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24.11.2023

COMMUNICATION
under the situation on the Israel-Palestine conflict
with regards to the investigation of the State of Palestine
by
Union of Turkish Bar Associations, Ankara, Türkiye

To the kind attention of the Prosecutor of the International Criminal Court,

The Union of Turkish Bar Associations would like to submit this communication in line with your mandate prescribed in the Rome Statute, on the recent developments of the conflict between the State of Israel and the State of Palestine, particularly that occurred after 7 October 2023 on the territory of the State of Palestine. I would be obliged if you take into consideration the reasoning on the after-mentioned grounds.

Kind regards,

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I-Background Information

The United Nations (UN) Commission of Inquiry called for an investigation into the alleged gross violations committed during the 2014 Gaza conflict. In June 2015, the Commission of Inquiry into the Gaza conflict, as mandated by the UN Human Rights Council, submitted a comprehensive report outlining the purported war crimes committed by both sides during the summer of 2014. The report called for criminal investigations to be initiated regarding Israel and Palestinian armed groups, emphasizing the importance of holding local authorities accountable and preventing the potential escalation of violence in the future.

On January 1, 2015, the Government of Palestine (“Palestine”) submitted a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court (“ICC”) over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014”. Subsequently, on January 2, 2015, Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General. The Rome Statute entered into force for Palestine on 1 April 2015.

Upon receipt of a referral or a valid declaration made pursuant to article 12(3) of the Rome Statute,¹ the Prosecutor, in accordance with regulation 25(1)(c) of the Regulations of the Office of the Prosecutor, and as a matter of policy and practice, opens a preliminary examination of the situation at hand. Accordingly, on 16 January 2015, the Prosecutor announced the opening of a preliminary examination into the Situation in the State of Palestine (“Situation”) in order to determine whether the Rome Statute criteria for opening an investigation are met. Specifically, under article 53(1) of the Rome Statute, the Prosecutor shall consider issues of jurisdiction, admissibility, and the interests of justice in making this determination. The preliminary investigation initiated by the ICC Office of the Prosecutor also focuses on crimes related to settlement activities in Gaza and the West Bank, allegedly committed by both Palestinian armed groups and the Israel Defence Forces (IDF) during the 51-day Gaza conflict in 2014.

The Palestinian government submitted information to the ICC Office of the Prosecutor on the alleged crimes related to the 2014 Gaza conflict. In July 2015, Israel initiated a dialogue with the Office of the Prosecutor regarding the preliminary examination and published a report on the factual and legal aspects of the 2014 conflict. However, there have been worrying political reactions to the alleged offences committed in Israel and the Palestinian territories. Israel and the United States made strong statements against both the recognition of Palestine as a state and against the ICC, and withheld aid in an attempt to put pressure on Palestine.

Palestine’s responsibilities as a state party to the Rome Statute include co-operating with the Court and its decisions, incorporating the Rome Statute into its national legislation

¹ Rome Statute, Article 12(3): “If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question.”

and assisting the Office of the Prosecutor in the preliminary examination stages. Israel, although not a state party to the Rome Statute establishing the ICC, is also required to maintain positive relations with the Court. The international community, in particular States which are party to the Rome Statute establishing the ICC, must support accountability processes, whether through their national judicial systems or through the ICC.

Palestine played a role as an observer delegation during the Rome Conference in 1998. Since then, it has consistently expressed its support for the International Criminal Court (ICC). This support is articulated not only as a mechanism for fostering accountability but also, notably, as a crucial tool for ending impunity concerning international crimes that are alleged to have occurred on Palestinian territory. In April 2012, the Office of the Prosecutor declined to accept a declaration made by Palestine under Article 12(3) of the Rome Statute of 2009, accepting the exercise of jurisdiction by the International Criminal Court for acts committed on the territory of Palestine since 1 July 2002. The Prosecutor decided that only a “state” is eligible to accept ICC jurisdiction and that Palestine was not a “state” according to the UN General Assembly. The Office of the Prosecutor reiterated that Palestine refused to act as a proxy for UN bodies and ultimately for the ICC Assembly of States Parties (TDA) to resolve legal questions of statehood or non-statehood. It is likely that the Office of the Prosecutor considered at that time that it could not proceed with a preliminary examination to decide whether a formal investigation was necessary. However, in November 2012, UN General Assembly resolution 67/19 upgraded Palestine’s status at the UN from an observer organisation to a non-member observer state, enabling Palestine to accede to a number of international treaties. At the December 2014 session of the TDA, Palestine was invited for the first time to participate as a non-member observer state.

On 22 May 2018, pursuant to articles 13(a) and 14 of the Rome Statute, Palestine referred to the Prosecutor the Situation since 13 June 2014, with no end date. Such a referral did not automatically lead to the opening of an investigation, since the Prosecutor still had to determine whether the statutory criteria to open an investigation were met.

On 20 December 2019, the Prosecutor announced that following a thorough, independent and objective assessment of the reliable information available to her Office, the preliminary examination into this Situation had concluded with the determination that all the statutory criteria under the Rome Statute for the opening of an investigation had been met. However, given the complex legal and factual issues attaching to this situation, she announced that she would be making a request to Pre-Trial Chamber I for a ruling to clarify the territorial scope of the Court’s jurisdiction in this Situation.²

On 5 February 2021, the Chamber decided, by a majority, that the Court may exercise its criminal jurisdiction in the Situation in Palestine, and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem. In its majority ruling, the Chamber stressed that it was not determining whether Palestine fulfilled the

² <https://www.icc-cpi.int/palestine>

requirements of statehood under public international law, or adjudicating a border dispute, or prejudging the question of any future borders; it was solely determining the scope of the Court's territorial jurisdiction for the purposes of the Rome Statute, as requested.³

On 3 March 2021, the ICC Prosecutor confirmed the initiation by the Office of the Prosecutor of the International Criminal Court of an investigation respecting the Situation in Palestine. The investigation will cover crimes within the jurisdiction of the Court that are alleged to have been committed in the Situation since 13 June 2014.⁴

International and local civil society organisations have long advocated for accountability measures for crimes committed in the context of the Israeli-Palestinian conflict. NGOs continue to document human rights violations, raise awareness and share relevant information with the Office of the Prosecutor. This submission by the Union of Turkish Bar Associations, pertaining to events occurring after October 7, 2023, serves as an additional declaration to augment the ongoing investigation.

³ <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>

⁴ <https://www.icc-cpi.int/sites/default/files/itemsDocuments/210303-office-of-the-prosecutor-palestine-summary-findings-eng.pdf>

II-Introduction

WHY IS THE UNION OF BAR ASSOCIATIONS OF TURKEY (TBB) APPLYING TO THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT?

Bar Associations in the Turkish Legal System: Qualifications and Core Values

The Union of Turkish Bar Associations (UTBA) serves as the overarching body for provincial bar associations, with 182,944 lawyers as members. It operates as a public institutional and independent professional association. The public nature of the UTBA is directly derived from Article 135 of the Constitution of the Republic of Turkey, ensuring its independence outside the government hierarchy.

In Turkey, the legal profession is a cornerstone of the right to a fair trial and defence, and by extension, the rule of law. The effectiveness of the legal profession in upholding these principles relies on its independent and public characteristics, blending these two functions. Bar associations, as public representatives of the legal profession, and the Union of Turkish Bar Associations, in its capacity as the umbrella organization, bear both public and private, as well as civil rights and obligations in fulfilling this vital role.⁵

In line with the jurisprudence of the Constitutional Court, it is emphasized that “*these institutions have acquired a public character and constitutional inclusion due to their substantial membership, the orientation of their work and services towards the fundamental needs of society on a widespread scale, their role as effective civil society organizations in a pluralistic democratic development context, and their capacity to balance the benefits provided to members with the interests of society at appropriate levels, and to deepen the culture of a democratic society without disrupting public order.*” Consequently, to wield this *sui generis* public power in accordance with their mandates, it is imperative for bar associations and the Union of Turkish Bar Associations to actively engage in civil, democratic, legal, and judicial activities. This engagement is crucial not only to protect and develop human rights but also to operationalize them for the advancement of a democratic society.

The legal foundation for the responsibility of bar associations in Turkey to safeguard public human rights is grounded in Article 76 of the Turkish Advocacy Law, which outlines the formation and qualifications of bar associations. Article 76 of the Law on Lawyers, governing the establishment and qualifications of bar associations, explicitly defines bar associations as “*public professional organizations with legal personality. These associations are tasked with a broad range of activities, including the development of the legal profession, fostering honesty and trust among its members and with business entities, defending and upholding professional order, ethics, dignity, the rule of law, human rights, and meeting the common needs of lawyers,*

⁵ Çiğdem Sever, “Lawyers as Subject of Rights in the Decisions of the European Court of Human Rights”, Ankara Bar Association Journal, Year 76, S. 2018/4, pp. 243-245.

and to carry out their activities in accordance with democratic principles". Furthermore, Article 95/21 of the Law on Lawyers, delineating the responsibilities of the executive boards of bar associations, underscores their duty *"to defend and protect the rule of law and human rights and to make these concepts operational."*

The Union of Turkish Bar Associations (UTBA) has been explicitly assigned a specific role in this context, as outlined in Article 110/17 of the same Law. This particular provision designates the duty of the Union of Turkish Bar Associations, emphasizing its responsibility to *"defend and protect the rule of law and human rights, and make these concepts operational."*

The phrase *"to make these concepts operational"* in the provisions, structured as a public and social duty, imposes a positive obligation. A positive obligation entails the responsibility to proactively take actions aimed at fulfilling the specified duty. Pursuant to the provision *"The lawyer shall freely represent the independent defence, which is one of the constituent elements of the judiciary"* in Article 1 of the Law on Lawyers and the duty outlined in Article 110/17 of the same law to *"defend and protect the rule of law and human rights,"* the primary and natural arena for the UTBA to fulfil this obligation is within the judicial organs. These judicial bodies serve as the practical realm for the public act of advocating for the rule of law and human rights. To carry out this responsibility, the UTBA actively engages in *amicus curiae* applications and seeks to participate in both national and international legal proceedings, especially those addressing violations of social rights.

In the preamble of the Morelia Charter of the International Lawyers' Association, professional organizations of lawyers are assigned specific responsibilities to uphold rights, guided by the perspective that *"the unconditional right of access to justice must be integrated into the human rights with which it is inherently connected."* Recognizing that genuine human dignity is unattainable without this right, the Charter emphasizes the imperative to guarantee access to justice for every individual based solely on their humanity.

Likewise, Article 14 of the Havana Rules, adopted by the United Nations Conference on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, specifies that lawyers (and by extension, their professional associations) will *"endeavour to promote human rights and fundamental freedoms recognized by both national and international law."*

On the other hand, Article 110/15 of the Attorneyship Law No. 1136 includes the following provision to ensure that the UTBA fulfils its duty on the international stage: *"To establish contacts with foreign bar associations, lawyers' associations, and legal institutions and to participate in international congresses."* In this context, the International Criminal Court stands out as the universal legal institution with which the UTBA will engage to protect human rights concerning serious violations of humanitarian law and international crimes.

It is noteworthy that, as emphasized by the European Court of Human Rights (ECtHR), “lawyers’ associations, which play a crucial role in the protection of human rights, must be able to remain independent”.⁶

We strongly urge that, in addition to government submissions, our independent submission as the UTBA be duly considered, in line with Article 15(2) of the Rome Statute. This article allows the Prosecutor’s Office to receive information from non-governmental organizations or other reliable sources as it deems appropriate.

⁶ ECHR, Hajibeyli / Aliyev v. Azerbaijan, B. No: 6477/08 and 10414/08, 19.4.2018.

III-Grounds on the Communication

The Principle of Distinction Between Civilians and Combatants

The primary aim of the law of armed conflict is to protect the victims of armed conflict and to regulate the conduct of hostilities based on a balance between military necessity and humanity. The undisputed cornerstone of International Humanitarian Law is the principle of distinction between civilians and combatants, which obliges belligerents to distinguish at all times between persons who may be lawfully attacked, and persons who must be spared and protected from the effects of the hostilities.⁷

This principle of distinction is expressed in the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977 (Protocol I):

“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”

A precise definition of “civilian” or “civilian population” is notably absent in the Geneva or Hague Conventions, even though the Fourth Geneva Convention specifically focuses on the protection of civilian persons during times of war. Instead, the Fourth Geneva Convention refers to “persons in the hands of the enemy.” Recognizing the evolving categories of individuals covered in previous definitions and the fundamental obligations to distinguish between combatants and civilians, those who drafted the Additional Protocol identified the need for a more exact definition. The definition provided is a negative one, categorizing civilians as all persons who do not fall under the category of combatants.⁸

Protocol I Article 50 defines the concept of civilians and civilian population:

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

⁷ Nils Melzer, *The Principle of Distinction Between Civilians and Combatants*, in *The Oxford Handbook of International Law in Armed Conflict* (ed. by Andrew Clapham / Paola Gaeta), Oxford University Press 2014, p. 296.

⁸ Laurie R. Blank / Gregory P. Noone, *International Law and Armed Conflict, Fundamental Principles and Contemporary Challenges in the Law of War*, Wolters Kluwer 2013, p. 280.

3. *The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.*

The aim of the principle of distinction is emphasized in Article 51 of the Protocol I as “*The civilian population as such, as well as individual civilians, shall not be the object of attack*”. That means any party to a conflict distinguish between those who are fighting and those who are not, and direct attacks solely at the former.⁹ This provision expressly states the civilian population and individual civilians are to enjoy general protection against dangers arising from military operations. In this article, acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are also prohibited.

As a result of this principle, indiscriminate attacks against civilians and civilian population are also prohibited. Article 51 / 4 also defines the indiscriminate attacks:

(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat, the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

The same article (51/5/a) states that, among others, the following types of attacks are to be considered as indiscriminate:

an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and

(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

While treaty-based International Humanitarian Law addressing non-international armed conflict includes some provisions on the conduct of hostilities, the most crucial rules and principles applicable in situations of international armed conflict are now widely acknowledged to have achieved customary status, extending their relevance to non-international armed conflicts as well.¹⁰

⁹ Laurie R. Blank / Gregory P. Noone, p. 44.

¹⁰ Melzer, p. 307.

Attacks on Hospitals and Medical Facilities

International humanitarian law includes significant provisions for the protection of medical personnel, medical installations, and medical transports. According to Conventions and Protocols, medical personnel, administrative support staff, and religious personnel are entitled to protection and care. They are immune from being targeted or attacked and must be permitted to carry out their medical or religious duties without hindrance.

Robust protections are in place for medical goods and objects, encompassing medical units and transports. According to Articles 33 and 34 of Geneva Convention I, buildings, material, and stores of fixed medical establishments of the armed forces are safeguarded—they must not be intentionally destroyed and should be dedicated to the care of the wounded and sick. This protection extends to mobile medical units, even if they fall into the hands of the enemy; they are to be utilized for the well-being of the wounded and sick.

Medical transports, including ambulances, are designated for protection and respect in accordance with the laws of armed conflict. Should they be captured, the law of armed conflict mandates that proper care and respect be extended to any wounded and sick persons being transported in such vehicles.¹¹

The safeguarding of medical installations, mobile medical units, and medical ships will cease only if these installations are utilized to engage in activities harmful to the enemy beyond their humanitarian duties. The cessation of protection for such units and installations requires a prior warning, the provision of a reasonable time-limit for discontinuing the harmful acts, and only after the warning has gone unheeded.

What constitutes a “harmful” act is not defined in the Conventions, although both Conventions I and II and Protocol I outline certain conditions that are not to be “considered as depriving [the protected objects] of the protection due to them”;¹² these include, for example, the fact that the hospital or hospital ship is tending to wounded, sick and shipwrecked civilians; or the presence of small arms or ammunition taken from the wounded, sick and shipwrecked and not yet handed in to the proper authorities.

In the Commentary on Article 23, it is explicitly stated that “*the prohibition on directing attacks against protected zones also forms part of customary international humanitarian law in respect of both international and non-international armed conflicts.*”¹³

¹¹ Geneva Convention I, Art. 35, Additional Protocol I, Art. 21, Additional Protocol II, Art. 11.

¹² Geneva Convention I, Art. 22, Geneva Convention II, Art. 35, Additional Protocol I, Art. 13.

¹³ ICRC Study on Customary International Humanitarian Law (2005), Rule 35.

Violations of hospital zones and localities can have consequences under international criminal law. Attacks on them can fall within the war crime of “[i]ntentionally directing attacks against ... places where the sick and wounded are collected.”¹⁴

The war crime of ‘[a]ttacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives’ can also be applicable.¹⁵ In addition, attacks against a hospital zone or locality, or the persons or objects sheltered therein, could constitute other war crimes, such as attacks on the civilian population, on civilian objects or on buildings using the distinctive emblems of the Geneva Conventions.¹⁶

The World Health Organization (WHO) has reported that at least 521 people, including 16 medical workers, have been killed in 137 “attacks on health care facilities” in Gaza as of November 12. These attacks, alongside Israel’s decisions to cut off electricity and water and block humanitarian aid to Gaza, have severely impeded health care access. The United Nations found as of November 10 that two-thirds of primary care facilities and half of all hospitals in Gaza are not functioning at a time when medical personnel are dealing with unprecedented numbers of severely injured patients. WHO also reported that as of November 10, 18 out of 36 hospitals and 46 out of 72 primary care clinics were forced to shut down. The forced closure of these facilities stems from damage caused by attacks as well as the lack of electricity and fuel.¹⁷

According to Human Rights Watch Statement on 14 November *the Israeli military’s repeated, apparently unlawful attacks on medical facilities, personnel, and transport are further destroying the Gaza Strip’s healthcare system and should be investigated as war crimes. Despite the Israeli military’s claims on November 5, 2023, of “ Hamas’s cynical use of hospitals,” no evidence put forward would justify depriving hospitals and ambulances of their protected status under international humanitarian law.*

Human Rights Watch investigated attacks on or near the Indonesian Hospital, al-Ahli Hospital, the International Eye Care Centre, the Turkish-Palestinian Friendship Hospital, and the al-Quds Hospital between October 7 and November 7. Human Rights Watch spoke by phone with two displaced people sheltering in hospitals and 16 healthcare workers and hospital officials in Gaza and analysed and verified open-source data, including videos posted to social media and satellite imagery, as well as WHO databases.

Israeli forces struck the Indonesian Hospital multiple times between October 7 and October 28, killing at least twelve civilians. The International Eye Care Centre was struck repeatedly and completely destroyed after a strike on October 10 or 11. Strikes hit the compound and vicinity of the Turkish-Palestinian Friendship Hospital on October 30 and 31. Damage to the hospital as well as a lack of fuel for hospital generators resulted in its closure on November 1. Repeated Israeli strikes

¹⁴ ICC Statute Article 8(2)(b)(ix) and (e)(iv)

¹⁵ ICC Statute (1998), Article 8(2)(b)(v); see also ICTY Statute (1993), Article 3(c).

¹⁶ ICC Statute (1998), Article 8(2)(b)(i) and (e)(i), (b)(ii), and (b)(xxiv) and (e)(ii).

¹⁷ <https://www.hrw.org/news/2023/11/07/gaza-israeli-ambulance-strike-apparently-unlawful>

damaged the al-Quds Hospital and injured a man and child out front. Israeli forces on several occasions struck clearly marked ambulances, killing and wounding at least a dozen people in one incident on November 3, including children, outside al-Shifa hospital.¹⁸

At this point we share the legal opinion of the Human Rights Watch on the illegality of attacking the hospitals and medical facilities in Gaza:

Hospitals and other medical facilities are civilian objects that have special protections under international humanitarian law. Hospitals only lose their protection from attack if they are being used to commit “acts harmful to the enemy,” and after a required warning. Even if military forces unlawfully use a hospital to store weapons or encamp able-bodied combatants, the attacking force must issue a warning to cease this misuse, set a reasonable time limit for it to end, and lawfully attack only after such a warning has gone unheeded. Ordering patients, medical staff, and others to evacuate a hospital should only be used as a last resort. Medical personnel need to be protected and permitted to do their work.

All warring parties must take constant care to minimize harm to civilians. Attacks on hospitals being used to commit “acts harmful to the enemy” are still unlawful if indiscriminate or disproportionate. The use of explosive weapons in densely populated areas heightens the risk of indiscriminate attacks. Attacks in which the anticipated loss of civilian life and property are excessive compared with the concrete and direct military gain are disproportionate. Concerns about disproportionate attacks are magnified with respect to hospitals, since even the threat of an attack or minor damage can have massive life-or-death implications for patients and their caregivers.¹⁹

Attack on Palestinian Bar Association

On October 9, 2023, the Israeli forces bombed the Bar Association building in Gaza City, completely destroying it. It is well known that this building belongs to the Bar Association, a civil professional institution that provides services to its members and civilian citizens.

The Palestinian Bar Association made a statement about this attack:

“... This act is considered a violation of international law, legal protection, and the laws established by the International Bar Association in 1992. This action will limit the Bar Association’s ability to fulfil its professional and national duties towards lawyers and civilian citizens.

¹⁸ <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>

¹⁹ <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>

The Palestinian Bar Association affirms that the collective punishments carried out by the occupying state constitute a clear violation of Article 33 of the Fourth Geneva Convention, which prohibits collective punishments and all measures of threat and terrorism and measures of retaliation against defenceless persons and their property.

The acts of destruction practiced by Israel on a large scale violate Article 53 of the Fourth Geneva Convention, which prohibits the occupying state from destroying any private, immovable or movable property related to individuals, groups, the state, or public authorities.

And the ongoing violations and attacks conducted by Israel against cultural objects and places of worship; It is a violation of the Hague Convention for the Protection of Cultural Property, which prohibits exposing this property to any type of attack in the event of armed conflict and stresses the necessity of preserving it.

Since Israel is violating more than 12 international agreements and resolutions and is abusing the Palestinians, especially civilians and legal professionals, since the beginning of the war on Gaza on October 7, 2023, a number of lawyers and a judge have been killed by Israeli occupation bullets while they are in their homes, safe and defenceless”.²⁰

Attacks on Media Workers

According to the Committee to Protect Journalists’ (CPJ) report, issued on November 12:

“The Israel-Gaza war has taken a severe toll on journalists since Hamas launched its unprecedented attack against Israel on October 7 and Israel declared war on the militant Palestinian group, launching strikes on the blockaded Gaza Strip”.

As of November 12, Committee to Protect Journalists’ (CPJ’s) preliminary investigations showed at least 40 journalists and media workers were among the more than 12,000 killed since the war began on October 7—with over 11,070 Palestinian deaths in Gaza and the West Bank and 1,200 deaths in Israel:

- *40 journalists and media workers were confirmed dead: 35 Palestinian, 4 Israeli and 1 Lebanese.*
- *8 Journalists were reported injured.*
- *3 journalists were reported missing.*
- *13 journalists were reported arrested.*

²⁰ <https://iadllaw.org/2023/10/palestinian-bar-association-statement-of-appeal-and-condemnation-for-the-bombing-of-the-pba-headquarters-in-gaza-city/>

- *Multiple assaults, threats, cyberattacks, censorship and killing of family members*²¹.

The Israel Defence Forces (IDF) told Reuters and Agence France Press news agencies that it could not guarantee the safety of their journalists operating in the Gaza Strip, after they had sought assurances that their journalists would not be targeted by Israeli strikes, Reuters reported on October 27.²²

International Humanitarian Law extends protection to all journalists, classifying them as civilians. In both international and non-international armed conflicts, journalists are safeguarded by these legal provisions. As civilians, journalists are immune from attacks unless, and only for the duration that, they are directly participating in hostilities.²³

The prohibition against attacks on journalists and news media is rooted in the protection afforded to civilians and civilian objects under international humanitarian law. Furthermore, the media, even when utilized for propaganda, is generally not deemed a military objective unless under special circumstances. In essence, although there is no specific status designated for journalists and their equipment, they are granted general protection akin to civilians and civilian objects, unless they actively contribute to military action.²⁴

Protocol I Article 79 expressly states:

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 A (4) of the Third Convention.

Journalists in armed conflicts or in wartime play an important role as the primary source of information for the public and in shaping public opinion. Their reports provide insights into the realities of armed conflicts or wars, impact on civilians and the activities of the armed forces. By reporting on war crimes, human rights abuses and other similar violations, journalists contribute to transparency and can help prevent impunity.

²¹ The list of the killed, injured and missing journalists: <https://cpi.org/2023/11/journalist-casualties-in-the-israel-gaza-conflict/>

²² <https://www.reuters.com/world/middle-east/israeli-military-says-it-cant-guarantee-journalists-safety-gaza-2023-10-27/>

²³ https://www.icrc.org/en/download/file/67246/handout_7_-_how_does_ihl_protect_journalists.pdf

²⁴ <https://casebook.icrc.org/case-study/protection-journalists>

Journalists in Gaza face particularly high risks as they try to cover the conflict in the face of an Israeli ground assault on Gaza City, devastating Israeli airstrikes, disrupted communications, and extensive power outages.

Attacks on Refugee Camps

In a report published on 14 November by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA):²⁵

- Almost 1.6 million people have been displaced across the Gaza Strip since 7 October.
- Nearly 795,500 internally displaced persons (IDPs) are now sheltering in 154 UNRWA installations across all five governorates of the Gaza Strip, including in the north.
- About 634,500 IDPs are sheltering in 97 facilities in the Middle, Khan Younis and Rafah areas. Nearly 160,000 IDPs were sheltering in 57 UNRWA schools in the northern and Gaza areas as of 12 October 2023, before the evacuation order was issued by the Israeli Authorities. UNRWA is not able to access these shelters to assist or protect IDPs and does not have information on their needs and conditions.
- Obtaining updated figures and information is becoming increasingly challenging, especially in the Middle area, due to serious communication breakdowns. In some areas, the telecommunications companies have stopped operating. It is expected that communications will start to fail as of Thursday 16 November, when telecommunication companies run out of fuel to operate their data centres and major connection sites.
- With current supplies, UNRWA is meeting only 39 per cent of food needs and one per cent of WASH needs in the shelters.
- Nearly one third of the UNRWA colleagues who were killed were below the Wadi Gaza line, in the southern and middle areas of the Gaza Strip.
- UNRWA received another extremely concerning report that Israeli Forces entered an UNRWA school in Gaza City and used the installation for military operations, including using it as a sniper position. UNRWA is further verifying this report. If confirmed, the military use of UNRWA facilities raises serious concerns, as such use puts civilians at serious risk of harm, in addition to being a severe breach of UN privileges and immunities.
- Due to strikes close to one UNRWA school in Nuseirat camp, in the Middle area, two IDPs were injured by shrapnel that fell inside the school. Over 6,400 IDPs are sheltering in the school.
- At least 563 IDPs sheltering in UNRWA premises have been injured and 71 killed since 7 October. The number of killed and injured IDPs is likely to be higher as UNRWA is still trying to verify casualties of incidents impacting its installations in the North and Gaza areas.
- At least 64 UNRWA installations have been impacted since the beginning of the war.

²⁵ <https://www.unrwa.org/resources/reports/unrwa-situation-report-30-situation-gaza-strip-and-west-bank-including-east-jerusalem>

Some news from international media about the attacks on refugee camps and civilians sheltering in these installations are as follows:

31 October: Israeli airstrikes caused significant damage to a large refugee camp in Jabalia, just north of Gaza City, on Tuesday. The Israeli military confirms it was targeting the area, which it says is a Hamas “stronghold,” including underground tunnels and a command centre.

Photos from the scene showed large craters and other damage at the camp, where teams of people lined up bodies in rows, covered by white sheets. Hamas officials said at least six airstrikes demolished apartment buildings in the residential area.

A precise number of casualties and injuries is yet to be discovered; initial reports from the health ministry in Gaza stated that a large number of people were wounded or killed.²⁶

November 3: Israeli airstrikes inflicted extensive damage on parts of the Jabalia refugee camp in North Gaza this week, levelling buildings in a densely populated area. Palestinian authorities report that at least 195 civilians were killed, and there are numerous individuals still missing. (...)

Israel’s ensuing bombardment of the small Palestinian enclave of 2.3 million people has killed more than 9000 people, according to health authorities in Gaza. Food and water are scarce, and medical services are collapsing.

At least five other refugee camps in the coastal enclave have been hit during Israel’s ongoing offensive, according to satellite images analysed by Masae Analytics. The United Nations refugee agency for Palestine indicated that schools used as shelters by thousands of people have been damaged in the Jabalia, Beach and Al Bureij camps and nearly 50 of its buildings and assets have been affected across the 360 square kilometres Gaza Strip. The UN agency reported that more than seventy of its staff members have been killed²⁷.

November 5: Israel’s military has bombed at least three refugee camps in Gaza, including al-Maghazi camp, in the last 24 hours and killed dozens of people, Palestinian officials have stated. At least 47 people were killed after Israel struck the al-Maghazi refugee camp overnight on Saturday. Jabalia camp was also hit overnight, leaving at least six people dead.²⁸

²⁶ <https://www.npr.org/2023/10/31/1209646548/israel-military-central-gaza-fighting-hamas>

²⁷ <https://www.reuters.com/graphics/ISRAEL-PALESTINIANS/GAZA-JABALIA/byprdygje/>

²⁸ <https://www.aljazeera.com/news/2023/11/5/israel-bombs-al-maghazi-refugee-camp-killing-dozens-gaza-officials-say>

Hate Speeches and Genocidal Rhetoric of the Israeli Public Officials and Genocidal Intent

A U.N. committee on racism voiced concern about a sharp increase in racist hate speech and dehumanisation directed at Palestinians by Israelis, including senior officials, since the October 7 Hamas attacks. The Geneva-based committee said it was “highly concerned” by recent comments including those made by senior Israeli officials, politicians and public figures and called for Israel to condemn hate speech and investigate and punish such acts.²⁹

According to Article 5 of the Statute of the International Criminal Court, which reflects verbatim the definition of genocide as contained in the Convention on the Prevention and Punishment of the Crime of Genocide, genocide means any of the following acts, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, namely, inter alia: killing members of the group; causing serious bodily or mental harm to members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group.

Genocide stands apart from other crimes due to its unique characteristic known as “specific intent” or “*dolus specialis*.” Specific intent in a crime is a special intention, an essential element of the crime that necessitates the perpetrator’s clear intention to commit the act in question. In the context of genocide, this specific intent lies in the deliberate intention “to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.”³⁰

Specific intent is a well-established concept in criminal law within the Roman-continental legal systems. It serves as a necessary constituent element for certain offenses, demanding that the perpetrator possesses a clear intent to commit the charged offense. In this context, specific intent is the pivotal element of an intentional offense, characterized by the psychological connection between the physical result and the mental state of the perpetrator.³¹

In practical terms, for any of the acts charged to constitute an element of genocide, the act must have been committed against one or several individuals solely because they were members of a specific group. The specific motive for targeting these individuals is crucial; it must be because they belonged to this particular group. Thus, the victim is chosen not because of their individual identity, but rather on account of their membership of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as

²⁹ <https://www.reuters.com/world/un-committee-voices-concern-about-rising-israeli-hate-speech-against-2023-10-27/>

³⁰ International Criminal Tribunal for Ruanda, Case No: ICTR-96-4-T, Chamber I, Judgement, par. 498.

³¹ Akayesu, par. 518.

such, which thus means that the victim of the crime of genocide is the group itself and not only the individual.³²

As a consequence of these considerations, it is crucial for a court or prosecutor to ascertain the specific intent (*mens rea*) of the perpetrators concerning the crime of genocide. While a confession from the accused admitting to acting with genocidal or specific intent could be considered considerable evidence in this context, such confessions are not prevalent in cases of genocide that come under the purview of international court decisions.

In the *Akayesu* decision, International Criminal Tribunal for Rwanda addressed the difficulty of proving specific intent and established certain criteria for determining the perpetrator's intent:

“On the issue of determining the offender’s specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of an individual”.

Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia also stated that the specific intent of the crime of genocide:

*“may be inferred from a number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article 4, or the repetition of destructive and discriminatory acts. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate the very foundation of the group - acts which are not in themselves covered by the list in Article 4(2) but which are committed as part the same pattern of conduct”.*³³

Repeated in many international court decisions like *Krstic and Jelusic*, ICTY states that *where direct evidence of genocidal intent is absent, the intent may still be inferred from the*

³² *Akayesu*, par. 521.

³³ International Criminal Tribunal for the former Yugoslavia, Decision of Trial Chamber I, Radovan Karadzic, Ratko Mladic case (Cases Nos. IT-95-5-R61 and IT-95-18-R61), Consideration of the Indictment within the framework of Rule 61 of the Rules of Procedure and Evidence, par. 94.

factual circumstances of the crime and the genocidal intent may be inferred, among other facts, from evidence of “other culpable acts systematically directed against the same group.”³⁴

Thus, in the matter brought before the International Criminal Tribunal for the former Yugoslavia, the Trial Chamber, in its findings, found that:

“this intent derives from the combined effect of speeches or projects laying the groundwork for and justifying the acts, from the massive scale of their destructive effect and from their specific nature, which aims at undermining what is considered to be the foundation the group.”³⁵

According to the findings of the ICTY, speeches or statements may be deemed as factual circumstances of the crime or other culpable acts that are systematically directed against the same group.

The Israeli authorities have made the following written or oral statements regarding the armed conflict that started on 7 October 2023:

Statement by Israeli President Isaac Herzog:

“It is an entire nation that is responsible. This rhetoric about civilians not being involved is absolutely untrue...and we will fight until we break their backs.”³⁶

Statement by Prime Minister Benjamin Netanyahu on 29 October:³⁷

“They [the Israeli army] are longing to recompense the murderers for the horrific acts they perpetrated on our children, our women, our parents and our friends. They are committed to eradicating this evil from the world, for our existence, and I add, for the good of all humanity. The entire people, and the leadership of the people, embrace them and believe in them. ‘Remember what Amalek³⁸ did to you’ (Deuteronomy 25:17). We remember and we fight.”

³⁴ Krstić Appeal Judgment, par. 34, Jelisić Appeal Judgment, paras 47-48, And also see Stakić Appeal Judgment, par. 55; Hategekimana Appeal Judgment, par. 133; Karadžić Rule 98 bis Appeal Judgment, par. 80.

³⁵ Decision of Trial Chamber I, Radovan Karadzic, Ratko Mladic Case, par. 95.

³⁶ <https://transcripts.cnn.com/show/cnr/date/2023-10-15/segment/01>

³⁷ Statement by PM Netanyahu, <https://www.gov.il/en/departments/news/event-statement281023>

³⁸ “Amalek, in the Tanakh (Hebrew Bible), is a nation that ambushed the Israelites making their way to the Promised Land. Following the attack, which the Israelites were able to beat back, God instructed that they must never forget and must wage an eternal war until no trace of Amalek’s existence remains. Generations later, King Saul killed all but the Amalekite king, whose descendent, Haman, generations after that, in the story of Purim, plotted to kill all the Jews in Persia”. See Ariel Gold, “Who’s Drinking Netanyahu’s Genocidal Amalek Kool-Aid?”, <https://www.commondreams.org/opinion/netanyahu-amalek> See also Samuel 15:3: “Now go, attack the

A post from Israel's Prime Minister Benjamin Netanyahu's X account @IsraelPM (later deleted)

*"This is a struggle between the children of light and the children of darkness, between humanity and the law of the jungle."*³⁹

Israel's finance minister, Bezalel Smotrich:

"I welcome the initiative of members of Knesset Ram Ben-Barak and Danny Danon on the voluntary immigration of Gaza Arabs to the countries of the world. This is the right humanitarian solution for the residents of Gaza and the entire region,"

"A cell with a small area like the Gaza Strip without natural resources and independent sources of livelihood has no chance to exist independently, economically and politically in such a high density for a long time."

"The reception of refugees by the countries of the world that really want their best interests, with the support and generous financial assistance of the international community and within the state of Israel, is the only solution that will bring to an end the suffering and pain of Jews and Arabs alike."

*"The state of Israel will no longer be able to put up with the existence of an independent entity in Gaza."*⁴⁰

Heritage Minister Amichai Eliyahu, a member of National Security Minister Itamar Ben Gvir's far-right Otzma Yehudit (Jewish Power) Party, in answer to a question posed during a radio interview:

"Your expectation is that tomorrow morning we'd drop what amounts to some kind a nuclear bomb on all of Gaza, flattening them, eliminating everybody there..., " the Radio Kol Berama interviewer said.

"That's one way," Eliyahu responded. "The second way is to work out what is important to them, what scares them, what deters them... They are not scared of death."

Amalekites and totally destroy all that belongs to them. Do not spare them; put to death men and women, children and infants, cattle and sheep, camels and donkeys."

³⁹ <https://web.archive.org/web/20231017150336/https://twitter.com/IsraeliPM/status/1713949754948718657>

⁴⁰ <https://www.aljazeera.com/news/2023/11/14/israeli-minister-supports-voluntary-migration-of-palestinians-in-gaza>

“I pray and hope for their return, but there is a price to be paid in war,” he said. “Why are the lives of the abductees, whose release I really want, more important than the lives of the soldiers and the people who will be murdered later?”

Eliyahu also voiced objection to allowing any humanitarian aid into Gaza, saying, “we wouldn’t hand the Nazis humanitarian aid,” and charging that “there is no such thing as uninvolved civilians in Gaza.”⁴¹

The Coordinator of Israeli Military Activities in the OPTs, Maj. Gen. Ghassan Alian

“Animal humans will be treated accordingly; you wanted hell, and you will get it.”⁴²

An unnamed defence official told Israel’s Channel 13:

“Gaza will eventually turn into a city of tents. There will be no buildings. The ground manoeuvre will surprise Hamas,” the official said in a stark warning to the terrorist group behind the weekend assault that killed more than 1,200 Israelis.

Tally Gotliv, a member of Likud and Foreign Affairs and Defence Committee, of the Knesset, on X:

“Jericho Missile! Jericho Missile! Strategic alert. Before considering the introduction of forces. Doomsday weapon! This is my opinion. May God protect all our forces.”

“There is no pity! To the ground and crush Gaza. ... Do everything before considering bringing troops into Gaza.”

“We have artillery capabilities. We invested huge budgets in it. Must use everything we have in the arsenal! The lives of our soldiers are more important and precious than any person in Gaza. The gloves will be removed!”⁴³

⁴¹ <https://www.timesofisrael.com/far-right-minister-says-nuking-gaza-an-option-pm-suspends-him-from-cabinet-meetings/>

⁴² https://www.timesofisrael.com/liveblog_entry/cogat-chief-addresses-gazans-you-wanted-hell-you-will-get-hell/

⁴³ <https://nypost.com/2023/10/11/israeli-official-says-gaza-will-be-made-a-city-of-tents/>

Israeli Member of the Knesset, Ariek Kalnner on X:

“Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 48. Nakba in Gaza and Nakba to anyone who dares to join their Nakba, because like then in 1948, the alternative is clear”.

“Turn off the enemy now! This day is our Pearl Harbor. We will still learn the lessons. Right now, one goal: Nakba!”⁴⁴

The head of the IDF Spokesperson Unit, Rear Adm. Daniel Hagari:

“We are dropping hundreds of tons of bombs on Gaza. The focus is on destruction, not accuracy.”⁴⁵

Ben Gvir Itamar, the Israeli minister for border security and representing the far-right Party Jewish Power:

“As long as Hamas does not release the captives it holds the only thing that needs to enter Gaza are hundreds of tons of explosives from the Air Force, not an ounce of humanitarian aid.”⁴⁶

The ICTY Appeals Chamber in Stakic case stated:

“The Trial Chamber thus clearly considered the Appellant’s derogatory statements and propaganda, and the Appeals Chamber concludes that its assessment was reasonable. Evidence demonstrating ethnic bias, however reprehensible, does not necessarily prove genocidal intent. It is true, as the Prosecution suggests, that utterances might constitute evidence of genocidal intent even if they fall short of express calls for a group’s physical destruction; a perpetrator’s statements must be understood in their proper context.”

When these statements and social media posts by the Israeli authorities are read even with an objective perspective, it is evident that they do not contain propaganda or biases stemming from the past, and it is clear that they are aimed at the destruction of a certain group of Palestinians. Especially in the statement made by the coordinator of Israeli Military Activities in the OPTs, Maj. Gen. Ghassan Alian, Palestinians are likened to animals and it is

⁴⁴ <https://www.middleeastmonitor.com/20231009-israel-mk-calls-for-a-second-nakba-in-gaza/>

⁴⁵ <https://www.theguardian.com/world/2023/oct/10/right-now-it-is-one-day-at-a-time-life-on-israels-frontline-with-gaza>

⁴⁶ <https://www.ynetnews.com/article/bkm3w13bp>

suggested that they will receive the treatment they deserve. This statement is beyond mere propaganda or bias. This is one of the steps of the crime of genocide: dehumanisation.

The emphasis that Prime Minister Netanyahu places on the Old Testament, particularly the *Amalek* story, is seen by some as indicative of his specific intent — the destruction of the Palestinian group.

These statements and social media posts belonging to the Israeli authorities may also be considered as *direct and public incitement to commit genocide* which is prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide Art. III/c and Rome Statute Art. 25/3/c.

Issuing a Warrant of Arrest

Article 63 of the Statute stipulates that proceedings before the International Criminal Court (ICC) occur in the presence of the person, whether a suspect at the pre-trial stage or an accused person after the confirmation of the charges. The absence of arrests impedes the judicial process, preventing ICC judges from making determinations on guilt or innocence and hindering the opportunity for victims to be heard.

Impunity and instability are closely interconnected. When an alleged perpetrator of crimes remains at large, it poses risks to the collection and preservation of evidence, as well as the safety and well-being of potential witnesses and victims. Moreover, it implies that the individual might be free to persist in committing crimes, with no deterrent effect on other or future perpetrators.

Based on the investigations, the Prosecutor has the authority to request the issuance of a warrant of arrest from the Pre-Trial Chamber responsible for overseeing the proceedings related to the relevant situation under investigation.

To issue a warrant, the judges must be satisfied that there are reasonable grounds to believe that the suspect has committed a crime within the jurisdiction of the ICC.

Following this, the judges issue a warrant of arrest, aiming to ensure the individual's appearance at trial, prevent obstruction or endangerment of the investigation or court proceedings, and halt the person from continuing to commit the alleged crime or a related offense (as per Article 58(1)(b) of the Statute).

The Registry is responsible for transmitting the arrest warrant and requests for arrest and surrender to the relevant State(s), in consultation and coordination with the OTP.⁴⁷

⁴⁷ <https://www.icc-cpi.int/sites/default/files/bookletArrestsENG.pdf>

There are reasonable grounds to believe that several Israeli authorities and officials are responsible for having committed jointly with others and/or through others, or having ordered, solicited or induced, or of having aided, abetted or otherwise assisted in the commission of, or in any other way contributed to the commission of the crimes falling under the jurisdiction ICC committed between 7 October and 16 November 2023.

Article 58(1)(b)(iii) underscores that one of the objectives of an arrest warrant is to prevent the individual from persisting in the commission of a crime or related offenses falling within the jurisdiction of the Court, arising from the same circumstances. The urgency is evident, particularly for public officials, heads, or members of armed groups, given the widely acknowledged expectation that the ongoing situation in Gaza will escalate. Issuing arrest warrants is imperative to avert attacks and atrocities against civilians and civilian objects, ensuring that the person does not obstruct or jeopardize the investigation.

Grounds for an International Warrant of Arrest

On 20 December 2019, the Prosecutor announced that following a thorough, independent and objective assessment of all reliable information available to her Office, the preliminary examination into the Situation in Palestine had concluded with a determination that all the statutory criteria under article 53(1) of the Rome Statute for the opening of an investigation had been met. The Prosecutor announced that she was satisfied that: (i) there was a reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip; (ii) potential cases arising from the situation would be admissible; and (iii) there were no substantial reasons to believe that an investigation would not serve the interests of justice.

On 5 February 2021, the Pre-Trial Chamber decided, by a majority, that the Court may exercise its criminal jurisdiction in the Situation in Palestine, and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem. After this decision on March 2021, the Prosecutor confirmed the initiation by the Office of the Prosecutor of the International Criminal Court of an investigation respecting the Situation in Palestine. Since that time, the investigation has been ongoing. After October 7, it has been observed that numerous crimes falling within the jurisdiction of the Court have been committed both in Gaza and Israel.

According to Article 58 of the Statute, at any time after the initiation of an investigation, the Pre-Trial Chamber shall, upon the application of the Prosecutor and under certain conditions, issue a warrant of arrest for a person. These conditions are:

(a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and

(b) The arrest of the person appears necessary:

(i) To ensure the person's appearance at trial;

(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or

(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court, and which arises out of the same circumstances.

As previously mentioned, the non-international armed conflict between Hamas and Israel has led to thousands of deaths, injuries, attacks on civilians and civilian objects, and numerous violations of international humanitarian law. While the legal assessments of these acts will be conducted by the Prosecutor and Trial Chamber, we have reasonable grounds to believe that these countless acts amount to war crimes, crimes against humanity, and genocide. In our opinion, the first condition for issuing a warrant of arrest is met.

The deteriorating situation in Gaza underscores the imperative to prevent the suspects from persisting in the commission of crimes or related offenses falling within the jurisdiction of the Court. In light of these circumstances, the issuance of a warrant of arrest is deemed necessary.

Furthermore, the ongoing situation in Gaza presents obstacles to conducting a fair and independent investigation. The brutal attacks by the Israeli Defence Forces, coupled with the forced transfer of civilians, pose serious threats to the investigation process, making it extremely challenging to obtain evidence about the crimes committed.

Conclusion

In light of the foregoing, we kindly request the Prosecutor to:

- Include the violations of international humanitarian law mentioned above *inter alia* in the investigation, as they constitute crimes within the jurisdiction of the International Criminal Court.
- When preparing an indictment, take into consideration our findings related to the specific intent of the crime of genocide.
- Make an application to the Pre-Trial Chamber immediately for issuing an international warrant of arrest for the suspects responsible for directly committing, jointly with others and/or through others, or ordering, soliciting, inducing, aiding, abetting, or otherwise assisting in the commission of, or in any other way contributing to the crimes committed within the jurisdiction of the Court.

With kind regards.