in Rwanda and Bosnia and Herzegovina, and its Comparison to the Events in Gaza.**

Regarding the **genocide** committed in **Bosnia and Herzegovina**, the **International Criminal Tribunal for the former Yugoslavia (ICTY)** addressed and dealt with this crime. The court, in its consideration of the Bosnia and Herzegovina case, confirmed that the Serbian security apparatus was involved in the **genocide** committed against civilians. The court issued its judgment and convicted several Serbian officials of **genocide** in Bosnia and Herzegovina, despite the slow pace of the court's work, which took several years to reach a decision.

The court's ruling included the conviction of the head of the Serbian security apparatus, known as **Jovica**, along with his aides **Franjo** and **Simatović**. The court clarified that these criminals had a clear criminal intent, which was to permanently destroy non-Serb groups in Bosnia and Herzegovina. The court held them accountable for the crimes committed by Serbian forces, and they were sentenced to **15 years in prison**.

A **UN report** clarified that the crimes committed in Bosnia and Herzegovina led to the killing of more than **300,000 people**.<sup>1</sup>

The researcher believes that the **International Criminal Tribunal for the former Yugoslavia (ICTY)** was positive in addressing the **crime of genocide**, as it fell under

---

<sup>1</sup> Al Jazeera website Article entitled: **Bosnian academic After the recent international criminal ruling, a boy can no longer absolve herself of the Bosnian genocide**, the article was published on 8/6/2023 and the article is published on the following link:

<https://www.aljazeera.net/politics/2023/6/8/%D8%A3%D9%83%D8%A7%D8%AF%D9%8A%D9%85%D9%8A-%D8%A8%D9%88%D8%B3%D9%86%D9%8A->

its jurisdiction. However, there are some issues to highlight, particularly the **slow pace** of the tribunal in handling the **genocide** case in Bosnia and Herzegovina. The researcher argues that **delayed justice** is a form of **injustice**, noting that it took the court many years to issue its ruling. The researcher also points out that the **15-year sentence** handed to those responsible for the **genocide** is not **deterrent enough**, especially since these individuals caused the deaths of **thousands of civilians**. The researcher believes the sentence should have been **life imprisonment** or even **hard labor** in order to be a **true deterrent** against committing such crimes again.

Regarding the **genocide** in **Rwanda**, the researcher compares it to the **Bosnian genocide**, describing it as **more horrific** and **gruesome**, with the death toll reaching **800,000** people and approximately **250,000 women** being raped. These crimes were committed against the **Tutsi** community in **1994**, and the **infrastructure of Rwanda** was completely destroyed. Following these events, **genocide** was perpetrated in its **most brutal form**. The **International Criminal Tribunal for Rwanda (ICTR)** was established to begin prosecution, and **120,000 people** were arrested for allegedly participating in the **genocide**. The court convicted around **61 individuals**, and the sentences differed from those in the **Bosnian case**. The court sentenced these perpetrators to **life imprisonment** for their involvement in the **genocide**.

In contrast, the court **acquitted 14 individuals** and referred **10 others** to **national courts**. The ICTR worked diligently, listening to about **3,000 witnesses**, and in the end, it convicted the **former mayor of Rwanda, Jean-Paul**, on **nine charges** including **genocide, crimes against humanity, rape, and sexual assault**, sentencing him to **life imprisonment**. The national courts handled cases of individuals involved in **genocide planning** and **rape**, prosecuting about **10,000 suspects** linked to the genocide.

What distinguished the **ICTR** was its establishment of systems to prevent impunity, ensuring that a significant number of suspects were brought to court for investigation. The court took action if states were unwilling or unable to prosecute those accused of **genocide**, asserting its jurisdiction to handle these cases.

Additionally, the **ICTR** developed an early warning system regarding the risk of **genocide**. The **Special Advisor** to the court collects information related to potential **genocide**, and if signs emerge, the court can intervene quickly, potentially using

military force and coordinating with other countries to stop the crime before it escalates..<sup>1</sup>

The researcher believes that the **International Criminal Tribunal for Rwanda (ICTR)**, when compared to the **International Criminal Tribunal for the former Yugoslavia (ICTY)**, was more diligent in its work. The **ICTR** heard testimony from approximately **3,000 witnesses**, and the sentences it handed down were more **deterrent** compared to those in the **ICTY**. The **ICTR** sentenced **61 individuals to life imprisonment**, while the **ICTY** issued **15-year** sentences for those involved in the genocide in **Bosnia and Herzegovina**. The researcher argues that such a sentence is not sufficiently **deterrent**. The **ICTR** also worked more proactively, gathering a large number of **genocide suspects**, regardless of their number, and this demonstrates the seriousness of the court's efforts to hold all involved in **genocide** accountable.

Furthermore, a significant accomplishment of the **ICTR** was the establishment of an **early warning system**. The court assigned a **special advisor** to alert the court and the international community whenever there were signs of potential **genocide** planning. This proactive approach made the **ICTR** more effective than the **ICTY**, according to the researcher.

Regarding the **International Criminal Court (ICC)** and its handling of **genocide, crimes against humanity, war crimes, and aggression** committed by **Israel in Gaza**, the researcher notes that the court's response has been inadequate. Several countries, including **South Africa, Bangladesh, Comoros, Djibouti, and Bolivia**, along with numerous **human rights organizations**, have filed complaints against Israel. These complaints were based on **Israel's crimes committed within the geographic boundaries of a member state, Palestine**, which is a member of the ICC. This should have enabled the ICC to proceed with prosecution, but unfortunately, the ICC has only

---

<sup>1</sup> UNRWA website Article entitled: **1994 Genocide Outreach Programme against the Tutsi in Rwanda and the United Nations** Date of visit 15/12/2024 The article is published at the following link:

<https://www.un.org/ar/preventgenocide/rwanda/backgrounders.shtml>

issued **arrest warrants** for **Netanyahu** without taking effective action to **prosecute Israeli war criminals**.

The researcher argues that the **United States** has acted as a significant barrier to the **ICC's** ability to effectively prosecute **Israeli war criminals**, and despite numerous calls from several countries and organizations for the **ICC** to take action, the court has failed to follow through with meaningful steps. Even though **over a year** has passed since the **October 7th attacks** in Gaza, there have been no significant actions taken by the **ICC** regarding the **Palestinian issue**. This reflects the **failure of the international legal system** to deliver justice in this case.<sup>1</sup>

The state of **South Africa** before the **International Court of Justice (ICJ)** based its accusations against **Israel** of committing **genocide** on several grounds. These included the extensive **destruction** in **Gaza**, along with the **brutal killing** of **Palestinians** and the resulting **physical** and **psychological harm**. South Africa pointed out that the **Israeli military** deliberately created conditions aimed at the **complete physical destruction** of **Palestinians**. This intent was made clear through various statements from Israeli officials responsible for **Gaza**, in which they openly expressed their intention to commit **genocide** against the Palestinian people.

Moreover, **South Africa** highlighted to the **ICJ** that **Israel** deliberately targeted civilian shelters, such as **hospitals**, **refugee centers**, and **UNRWA facilities**, and obstructed the delivery of aid to **Palestinians**, leading to the creation of **harsh living conditions**

---

<sup>1</sup> Al Jazeera website: An article entitled **Practical steps to prosecute Israel for its crimes in Gaza** The article was published on 27/11/2023 and the article is published at the following link:

<https://www.aljazeera.net/news/2023/11/27/%D8%A7%D9%84%D8%AE%D8%B7%D9%88%D8%A7%D8%AA-%D8%A7%D9%84%D8%B9%D9%85%D9%84%D9%8A%D8%A9-%D9>

and the denial of **basic services**. These actions were used by **South Africa** to substantiate its claim that **Israel's actions amounted to genocide**.<sup>1</sup>

Regarding the events that took place in **Gaza**, where a complaint was submitted before the **International Criminal Court (ICC)** and a lawsuit was filed before the **International Court of Justice (ICJ)**, there is no overlap between the two courts. This is because **ICJ** deals with cases between **states**, while **ICC** is responsible for prosecuting **war criminals** who are responsible for committing **genocide, crimes against humanity**, and other serious crimes, including those in **Gaza**. Therefore, even if rulings are issued, the **ICJ** would issue a judgment against a **state**, while the **ICC** would issue a ruling on **individuals** who have committed these crimes.

### **2.3.2 Subsection Two: The Jurisdiction of the International Criminal Court in Palestine**

Initially, it is important to note a critical point regarding Palestine's position before international courts, specifically the **International Criminal Court (ICC)**, and whether the ICC can exercise its jurisdiction and hold Israel accountable for the crimes committed in Palestine, especially in **Gaza** after the events of **October 7th**.

To answer this question, we must highlight a significant step taken by Palestine in seeking accountability for Israel's crimes. This step is the accession of Palestine to the **ICC** and its acceptance of the court's jurisdiction by ratifying the court's statute in **2015**. As a result, the ICC is now able to conduct investigations if there is evidence of violations of its statute.

A positive step was taken by the **ICC Prosecutor** in **2019**, when a study was conducted that concluded war crimes were being committed, specifically by Israel, in **Gaza**, the **West Bank**, and **Jerusalem**. This was an important point and a positive step by the

---

<sup>1</sup> BBC website Article entitled: **South Africa vs. Israel before the International Court of Justice What to wait for in the first hearing**, the article was published January 10, 2024 and the article is published at the following link: <https://www.bbc.com/arabic/articles/c72y77n37w0o>.

court. The court clarified that its regional jurisdiction concerning the Palestinian issue includes the **West Bank, Gaza, and Jerusalem**, which works in favor of the Palestinians. Therefore, the areas occupied by Israel since **1967** fall under the ICC's jurisdiction.

However, on the downside, there is a criticism of the ICC's performance due to political considerations. Many legal experts have pointed out that the court has been slow and somewhat limited in prosecuting Israelis for the crimes they have committed, especially given the strong support from the **United States** for Israel, which has had a significant impact on the court's effectiveness in holding Israel accountable for its actions. <sup>1</sup>

As previously mentioned, the International Criminal Court (ICC) is responsible for prosecuting crimes of genocide, war crimes, crimes against humanity, and crimes of aggression. Therefore, from the perspective of the researcher, the court should pursue and hold Israeli leaders accountable for the severe violations they committed in Gaza, especially after the events of **October 7th**.

The court sent a special mission tasked with fact-finding, and after conducting their investigation, the mission prepared a report which was sent to the court. According to the findings of the report, it was confirmed that Israel had committed war crimes, crimes against humanity, and acts of genocide. Therefore, it is imperative that the Israeli leaders who perpetrated these crimes are held accountable and prosecuted. <sup>2</sup>

In analyzing the events that took place in Gaza, especially after UNICEF released a report stating that around 600,000 children in Gaza are suffering from hunger and a lack of food, as well as the bombing of hospitals and civilian refugee shelters and the prevention of aid and food from reaching civilians, it is evident that many deaths

---

<sup>1</sup> Dridi, Wafa, **The Case of Palestine before the International Criminal Court, A Reading of the Decision of Pre-Trial Chamber I**, Journal of Humanities at Larbi Ben M'hidi University, Volume Nine, Issue Two, 2022, page 749..

<sup>2</sup> Abdeen, Essam, **Temporal Jurisdiction of the International Criminal Court in the Palestinian Case**, Journal of Palestine Studies, Vol. 101, 2015, p. 78.

occurred among the residents of Gaza. All of these actions serve as evidence of Israel's intention to starve the Palestinian population.

Furthermore, Israel imposed various measures that led to infertility among Palestinian mothers. The occupation forces restricted the conditions during childbirth, subjecting women to extremely harsh living conditions, which affected their ability to conceive. This, in turn, fulfills the material element of genocide.

Regarding the mental element of the crime, which requires specific intent, this intent can be deduced from the actions Israel took in Gaza. The specific intent can be inferred from statements made by Israeli officials. For instance, the Israeli Minister of Defense described Palestinians on **October 9, 2023**, as "killing human animals," and also stated, "Gaza will never return to what it was, and we will remove everything." Additionally, statements by Minister of Heritage Amichai Eliyahu calling for the use of nuclear bombs in Gaza further corroborate the specific intent for genocide.

These statements by Israeli officials, alongside the deliberate targeting of residential areas, schools, ambulances, and hospitals by the Israeli military—including the bombing of the Baptist Hospital in Gaza—serve as key evidence of intent and support the case for genocide. <sup>1</sup>

Regarding the actions taken by the International Criminal Court (ICC) regarding the events in Gaza after October 7th, the ICC's Prosecutor issued arrest warrants against both Netanyahu and the Israeli Minister of Defense, accusing them of committing genocide in Gaza, along with crimes against humanity in the region. Additionally, arrest warrants were issued for leaders of Hamas, including Muhammad Deif and Yehya Sinwar. These arrest warrants were based on the charges that Netanyahu, the Minister of Defense, and Hamas leaders had committed genocide, crimes against humanity, and war crimes.

---

<sup>1</sup> Previous reference, Al-Ayeb, Jamal, **Legal adaptation of the crime of genocide in the Gaza Strip after the Al-Aqsa flood operation 10-7-2023**, Algerian field of rights and political science, volume tucked by issue one 2024, page 1210.

The ICC also clarified that there was a clear violation of international humanitarian law and human rights agreements, specifically noting that Israel employed a policy of starvation against civilians in Gaza, which is prohibited under international law. On November 7, 2023, South Africa, along with the Comoros and Bangladesh, addressed the court concerning the Gaza situation. The Prosecutor initiated an investigation into the events in Gaza as a result. Chile and Mexico also approached the Prosecutor to highlight the Gaza issue.

The Prosecutor indicated that Israel, represented by Netanyahu and the Minister of Defense, had committed war crimes by violating the Geneva Conventions and international conventions, in addition to committing crimes against humanity. These actions were said to violate the Rome Statute, particularly Article 5, which addresses genocide. The prosecutor pointed out that Israel had used sexual violence and torture, as well as cruel treatment, in addition to assaulting prisoners. Furthermore, Israel's actions involved widespread and systematic attacks on a civilian population, utilizing methods of killing and genocide. <sup>1</sup>

By referring to the Genocide Convention and applying its definitions to the events in Gaza, especially since the elements of this crime are clearly outlined in the convention — "First, killing members of the group or causing serious bodily or mental harm to members of the group, or subjecting the group to conditions intended to destroy it, in whole or in part, or imposing measures to prevent births within the group, or transferring children of the group to another group" — it becomes evident that all of these elements were met in Gaza.

South Africa's legal case against Israel was based on these very elements, where it highlighted Israel's complete destruction of infrastructure in Gaza, including hospitals

---

<sup>1</sup> Al Jazeera website Wael Al-Masri, article entitled: **International Criminal Legal Reading in Karim Khan's Declaration Against Israel and Hamas** Article

published on 21/5/2024 The article is published at the following link:

<https://www.aljazeera.net/politics/2024/5/21/%D8%A7%D9%84%D8%AC%D9%86%D8%A7%D8%A6>

and refugee shelters filled with civilians, and the denial of aid, which subjected Palestinians to harsh living conditions. Moreover, the genocidal intent behind these actions was apparent through the speeches made by Israeli officials, who expressed a clear intent towards the genocidal elimination of Palestinians..<sup>1</sup>

In response to the lawsuit filed against it by South Africa, Israel argued that the allegations were false and that the sources used by South Africa were unreliable. Israel claimed that its actions in Gaza were in accordance with international law and its humanitarian obligations, and that it had made efforts to minimize harm to civilians. Israel requested that the court dismiss the case brought by South Africa. However, the court's response was that Israel must cease the fire, especially in the Rafah area. Despite this, Israel did not comply with the court's ruling.<sup>2</sup> .

The researcher believes that the International Criminal Court's issuance of arrest warrants for Netanyahu and the Israeli Minister of Defense is a positive step, as it indicates the start of an investigation. However, the researcher also notes that the court is moving slowly. The researcher argues that a more effective means should have been used by the court to bring Netanyahu and the Minister of Defense to trial and enforce the arrest warrants that were issued. To date, the court has not executed these arrest warrants, which reflects poorly on the court and portrays it as weak in execution. If the court had stronger enforcement mechanisms, it could have acted more decisively in apprehending Netanyahu and compelling him to face trial.

Furthermore, the researcher emphasizes that there must be cooperation from the international community to hand over the accused, especially since the international

---

<sup>1</sup> Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>2</sup> Article titled **Israel Responds to South Africa's Accusations at the International Court of Justice**, Article published May 16, 2024 The article is published at the following link: <https://www.alhurra.com/arabic-and-international/2024/05/16/%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84-%D8%AA%D8%B1%D8%A8-%8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A%D8%A9>

community and states are witnesses to the massacres, including the genocide committed in Gaza. This is clear and undeniable. Therefore, there must be tangible collaboration with the court to ensure the successful arrest and prosecution of this individual. Unfortunately, the researcher points out that both the court and the international community are influenced by political considerations, particularly the influence of the United States, as Israel is seen as a favored ally of America.

### **Conclusion:**

Genocide is an international crime that results in numerous victims and widespread destruction. Despite the provisions of international laws, treaties, and the Rome Statute of the International Criminal Court addressing this crime, it has not served as a deterrent for major powers from committing such crimes. This was evident in the actions of Israel in the Gaza Strip, where numerous crimes falling under the Rome Statute, including genocide, were committed. It is important to highlight that to stop the commission of genocide, if nations fail to prevent it, the perpetrators should be prosecuted even after the war ends. They must be held accountable and serve as an example for anyone contemplating committing such crimes. Therefore, even after agreements are made and the war in Gaza concludes, perpetrators should not escape punishment. Instead, their crimes must be exposed to the international community, and they should be prosecuted. Israel should be obligated to pay compensation for the reconstruction of Gaza and to compensate the families of civilians whose homes were destroyed and whose children were killed. Additionally, Israel should be responsible for the treatment of all the injuries resulting from the war.

### **Results:**

- The term **genocide** is defined in **Article 2** of the **1948 Convention on the Prevention and Punishment of the Crime of Genocide**.
- For a crime to be legally classified as **genocide**, **all of its elements** must be fulfilled.

- Genocide is considered one of the **gravest crimes** against the international community, as it constitutes a **clear and explicit violation of international law** and severely disrupts the social fabric.
- By referring to **previous cases of genocide** that were officially recognized by the international community, and comparing them to what occurred in **Gaza**, it is evident that **all the elements of genocide are met**.
- Based on the **definition of genocide** as outlined in the Genocide Convention, its **legal elements**, and the relevant **international laws**, the researcher concludes that **what took place in Gaza fulfills the criteria for genocide** and should be recognized as such.

### **Recommendations:**

- The researcher recommends the **formation of a specialized task force** to approach the **International Criminal Court (ICC)**, consisting of experts and professionals capable of presenting **clear and compelling evidence** regarding the events in the **Gaza Strip**.
- The researcher recommends that **Palestinians file a case with the ICC**, presenting the **legal facts and findings** gathered by the Palestinian investigative team following the events of **October 7**.
- The researcher also recommends that **scholars and legal experts examine previous rulings** against perpetrators of **genocide**, and analyze the **principles applied in issuing those verdicts**, assessing whether the **sentences were sufficient and served as a deterrent**.

## References

### Sources

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted and submitted for signature by a United Nations resolution on December 9, 1948.

Protocol I Additional to the Geneva Conventions of August 1949 relating to the Protection of Victims of International Armed Conflicts.

Rules of Procedure and Evidence adopted by the Assembly of States Parties to the Rome Statute of the International Criminal Court in New York from 3 to 10 September 2002.

Rome Statute of the International Criminal Court, adopted in Rome on July 17, 1998.

### Arabic References:

#### Books

Khalil Abdel Fattah , Al-Wreikat: Murders before the International Criminal Court, Dar Al-Khaleej for Publishing and Distribution, Amman, 2016.

Abbas Hashem, Al-Saadi: The Criminal Responsibility of the Individual for International Crime, University Press, Egypt, 2001 .

Rateeb ,Muammar: The Evolution of the Concept of Genocide within the Scope of the International Criminal Court, Dar Al-Manhal for Publishing and Distribution, Amman, 2016.

Obaid, Issa: The International Court of Justice and its Role in Developing the Rules of International Criminal Law, Dar Al-Manhal for Publishing and Distribution, Amman, 2019.

Omar, Yahyaoui: The Law of International Responsibility, Second Edition, Dar Houma for Printing, Publishing and Distribution, Algeria, 2010.

## Theses

Joud Adnan, Duhailiya: The Crime of Genocide in International Law: An Analytical Study, Master's Thesis, An-Najah National University, Faculty of Graduate Studies, Nablus, 2021.

Mabkhout , Belkacem: International Criminal Responsibility for the Crime of Genocide, Master's Thesis, Faculty of Law and Political Science, University of Ziane Ashour, Djelfa, 2019.

Ziad Ahmed Mohammed, Al-Abbadi: The Role of Special International Criminal Tribunals in Determining the Crime of Genocide and Punishing it, Master's Thesis, Middle East University, Amman, 2016.

Aouina, Samira: The Crime of Genocide in International Jurisprudence, Master's Thesis, Hadj Khader University, Faculty of Graduate Studies, Algeria, 2013.

Munad ,Uhud: Crimes of Armed Conflicts against Civilians and Protection Mechanisms, Master's Thesis, Youssef Bin Khedda University, 2012.

Hani Adel, Awad: Personal Criminal Responsibility of the Perpetrators of War Crimes (Jenin Camp and the Old City of Nablus as a Model), Master's Thesis, An-Najah National University, Nablus, 2007.

Walid ,Baldahan: The crime of genocide and its follow-up mechanisms under international criminal law, Master's thesis, Larbi Ben M'hidi University, Oum El Bouaghi – Algeria, 2018.

Idris, dear Adam Mohamed, The crime of genocide in Sudanese law and international conventions and covenants, Master's thesis at Al-Neelain University in Sudan 2017.

Al-Abadi, Ziad Ahmed Mohamed, The Role of Special International Criminal Tribunals in Determining the Crime of Genocide, Master's Thesis at the Middle East University 2017.

Duhailiya, Joud Adnan, The Crime of Genocide in International Law: An Analytical Study, Master's Thesis at An-Najah National University at the Faculty of Graduate Studies 2021.

## Magazines

Hakim Al-Omari: The Impact of Palestine's Accession to the International Criminal Court on Holding Israel Accountable for its Crimes against the Palestinian People, *Journal of Legal and Political Sciences*, Vol. 10, No. 1, 2019.

Imad Omar Abu Al-Rub: Criminal State Responsibility (Israel as a Model), *Arab Journal of Political Science*, Volume 1, Issue 1, July 2009.

Al-Batrawi, Abdel Wahab Omar, On the crime of genocide is an international crime, *Journal of Legal and Economic Research*, Beni Suef University, Faculty of Law, Volume 15, Issue One, 2001.

Kazim, Shereen Muhammad, Genocide: A Sociological Study, University of Human Development and University of Baghdad, College of Arts, Volume and Issue 1, 2022.

Al-Saghir, Souissi Mohamed, The crime of genocide, its motives and forms, Kasdi Merbah University, Ouargla, Faculty of Law and Political Science, volume and number six, 2012.

Kariz, Muhammad Mustafa, The crime of genocide: A comparative study between the 1948 Genocide Convention and the Rome Statute of 1998, and the provisions of the Syrian Penal Code, *Tishreen University for Research and Scientific Studies*, Tishreen University, volume 43, issue three 2021.

. Rabie, Ziad Mohammed, The Crime of Genocide, *Journal of Legal Sciences at the University of Baghdad*, Volume 30, Issue 1, 2015.

Abed, Ammar Salim, Genocide from a Sociological Perspective: The Speicher Crime, University of Human Development and University of Baghdad, College of Arts, Volume and Issue One 2023.

Al-Azzawi, Zainab Muhammad Saleh, Anthropology of Genocide, *American-Arab Academy for Science and Technology*, Volume VIII, Issue 26, 2019.

Morsi, Mohamed Khalil, The Crime of Genocide in International Criminal Justice, *Journal of Security and Law*, Dubai Police Academy, Volume 11, Issue One, 2003.

Freiha, Hussein, The crime of genocide and international criminal justice, Kuwait University, Scientific Publishing Council, Volume 38, Second Issue 2014.

Al-Rahali, Nisreen, The Crime of Genocide in International Criminal Justice, *Mediterranean Journal for Legal and Judicial Studies*, Volume and Issue One, 2016.

Alqadi, Muhammad Abdel Malik, Illegal Israeli Acts against the State and Palestinian Persons , *Ibn Khaldun Journal for Studies and Research*, Ibn Al-Arabi Center for Culture and Publishing, 2022.

Rabie, Ziad Muhammad, The Crime of Genocide, Journal of Legal Sciences at the University of Baghdad, College of Law, Volume Thirty, Issue One, 2015.

Morsi, Mohamed Khalil, The Crime of Genocide in International Criminal Justice , Journal of Security and Law, Dubai Police Academy, Volume 11, Issue One, 2003.

Al-Rahali, Nisreen, The Crime of Genocide in International Criminal Justice , Mediterranean Journal for Legal and Judicial Studies, Volume and Issue One, 2016.

Makki, Omar, Elements of International Crimes: An Applied Study on the Law of International Crimes UAE, International Committee of the Red Cross 2022.

Craz Muhammad Mustafa, The crime of genocide, a comparative study between the Genocide Convention, the Rome Statute and the provisions of the Syrian Penal Code , Tishreen University Journal for Research and Scientific Studies, Volume 43, Issue Three 2021.

Guitari, Abdelkader, The Crime of Genocide in International Criminal Law, Journal of Historical and Social Studies at the University of Nouakchott, Vol. 36, 2019.

Sadara, Mohamed, Distinguishing between the crime of genocide and crimes against humanity in international law , Algerian Journal of Legal, Economic and Political Sciences, Faculty of Law Bank Canaan.

Al-Abadi, Osama Nazim Saadoun, International Legal Guarantees for the Protection of Humanitarian Groups under the Convention on the Prevention and Punishment of the Crime of Genocide, University of Basra, Journal of Literature of Basra, Volume and No. 48, 2001.

Al-Midani, Muhammad Amin, The International Criminal Tribunal for the Former Yugoslavia, An Overview of the Tribunal's System and the Conditions of its Establishment, The Arab Field for Human Rights, Arab Institute for Human Rights, Volume and No. 3, 1996.

Khalafallah, Sabrina, The contribution of the International Criminal Tribunal for the former Yugoslavia to the interpretation and development of international humanitarian law and its violations, Journal of Human Sciences, University of Constantinople, volume and issue 47, 2017.

Nasser, Montaser Dar, The Crime of Genocide in Palestine from the Perspective of International Law, Diwan of the Official Gazette, General Directorate of Legislation, Department of Studies and Research 2024.

Freja, Hussein, The Crime of Genocide and International Criminal Justice, Journal of Law at Kuwait University, Scientific Publishing Council, Volume 38, Second Issue 2014.

Al-Rahali, Nisreen, The Crime of Genocide in International Criminal Justice, Mediterranean Journal for Legal and Judicial Studies, Volume and Issue One, 2016.

Dridi, Wafa, The Case of Palestine before the International Criminal Court, a reading of the decision of Pre-Trial Chamber I, Journal of Humanities at Larbi Ben M'hidi University, Volume Nine, Issue Two 2022.

Abdeen, Essam, The temporal jurisdiction of the International Criminal Court in the Palestinian case, Journal of Palestine Studies, Vol. 101, 2015.

Sharif, Karim, Genocide and the Strategy for Confronting it from an Islamic Perspective, University of Human Development and University of Baghdad, College of Arts, Volume and Issue Two 2023.

Guitari, Abdelkader, The Crime of Genocide in International Criminal Law, Journal of Historical and Social Studies at the University of Nouakchott, Vol. 36 2019.

Skan, Ismail, The crime of genocide and the role of international criminal tribunals in addressing it, Journal of Law and Business at Hussein I University, volume and issue 82, 2022.

Dar Nasser, Montaser, The Crime of Genocide in Palestine from the Perspective of International Law, Diwan of the Official Gazette, General Directorate of Legislation, Department of Studies and Research, 2024.

Belkheir, Khouil, The Role of the International Criminal Court in Combating the Crime of Genocide, Journal of History Science Volume and Issue One 2017.

Al-Maliki Rani Abdel Rahman, The Role of the International Criminal Court in Addressing the Crime of Genocide Asharq Al-Awsat Journal for Scientific Publishing - Volume Four - Issue Three 2021.

Al-Ayeb, Jamal, Legal adaptation of the crime of genocide in the Gaza Strip after the Al-Aqsa flood operation 10-7-2023, Algerian Journal of Political Rights and Science, Volume VI, Issue One, 2024.

Al-Saghir, Souissi Mohamed, The crime of genocide, its motives and forms, Journal of Studies and Research at the University of Djelfa, Volume and Issue VII 2012.

### **Foreign references:**

Beckerman, G. (2011). Top Genocide Scholars Battle Over How To Characterize Israel's Actions. To see the whole article

Center for Constitutional Rights (2016). The Genocide of the Palestinian People: An International Law and Human Rights Perspective.

**Websites:**

BBC website, article entitled: Srebrenica massacre: What happened to Muslims in Bosnia, article published July 11, 2024 and article published at the following link: <https://www.bbc.com/arabic/articles/c6p2dk57xgxo>

Al-Jazeera website, Al-Hanafi, Mahmoud, the legal consequences of the assassination of Haniyeh, the date of publication of the article: 4-8-2024, and the article is published on the following link : <https://www.aljazeera.net/opinions/>

The site of the practical dictionary of humanitarian law is an article entitled Genocide, the date of the site visit is 30/10/2024 and the article is published at the following link: <https://ar.guide-humanitarian-law.org/content/article/5/bd-jm-yw/>

Nicolas Leila, Al-Alam TV website, an article entitled Do you know the difference between genocide and cleansing, which one speaks to the crimes of the occupation? Date of visit to the site 5/11/2024 and the site is published on the following link: <https://www.alalam.ir/news/6736403>

The Independent website, Abu Daqqa Mariam, an article entitled "Ethnic cleansing differs from genocide according to the intention of the perpetrator", the date of the site is visited 5/11/2024 and the article is published on the following link: <https://independentarabia.com/node/531191/%D8%B3%D9%8>

United Nations website, article entitled: What is the Convention on the Prevention of the Crime of Genocide Seven basic points, the article was published January 11, 2024 and the article is published at the following link: <https://news.un.org/ar/story/2024/01/1127587>

The BBC signed an article entitled: Gaza War What does it mean for the issuance of an arrest warrant by international crimes against Netanyahu, Galant and the guest, the date of publication of the article November 21, 2024 Date The article is published at the following link: <https://www.bbc.com/arabic/articles/czr7xv55rkeo>

Al-Maliki Rania Abdel Rahman, an article entitled: The Role of the International Criminal Court in Addressing Genocide, the article was published on September 6, 2021 in the Middle East Journal for Scientific Publishing, and the article was published at the following link: <https://journals.mejsp.com/researches/%D8%AF%D9%88%D8%B1->

Hoxt Encyclopedia website, article entitled: Rwanda First conviction against genocide Date visited 3/12/2024 The article is published on the following link: <https://encyclopedia.ushmm.org/content/ar/article/rwanda-the-first->

The website of the Strategic Forum for Public Policy and Development Studies: An article entitled The crime of genocide and violation of international laws Gaza as a model The article was published April 1, 2024. And stay posted at the following link: <https://draya-eg.org/2024/04/01/%D8%AC%D8%B1%D9%8A%D9%85%D8%A9D>

Jad Huff, Leila, Ravi Catherine, Hinduson James, Patel Wanisha, Genocide Case in Gaza Overview South Africa's legal battle against Israel at the International Court of Justice Article published January 10, 2024 The article is published at the following link:

<https://law4palestine.org/ar/%D9%82%D8%B6%D9%8A%D8%A9->

Al Jazeera website Article entitled: Bosnian academic After the last international criminal ruling, a boy can no longer absolve herself of the crimes of genocide Bosnia, the article was published on 8/6/2023 and the article is published at the following link:

<https://www.aljazeera.net/politics/2023/6/8/%D8%A3%D9%83%D8%A7%D8%AF%D9%8A%D9%85%D9%8A->

UNRWA website Article entitled: 1994 Genocide Outreach Programme against Tutsi in Rwanda and the United Nations Visited by 15/12/2024 The article is published at the following link :

<https://www.un.org/ar/preventgenocide/rwanda/backgrounders.shtml>

Al Jazeera website: An article entitled Practical steps to prosecute Israel for its crimes in Gaza Article published on 27/11/2023 The article is published at the following

link:<https://www.aljazeera.net/news/2023/11/27/%D8%A7%D9%84%D8>

Al Jazeera website: An article entitled Practical steps to prosecute Israel for its crimes in Gaza Article published on 27/11/2023 The article is published at the following link:

<https://www.aljazeera.net/news/2023/11/27/%D8%A7%D9%84%D8>

Al Jazeera website Wael Al-Masri, article entitled: International Criminal Legal Reading in Karim Khan's Declaration Against Israel and Hamas Article published on 21/5/2024 The article is published on the following link:

<https://www.aljazeera.net/politics/2024/5/21/%D8%A7%D9%84%D8>

Al Jazeera website An article entitled "Religious motives behind Israel's commission of crimes against Gaza" Article published on 26/8/2014 The article is published at the following link:

<https://www.aljazeera.net/news/2014/8/26/%D8%AF%D9%88%D8%>

Article entitled Crossing the Line Israeli Authority and the Crime of Apartheid and Persecution, Article published April 27, 2021 and the article is published at the following link: <https://www.hrw.org/ar/report/2021/04/27/378469>

BBC website, Marie Jose, an article entitled What are the most prominent legal decisions issued since October 7 and are they enforceable? Article published October 7, 2023 The article is published at the following link:

<https://www.bbc.com/arabic/articles/c77xz48xm47o>

Article entitled Before International Justice Israel disavowed its responsibility for the hunger and massacres of Gaza The article was published on 19/3/2024 and the article is published at the following link:

<https://www.aa.com.tr/ar/%D8%AF%D9%88%D9%84%D9%8A/%D8>

## ملخص الرسالة

جرم القانون الدولي جريمة الإبادة الجماعية بشكل واضح وصريح من خلال نظام روما بالإضافة إلى وضع اتفاقية خاصة بمنع جريمة الإبادة الجماعية وتجريم هذه جريمة أيضاً في اتفاقيات الحقوق، بالإضافة إلى أن ارتكاب هذه الجريمة يعتبر انتهاك للمواثيق والمعاهدات الدولية مثل الإعلان العالمي لحقوق الإنسان وغيرها، وتتكون هذه الجريمة من ركن مادي و ركن معنوي حيث يقوم الركن المادي على عدة عناصر تم ذكرها في اتفاقية منع جريمة الإبادة الجماعية تتمثل بقتل أفراد الجماعة أو التدمير الكلي أو الجزئي أو إخضاع هذه الجماعة لظروف معيشية صعبة أو استخدام مواد أو أسلحة تؤدي إلى أحداث العقم أو أخذ أطفال جماعة وضعهم عند جماعة أخرى ، بالإضافة إلى الركن المعنوي حيث تتطلب هذه الجريمة قصد خاص يتمثل في نية الجاني إلى تدمير الجماعة لحق الضرر بها، ويمكن إثبات هذا القصد من خلال تصريحات صادر عن الجاني تبين فيه نية ارتكاب هذه الجريمة، وقد تنبه المجتمع الدولي لخطورة هذه الجريمة وقام بإنشاء محكمة الجنايات الدولية من أجل محاكمة ومحاسبة كل من ارتكب جريمة الإبادة.