



Panel discussion

“2023 War on Gaza: The Responsibility to Prevent Genocide”

12 December 2023

10 a.m. - 12 p.m. (NY time)

**Convened by the
Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP)**

CHAIR SUMMARY

The Panel discussion “2023 War on Gaza: The Responsibility to Prevent Genocide” was convened on 12 December 2023 by the Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP). The event consisted of an opening with remarks by **H.E. Mr. Arrmanatha Christiawan Nasir**, Vice Chair of the Committee and Permanent Representative of Indonesia to the United Nations, and **H.E. Ms. Feda Abdelhady Nasser**, Deputy Permanent Observer of the State of Palestine to the United Nations. The panel was comprised of **Mr. Jihad Abusalim**, Executive Director of The Jerusalem Fund; **Mr. Raz Segal**, Associate Professor of Holocaust and Genocide Studies and Endowed Professor in the Study of Modern Genocide, Stockton University; **Ms. Hannah Bruinsma**, Legal Advisor at the NGO Law for Palestine; and **Ms. Katherine Gallagher**, Senior Staff Attorney at the New York-based Center for Constitutional Rights. The event was broadcast live on UN WebTV.

In his opening, the **Vice Chair** stated that the Committee had convened the panel at a time when the Palestinian people’s very existence was under threat. The death toll among Palestinian civilians—mostly women and children—caused by Israel’s war on Gaza was akin to collective punishment. Furthermore, the forcible displacement of Gaza’s population, many of whom were already refugees, and the systematic destruction of homes, infrastructure, mosques, churches, hospitals, public buildings, and protected objects, was endangering the very presence of Palestinians in their ancestral land. Such violence raised questions about the objectives of Israel’s military operation and the international community’s responsibility to address ongoing crimes. The international community recently commemorated the 75th anniversary of the “Convention on the Prevention and Punishment of the Crime of Genocide” of 9 December 1948, ratified or acceded to by 153 States, as of 2022. It was the obligation and duty of Member States to prevent this crime and implement the “never again” call.

Ambassador Feda Abdelhady said that the State of Palestine had acceded to the Genocide Convention, alongside other human rights covenants, but had not foreseen being compelled to invoke it, believing that the international community’s vow of “never again” was

universal and that the legal and moral obligations towards the question of Palestine would be upheld, enabling the Palestinian people to realize their long-denied rights. The world was witnessing unspeakable atrocities and crimes in Occupied Palestine, especially in the besieged Gaza Strip, being perpetrated by Israel and its occupying forces, including settler militias, as a blatant extension of over 75 years of Nakba.

This situation had led scholars, jurists, civil society, parliamentarians, governments, and global citizenry to conclude that Israel was committing war crimes, crimes against humanity and genocide against the Palestinian people. Ambassador Abdelhady said that the aims were the erasure of the Palestinian presence, its national identity, and the entrenchment of the Israeli occupation of the Palestinian land with as few Palestinians as possible. The State of Palestine appealed to Member States and all organs of the UN system to take action, with the most urgent step being a ceasefire. She expressed the hope that the panel would help raise awareness, provide information about the law, and suggest avenues for action.

Panel Discussion

Mr. Jihad Abusalim, born and raised in Gaza, stated that his family and friends were among the over two million Palestinians enduring one of the most violent military assaults this century. As of 11 December, the Euro-Med Human Rights Monitor estimated that 24,142 Palestinians in Gaza had been killed by Israeli bombardment, including 9,420 children. Additionally, 48,901 had been injured, and 1,840,000 had been displaced. A total of 53,000 homes and over 1,300 industrial facilities had been destroyed. What he described as the “ongoing genocide in Gaza” was part of Israel’s violent settler-colonialism and occupation of Palestinian land which began with the 1948 Nakba (“the catastrophe”), leading more than 750,000 Palestinians to flee or be expelled from their homes. The Nakba, he stressed, was not just an event in the distant past: its ongoing political, economic, geographic, and cultural effects prevented Palestinians from realizing their potential in their own homeland.

In 1956, 1957, and in 1967, Israel occupied the Gaza Strip, forcing a process of “de-development” and separating it from the West Bank through military closures and a permit system that limited entry and exit from the Strip and splitting families. In 2007, Israel imposed a land, air, and sea blockade. When Gaza rebelled, Israel always responded with extreme violence, further colonization, incursions, mass bombardment, and the killing of civilians. Residents of Gaza used the expression “I’m suffocating” to describe a psychological and emotional state when every simple and basic daily act, like accessing clean water, travel for medical treatment or education, fishing, and harvesting crops, were exhausting ordeals. Gazans continued to be killed in droves because Israel used extreme violence to reassert control.

Mr. Raz Segal pointed out that on 9 December 2023, a group of 56 senior scholars of the Holocaust, genocide, and mass violence, including himself, signed a statement deploring the atrocity crimes against civilians committed by Hamas and the Islamic Jihad on 7 October, and by Israeli forces since then. They noted evidence of a “widespread or systematic attack directed against any civilian population, with knowledge of the attack” that the Rome Statute of the International Criminal Court (ICC) defines as a crime against humanity. Since 7 October, Israeli leaders, including Israeli President Isaac Herzog, ministers in the war cabinet, and senior army officers - all with command authority – had made dozens of statements demonstrating an “intent to destroy Palestinians “as such”. Israel’s officials used a tried colonial rationalization for the destruction of people under colonial occupation by describing them as “human animals”.

According to Mr. Segal, casting entire civilian populations as “savages” or “enemies” - and as legitimate military targets - was a common genocidal mechanism. As examples, he cited the 1904-1907 operation in Southwest Africa when the German colonizers killed 65,000 Herero and Nama - 80 percent of the population. A similar rhetoric was utilized by Hutu authorities in Rwanda in 1990 leading to the 1994 genocide.

For Mr. Segal, Israel had demonstrated genocidal intent according to the three acts defining genocide in the Convention: (a) “killing members of the group”; (b) “causing serious bodily or mental harm”; and (c) “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”. The “total siege” measures, together with the forced displacement of over 1.8 million of the 2.3 million Palestinians in Gaza, and the risk of outbreaks of infectious diseases, exacerbated by acute shortages of food, clean water, fuel, and medical supplies, met the conditions defined in the Convention. While forced displacement - or “ethnic cleansing”- was not in itself an act of genocide, it had historically figured in genocidal processes of pushing unwanted people into designated areas - that eventually escalated into genocide. The Nazis experimented from 1939 to 1942 with various schemes of forced displacement of Jews before reaching the “final solution of the Jewish question.” Mr. Segal added that Israel’s statements about deporting Palestinians in Gaza to the Sinai desert were also alarming as deserts have been used historically as weapons of genocide, leaving entire populations to die from hunger and dehydration.

Mr. Segal also noted that since 7 October, there was incitement to genocide, a separate crime under article 3 of the Genocide Convention, in Israeli media, social media, politics, and public spaces. The Israeli discourse promoted the notion that “there are no innocent civilians in Gaza”, “Palestinian children are terrorists,” and the Israeli army needs to “burn Gaza until nothing was left of it”. Such statements openly confirmed the “intent” - usually the most difficult element to prove.

Ms. Hannah Bruinsma expressed concern that intellectuals and activists, particularly Palestinian colleagues speaking out or calling for legal actions against Israel’s crimes, were facing threats, not just in Palestine, but also in the United States. She mentioned the failure of the international community to hold Israel accountable for the 75 year-long settler colonial regime, 56-year illegal occupation of Palestinian territory, and 17-year-long siege of the Gaza Strip. Israel’s decades-long impunity for international crimes, including the crime of apartheid, had continued with war crimes, crimes against humanity, and incitement to commit genocide in Gaza. Genocide was taking place in Gaza while the United States used its UN Security Council veto to stop calls for a ceasefire.

Ms. Bruinsma stated the situation in Gaza met the legal and criminological definitions of genocide, requiring both intent to destroy and actions. As other panellists, Ms. Bruinsma judged that Israel had committed *actus reus* in Gaza, actions that constituted genocide as defined by the Convention. Usually, “intent” was the most difficult part to prove, but in this case, Israeli leaders had been so publicly explicit, that their statements clearly constituted the *mens rea* - the mental element - of genocide. Since 7 October, Law for Palestine created a database, so far containing over 500 statements of genocidal statements by Israeli public officials that would be submitted to the ICC.

Ms. Bruinsma cited Raphael Lemkin, who coined the term “genocide”, noting that he had written that genocide was not limited to acts of mass killing, but must encompass a coordinated

plan aimed at destroying the essential foundations of the lives of national or ethnic groups. In Gaza, Israel's implementation of the 17-year-old "Dahiya doctrine", a military strategy of using disproportionate force to weaken the population to the point where mere survival supersedes resistance, was in full display. The Genocide Convention, signed by 152 States so far, obliges all States to comply with its terms, as reiterated by the International Court of Justice (ICJ) on several occasions. The prohibition of genocide constituted a *jus cogens* norm, meaning that it was absolute and could not be deviated from under any justification or circumstance. In closing, Ms. Bruinsma expressed solidarity with her colleagues in the Occupied Palestinian Territory who demanded robust action against these crimes, often at personal risk. It was incumbent on all members of the international community to build a case against the perpetrators of this genocide and see that they were brought to justice.

Ms. Katherine Gallagher focused on the characterization of the crimes being committed in the Gaza Strip, the implications for the International Criminal Court and States parties. She reiterated that intent and genocidal acts were currently taking place in Gaza in addition to crimes against humanity, i.e.: murder, persecution, forcible transfer, and extermination.

Article 1 of the Convention created a legal duty to prevent genocide: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish". The ICJ found in the case of *Bosnia v Serbia*, "that each State party must assess whether a genocide or a serious risk of genocide exists". This was the international community's collective commitment to ensure that groups were not targeted for destruction because of their identity. All states had a "duty to prevent": (a) from the moment a country "learns of or should have learned of the existence of a serious risk of genocide" (b) to take all measures "reasonably available to them" to deter the commission of the crime; and (c) such duty was heightened when a State had the ability to influence or "effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent". The ICJ could also issue provisional measures to ensure compliance with the Convention in the case of an unfolding genocide, including if it found that breaches of the Convention were "plausible" (*e.g. Gambia v Myanmar re: Rohingya genocide*).

Ms. Gallagher informed that the Center for Constitutional Rights, on 13 November, had filed an urgent motion on behalf of Defense for Children International-Palestine, Al-Haq, and individuals in Gaza asking a US federal court to immediately stop President Biden, Secretary of State Blinken, and Secretary of Defense Austin from providing further arms, money, military support, and diplomatic support to Israel on grounds that they have a legal duty to prevent, and not contribute to "an unfolding genocide against Palestinians in Gaza". The lawsuit claimed that by providing military assistance to Israel, the US had crossed the line to "complicity in genocide". Other experts had concluded that the United States had breached its obligation to prevent genocide. Ms. Gallagher strongly urged Member States to act and prevent the "unfolding genocide in Gaza".

H.E. Mr. Hari Prabowo, Deputy Permanent Representative of Indonesia to the United Nations, who moderated the **Q&A session**, invited Member States "to assume their responsibilities to prevent genocide and to "vote for humanity" at the resumed General Assembly 10th emergency special session taking place that afternoon. He asked clarification on accountability mechanisms available to Member States, including at the ICC and ICJ.

Panellists responded that taking "precautionary measures" at the ICJ was a tool available. Halting the transfer of weapons to Israel and Boycott Divestment and Sanctions

(BDS) measures were also powerful measures. Ending decades-long of impunity vis-à-vis the State of Israel and preventing a possible escalation in the West Bank and East Jerusalem, where weapons are being distributed to settlers, were necessary. Other suggested actions included an arms embargo against Israel, as called for by the General Assembly 40 years ago; implementation of article 6 of the Arms Trade Treaty prohibiting arms transfers in cases of genocide; and applying diplomatic and visa restrictions to Israelis. Responding to a question on the role of national courts, it was reiterated that the crime of genocide is an *erga omnes* norm, so all States can file cases in national courts because of the Convention's universal jurisdiction. A strong call was made to States to act and not leave the burden to civil society organizations.

Responding to a question on Israel's stated goal of "wiping out Hamas" and the possible duration of the conflict, panellists responded that there was no convincing evidence that Hamas could be defeated without further devastation and huge civilian casualties. It was also suggested to stop referring to a "conflict" but rather to "State violence" inflicted on Palestinians beginning with the 1948 Nakba. A just and lasting solution would have to be based on equality, dignity, and agreement that "security for Israel depends on security for Palestinians and vice versa". Panellists concluded by reiterating the sense of urgency to "stop the killing and the ongoing genocide" while ensuring Israel's accountability and an end of the occupation.

In closing, **Ambassador Prabowo** expressed the Committee's support to the Secretary-General for invoking article 99 of the UN Charter, asking the Security Council to shoulder its responsibilities and ensure the implementation of its resolution 2712 (2023) while regretting the failure of the Security Council, on 8 December, to adopt a resolution calling for an immediate ceasefire in Gaza. The onus was now with the General Assembly. He made a final appeal to all Members and Observers of the Committee to take usual action and stand up for Palestine.

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