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October 25, 2023

The Honorable Amb. Linda Thomas-Greenfield
Representative of the United States of America to the United Nations
United States Mission to the United Nations
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URGENT: U.S. Complicity in Israel's Unfolding Genocide Against the Palestinian People

Dear Ambassador Thomas-Greenfield:

In advance of the UN General Assembly Emergency Special Session tomorrow, I am writing to share a legal brief assessing Israel's unfolding crime of genocide of the Palestinian people, and the United States' failure to prevent and complicity in it. This brief was published on October 18, 2023. Since then, Israel has killed over 3,000 more Palestinian people, raising the death toll to over 6,500, of whom more than 2,704 are children. We implore you to use your position during the emergency session tomorrow to join the international call for a ceasefire.

There is a plausible and credible case, based on powerful factual evidence, that Israel is attempting to commit, if not actively committing, the crime of genocide in the occupied Palestinian territory, and specifically against the Palestinian people in the Gaza Strip. The gravest of crimes under international law, genocide refers to specific actions – such as killing or deliberately inflicting conditions of life calculated to bring about the destruction of the group in whole or in part – taken with the intention of destroying, in whole or in part, the group targeted, including on ethnic or national grounds.

As you know well from your time in Rwanda at the start of the genocide, inaction by the international community at a moment like this one will be catastrophic and irreversible. Since Israeli officials first began expressing and acting on the Israeli government's genocidal intent against the Palestinian people in Gaza, United Nations officials, Holocaust and genocide studies scholars, and human rights organizations have been warning of an unfolding genocide. Now is the moment for action. The United States must shift course immediately, and stop providing military, diplomatic and economic support for Israel and instead call for an immediate cease-fire and end to the siege for the 2.2 million Palestinians in Gaza.

Like both Palestine and Israel, the United States is a signatory to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The Genocide Convention places a duty on all 153 signatories to both prevent and punish genocide. The Convention criminalizes not just the commission of genocide, but incitement and attempts to commit genocide, as well as complicity in genocide, which is detailed in the brief. The United States – and U.S. citizens, including and up to the President – can be held responsible for their role in furthering genocide. And international law permits national courts to exercise universal jurisdiction over this crime.

As the brief outlines, the United States is not only failing to uphold its obligation to exercise its considerable influence over Israel to prevent the crime, but there is a plausible and credible case

that its actions to further the Israeli military operation, closure, and campaign against the Palestinian population in Gaza rise to the level of complicity in the crime under international law. Since the brief was published, the United States has not only failed to call for a ceasefire, but it actively vetoed a UN Security Council resolution calling for a “humanitarian pause” to Israel’s bombardment, while humanitarian organizations have been blocked from providing critical services on the ground and the healthcare system has been decimated. And the United States has continued providing unconditional military support to Israel, including military advisors, equipment, and other aid: on October 20, President Biden requested an additional \$14 billion in military assistance for Israel.

Israel, the United States, and indeed, all States, must immediately comply with their obligations under the Convention. The United States must call for an immediate ceasefire and must stop providing military, diplomatic and economic support for Israel.

Thank you in advance for your immediate attention.

Sincerely,

A handwritten signature in cursive script that reads "Maria C. LaHood".

Maria C. LaHood
Deputy Legal Director

Encl.

cc: Ambassador Robert Wood
woodRA@state.gov

CENTER FOR CONSTITUTIONAL



EMERGENCY LEGAL BRIEFING PAPER

Israel's Unfolding Crime of Genocide of the Palestinian People & U.S. Failure to Prevent and Complicity in Genocide

October 18, 2023

The Center for Constitutional Rights is a legal organization that works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, the Center for Constitutional Rights has taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach. For more information, visit: <https://ccrjustice.org/>.

Israel's Unfolding Genocide of the Palestinian People & U.S. Failure to Prevent and Complicity in Genocide

"I am here like an olive tree. We will never leave our homeland."

- Raji Sourani¹

I. INTRODUCTION

There is plausible and credible case, based on powerful factual evidence, that **Israel is attempting to commit, if not actively committing, the crime of genocide in the occupied Palestinian territory, and specifically against the Palestinian people in the Gaza Strip.**² The gravest of crimes under international law, genocide refers to specific actions – such as killing or deliberately inflicting conditions of life calculated to bring about the destruction of the group in whole or in part – taken with the intention of destroying, in whole or in part, the group targeted, including on ethnic or national grounds.

Since October 7, 2023, Israel has escalated its 16-year closure over 2.2 million Palestinians in Gaza where approximately half the population is under 18, indiscriminately and repeatedly bombing civilians while cutting off access to all basic necessities, including food, water, electricity, and medical supplies, and on October 13th ordered a forced “evacuation” of 1.1 million Palestinians out of northern Gaza.

As this briefing paper was being finalized on the evening of October 17, 2023, there were an estimated 500 fatalities following a reported Israeli airstrike at Al-Ahli Arab Hospital in Gaza City

¹ Raji Sourani, Founder and Director of the Palestinian Center for Human Rights (PCHR) in Gaza, when asked if he would leave his home in Gaza City in response to the bombing and the “evacuation” order. “On my body, I have no plan,” explaining that his family has lived in Gaza/Palestine for eight centuries. *“We Will Never Leave”: Human Rights Lawyer Raji Sourani in Gaza City Refuses to be “Good Victim,”* Democracy Now (Oct. 17, 2023), https://www.democracynow.org/2023/10/17/raji_sourani_gaza.

² The Center for Constitutional Rights (CCR) has produced this analysis in the midst of a situation still unfolding with devastating speed, in response to questions from journalists, activists and within the legal community. This analysis is necessarily incomplete, therefore. However, given the proclamations about the trajectory and intensity of the upcoming Israeli ground invasion and bombing of Gaza, we fear the unfolding genocide will not abate and may well intensify.

CCR recognizes that Palestinians and Palestinian human rights organizations have long warned of the likelihood of genocide being the inevitable frame through which to assess the widespread and systematic violations being committed against their people across the occupied Palestinian territory, and urged States to take action before it advanced. For such a recent analysis of Gaza and genocide from a sociological perspective, see Mohammed Nijim, *Genocide in Palestine: Gaza as a case study*, 27 *International Journal of Human Rights* 165 (2023). We credit and honor Palestinian organizations such as Al-Haq, Al Mezan Center for Human Rights, Defense for Children International-Palestine and PCHR, and many others for their tireless work under dangerous and unimaginably difficult conditions to gather information included in this paper and for their analysis of the human rights violations and crimes being committed by Israel and its officials. We also honor the people of Gaza who, despite being under constant bombardment with dwindling access to electricity, have nevertheless written, tweeted, posted, made calls, or otherwise reported on the Israeli assault, including when it has wiped out their own families.

where many were seeking shelter. Excluding those killed at Al-Ahli Hospital, as of October 17, 2023, the Palestinian Ministry of Health has confirmed that 3,000 Palestinians have already been killed, including at least 1,030 children and hundreds of family units; in 11 days, more than 12,500 people have been injured, one million Palestinians displaced, and thousands of homes destroyed, with reports of 1,200 missing people believed to be trapped under the rubble. As set forth below in both the detailed factual overview and the Findings, Israeli officials have made statements revealing that these actions are for the purpose of destroying the Palestinian population in Gaza.³ This presents a plausible and credible case of a breach of the Genocide Convention.

Like both Palestine and Israel, the United States is a signatory to the *1948 Convention on the Prevention and Punishment of the Crime of Genocide*, the first human rights treaty adopted by the United Nations General Assembly and considered the building block of the international human rights system.⁴ The Genocide Convention places a *duty* on all 153 signatories to both *prevent* and *punish* genocide.⁵ The Convention criminalizes not just the commission of genocide, but incitement and attempts to commit genocide, as well as complicity in genocide, which is discussed below in detail. Israel, the United States, and indeed, all States, must immediately comply with their obligations under the Convention.

The United States has been obligated, from the time learning of the serious risk of genocide of the Palestinian people, to exercise its influence on Israel to prevent the crime. **The United States is not only failing to uphold its obligation to prevent the commission of genocide, but there is a plausible and credible case to be made that the United States' actions to further the Israeli military operation, closure, and campaign against the Palestinian population in Gaza, rise to the level of complicity in the crime under international law.**

The United States – and U.S. citizens, including and up to the President – can be held responsible for their role in furthering genocide. Any individual who commits, incites, conspires to commit or is complicit in genocide can be held liable under international law – including before the International Criminal Court (“ICC”),⁶ which already has an open investigation into crimes being

³ This document includes facts and events through October 17, 2023, 00:00 EST.

⁴ Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on December 9, 1948 as General Assembly Resolution 260, and entered into force on January 12, 1951 (“Genocide Convention”), <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>. Israel ratified in 1950, the United States became a party in 1988, and Palestine acceded in 2014.

⁵ As the International Court of Justice made clear in its first pronouncement on the Genocide Convention, “the contracting states do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the convention.” *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 15, 23, <https://www.icj-cij.org/case/12>.

⁶ The Rome Statute of the International Criminal Court, art. 6, opened for signature July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002) (“Rome Statute”), <http://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

committed in Palestine⁷ – or under U.S. law.⁸ The International Court of Justice (“ICJ,”) also known as the World Court, which is empowered to resolve disputes between signatory States to the Genocide Convention, can also issue provisional measures to ensure compliance with the Convention in the case of an unfolding genocide, including if it finds that breaches of the Convention are “plausible.”⁹ Additionally, because the prohibition against genocide is recognized as a crime under customary international law, as what is known as a *jus cogens* norm with *erga omnes* obligations, it is binding on all countries, and can be prosecuted under the principle of universal jurisdiction.

Israel’s invocation of self-defense for the campaign it has unleashed against the entire Palestinian population in Gaza, and the full credit the United States gives it when affirming its unconditional support, does not negate genocidal intent or serve as a justification for its crimes under international law. Israel launched its most recent war on Gaza in response to an attack by fighters from Hamas’ military wing, the al Qassam brigade, which killed at least 1,400 people, the majority of whom were Israeli civilians, and took an estimated 200 people from Israel into Gaza as hostages. This targeting or wilful killing of civilians and taking of civilian hostages constitute violations of international humanitarian law, including the law prohibiting war crimes, and should be addressed through appropriate mechanisms for accountability. Yet, as the law makes clear, “no State or individual can ever be permitted to justify genocide in the name of self-defence.”¹⁰

We also make clear that nothing in this analysis should be understood as minimizing the prior or ongoing crimes and gross human rights violations by Israel that are separate from the crime of genocide, including war crimes and the crimes against humanity of apartheid, persecution and extermination that have been separately well-documented by U.S., international and Israeli human rights groups. These serious violations impose obligations on States to take all measures possible to prevent their commission and to stop recurrence through accountability mechanisms at both the State and individual level. With the support of and endorsement by the United States, Israel has enjoyed impunity for such crimes. In the absence of accountability, we have now reached the point of genocide. All States must now – finally – act, including the United States, to end and address all of these crimes.

⁷ Pre-Trial Chamber I, *Situation in the State of Palestine*, ICC-01/18-143, Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine,’ (Feb. 5, 2021), <https://www.icc-cpi.int/court-record/icc-01/18-143>.

⁸ The United States implemented its obligations under the Genocide Convention at 18 U.S.C. § 1091. This statute imposes individual criminal responsibility for commission, incitement, attempt, and conspiracy to commit genocide; aiding and abetting is a mode of liability generally applicable to the U.S. criminal code. *See* 18 U.S.C. §§ 2(a) and 2(b).

⁹ *See, e.g., Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, I.C.J. Reports 2020-2021 (Jan. 23, 2020), paras. 44, 56, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>; Genocide Convention, Article IX.

¹⁰ *See* William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge University Press 2009) at p. 395; *Prosecutor v. Martić* (Case No. IT-95-11-R61), Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 13 March 1996, para. 17.

Immediately, the United States must take all available measures to secure a ceasefire, to pressure Israel to end all military operations, and to ensure the provision of food, water, medical supplies, emergency housing, and other humanitarian assistance to Palestinians in Gaza. The United States must end all military aid, as well as political, economic and diplomatic support to Israel until Israel comes into compliance with international law. In addition, the international community must achieve the immediate end of Israel's 16-year closure of the Gaza Strip, Israel's 56-year military occupation of the occupied Palestinian territory (the West Bank, including East Jerusalem, and Gaza), and the apartheid regime Israel administers across historic Palestine.

II. THE CRIME OF GENOCIDE

"I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed. We are fighting human animals and we act accordingly"
- Israeli Defense Minister Yoav Gallant¹¹

In the aftermath of World War II and the horror of the Holocaust, the Genocide Convention was adopted to deter and prevent such horrors in the future, and, failing that, to hold those responsible accountable. In its first opinion examining the scope, purpose and obligations under the Genocide Convention, the ICJ found "its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality."¹² The Genocide Convention recognizes responsibility at both the State level and of individuals, and calls for accountability at both levels.

The Genocide Convention defines genocide as committing specified acts "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."¹³ The "group" is what must be targeted,¹⁴ on grounds including nationality or ethnicity; and it is the "group" that is protected.¹⁵ The "part" targeted for destruction can be represented by a subgroup, for example, in a specific geographic area.¹⁶ Palestinians living in Gaza, as part of the Palestinian population, can constitute the targeted group for the purposes of the Genocide Convention.

¹¹ *Israel's Defense Minister – we are fighting 'human animals'*, Bloomberg Television (Oct. 9, 2023), <https://www.youtube.com/watch?v=3x02rCeusCI>; see also *"We are fighting human animals" said Israeli Defense Minister Yoav Gallant*, No Comment TV (Oct. 9, 2023), <https://www.youtube.com/watch?v=ZbPdR3E4hCk>.

¹² *Reservations to the Convention on Genocide*, *supra* note 5, at p. 23.

¹³ Genocide Convention, art. 2, chapeau.

¹⁴ See, e.g., *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Trial Judgment, para. 165 (Jan. 27, 2000).

¹⁵ See *Prosecutor v. Krstić*, Case No. IT-98-33, Appellate Chamber Judgment, Partial Dissenting Opinion of Judge Shahabuddin, para. 50 (Apr. 19, 2004) (explaining that in the context of the massacre of 8,000 Bosnian Muslims at Srebrenica, "A group is constituted by characteristics - often intangible - binding together a collection of people as a social unit").

¹⁶ This was the case with regards to the Srebrenica genocide, with the "group" for genocide purposes being Bosnian Muslims, and the "part" of the group represented by the Bosnian Muslim community of Srebrenica.

Genocide, like the crime against humanity of persecution, is a crime distinguished by the specific intent to target a group on recognized grounds through a series of acts often reflected in and achieved through State policies. In the case of genocide, the protected group itself is targeted for destruction. As the General Assembly underscored in 1946, the “denial of the right of existence shocks the conscience of [hu]mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.”¹⁷

The specific intent to destroy a group, which can be inferred from the general context,¹⁸ is incompatible with the argument of self-defense. International criminal law scholars agree that the gravity and specificity of the crime of genocide - the perpetrator must intend to destroy a group - makes inconceivable the justification of defensive force under Article 31(1)(c) of the Rome Statute.¹⁹ A group’s very existence (in this case Palestinians in Gaza) would thus need to be characterized as an imminent unlawful threat, which is an untenable proposition here. Further, the right of self-defense is bound by the principles of international law,²⁰ as well as the rule of proportionality, and “cannot comprise retaliatory or punitive action. For this reason, no State or individual can ever be permitted to justify genocide in the name of self-defence.”²¹

In addition to prohibiting the commission of genocide, the Genocide Convention prohibits conspiring, inciting, attempting to commit, and complicity in, genocide. The International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”) have addressed different forms of complicity to the crime of genocide, including aiding and abetting genocide, as well as conspiracy and joint criminal enterprise.²²

Mass killings are one means by which genocide is committed, but that is not the only method by which a group is “destroyed” or exterminated (in whole or in part). Raphael Lemkin, the Polish-Jewish lawyer credited with coining the term, said that genocide often includes “a coordinated plan aimed at destruction of the essential foundations of the life of national groups so that these groups

¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 3, para. 69 (quoting U.N.G.A. Res. 96(I) (Dec. 11, 1946)) (“*The Gambia Order*”).

¹⁸ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, [Trial Judgment](#) (Sept. 2, 1998), at 523.

¹⁹ See, e.g. Hannah Tonkin, *Defense Force Under the Rome Statute*, 6 Melbourne Journal of International Law (2005); see also Schabas, *Genocide in International Law: The Crime of Crimes*, Chapter 7 (“Defences to Genocide”).

²⁰ See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1. C.J. Reports 1996, p. 226, para. 42.

²¹ See Schabas, *Genocide in International Law: The Crime of Crimes* at p. 395; *Prosecutor v. Martić* (Case No. IT-95-11-R61), Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 13 March 1996, para. 17.

²² See, e.g. *Prosecutor v. Popović et al.*, Case No. IT-05-88-A, Appeal Judgment (January 30, 2015) (conspiracy to commit genocide and aiding and abetting the crime) *Prosecutor v. Ndindabahizi*, Case No. ICTR-01-71-A, Judgment, ¶ 122 (Jan. 16, 2007) (aiding and abetting genocide); *Prosecutor v. Ntagerura*, Case No. ICTR-99-46-A, Judgment, ¶ 370 (July 7, 2006) (same); *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Judgment, ¶ 180 (Jan. 27, 2000) (same).

wither and die like plants that have suffered a blight It may be accomplished by wiping out all basis of personal security, liberty, health and dignity.”²³ More than fifty years after Lemkin’s foundational observation, the ICTR rendered the first genocide conviction by an international court and held that in addition to killings, “subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below the minimum requirement” constituted the crime of genocide as “methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction.”²⁴

As a leading genocide scholar has determined, settler colonial regimes – such as Israel – are structured, through their policies and expansionist planning, to facilitate the commission of genocide, and often undertake “genocidal moments” in response to the resistance of a colonized or occupied people.²⁵

A. Elements of Genocide

Article II of the Genocide Convention defines the crime of genocide by two main elements: (1) specific underlying acts, and (2) intent. The same elements define the crime of genocide in the statute of the ICC, as well as the ICTY and ICTR.²⁶ Genocide is a crime whether committed in time of peace or war.²⁷ That genocide takes place while a party is in an armed conflict with another group “can in no way be considered as an extenuating circumstance for it.”²⁸

Specific Underlying Acts. The first element, specific underlying acts, include any of the following: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group.

²³ Raphael Lemkin, *Genocide – A Modern Crime*, 4 *Free World* 39 (1945).

²⁴ See *Akayesu* Trial Judgment. The tribunal also held for the first time that rape and other forms of sexual violence could constitute forms of genocide when committed with the intent to destroy a group in whole or in part.

²⁵ See A. Dirk Moses, *An Antipodean Genocide? The Origins Of The Genocidal Moment In The Colonization Of Australia*, 2 *J. of Genocide Research* 89 (2000). See generally A. Dirk Moses (ed.), *Empire, Colony, Genocide: Conquest, Occupation and Subaltern Resistance in World History* (Berghahn Books 2008). See also Haifa Rashed & Damien Short, *Genocide and Settler Colonialism: Can a Lemkin-Inspired Genocide Perspective Aid Our Understanding of the Palestinian Situation?*, 16 *Int’l J. Hum. Rts.* 1142 (2012).

²⁶ See Rome Statute, art. 6; see also, Statute of the International Tribunal for the Former Yugoslavia, art. 4 (adopted by U.N. S/RES/827, May 25, 1993); Statute of the International Criminal Tribunal for Rwanda, art. 2 (adopted by U.N. S/RES/955, Nov. 8, 1994).

²⁷ Genocide Convention, art. 1.

²⁸ *Akayesu* Trial Judgment, para. 128. Article 31(1)(c) of the Rome Statute provides in part: “The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility.”

As is particularly relevant to the unfolding situation in Gaza, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part is an act of genocide. The ICC Elements of Crimes, drawing from customary international law, defines the term “conditions of life” as including but not limited to “deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.”²⁹ The tribunal examining the case of Srebrenica, for example, explained that such methods of destruction “do not immediately kill the members of the group, but . . . ultimately, seek their physical destruction” – proof that the result was actually attained is not required.³⁰ Denying medical services,³¹ systematically expelling members of the group from their homes,³² and creating circumstances that would “lead to a slow death,” such as the lack of proper housing, water, shelter, clothing, hygiene, sanitation, or proper food including by subjecting people to a subsistence diet, or subjecting members of the group to excessive work or physical exertion,³³ have all been found to be examples of “conditions of life” calculated to bring about a group’s physical destruction, in whole or in part, by international tribunals in the context of the Rwandan and Srebrenica genocides. “The actual nature of the conditions of life, the length of time that members of the group were subjected to them, and the characteristics of the group such as its vulnerability are illustrative factors to be considered in evaluating the criterion of probability.”³⁴

For the purposes of genocide, *killing* is equated with murder, meaning causing the death by an act or omission, with the intent to either kill or cause serious bodily harm that would likely lead to death. There is no minimum number of people killed necessary to establish that genocide has been committed.³⁵ Because of the obligation on states to take all measures to prevent genocide, as well as the prohibition on the “attempt” to commit genocide, state obligations are triggered when killings are done in a manner that reveals an intention to destroy a targeted population, in whole or in part.

Examples of *causing serious bodily or mental harm* as an act of genocide include torture, inhumane or degrading treatment, interrogations combined with beatings, and harm that damages health or causes disfigurement or serious injury to the external or internal organs of members of the group,

²⁹ See ICC Elements of Crimes, art. 6(b), n. 4.

³⁰ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, [Trial Judgment](#), para. 814 (Jun. 10, 2010).

³¹ *Id.*, para. 815; *Musema* Trial Judgment, para. 157.

³² See, e.g., *Prosecutor v. Brđanin*, Case No. IT-99-36, [Trial Judgment](#), para. 691 (Sept. 1, 2004); *Prosecutor v. Stakić*, Case No. IT-97-24-T, [Trial Judgment](#), para. 517 (Jul. 31, 2003); *Akayesu* Trial Judgment, para. 506.

³³ See, e.g., *Akayesu* Trial Judgment, para. 523; *Stakić* Trial Judgment, para. 517; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, [Trial Judgment](#), para. 547 (Mar. 24, 2016).

The ICJ also included the destruction of villages and homes, denial of access to food, shelter and other essentials of life, as well as mass killings as acts that affect “the right of existence of a protected group” under the Genocide Convention in the context of charges of genocide against the Rohingya. *The Gambia* Order, para. 71.

³⁴ *Karadžić* Trial Judgment, para. 548.

³⁵ “There is no numeric threshold of victims necessary to establish genocide, even though the relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Article 2 of the Statute, is strong evidence of the intent to destroy a group, in whole or in part.” *Prosecutor v. Muhimana*, Case No. ICTR-95-1B-T, Judgment, para. 498 (Apr. 28 2005).

although the harm does not need to be permanent and irremediable.³⁶ Threats of death and knowledge of impending death can constitute serious mental harm,³⁷ with war crimes tribunals specifically recognizing the serious mental harm caused by the threat of indiscriminate killings: “[t]he fear of being captured, and, at the moment of the separation, the sense of utter helplessness and extreme fear for their family and friends’ safety, is a traumatic experience from which one will not quickly – if ever – recover.”³⁸ Torture, as an underlying act of genocide, means causing serious physical or mental harm, which can be done through physical injuries or by threats to harm or kill a person (or relative or loved one) in order to coerce or punish, with the intention of producing mental suffering such as fear.³⁹ Deportation has also long been recognized as causing serious bodily or mental harm.⁴⁰

Specific Intent. The second element – intent – requires that these acts be committed “with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”⁴¹ Genocidal or specific intent means that the result of destroying the group (in whole or in part) is clearly intended; it is the group *qua* group (and not only certain individual members of the group) that must be targeted to be destroyed, in whole or in part.⁴² “In part” is understood as a substantial part of a particular group, which can be part of the larger group “within a geographically limited area.”⁴³ This specific intent may be proven from the facts and circumstances of a case.⁴⁴

³⁶ *Karadžić* Trial Judgment, para. 545; *Akayesu* Trial Judgment, para. 502.

³⁷ In assessing the threat of death in the context of Srebrenica, the trial chamber found: “The suffering of men separated at Potocari or detained after their surrender or capture from the column of men leaving Srebrenica, knowing they were likely to be killed, constituted serious bodily and mental harm as an actus reus of genocide. It was of such a nature as to contribute or tend to contribute to the destruction of the group in that their suffering prevented these members from leading a normal and constructive life.” *Prosecutor v Tolimir*, No. IT-05-88/2-T, Judgment, paras. 754-55 (Dec. 12, 2012).

³⁸ *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Trial Judgment, para 647 (Jan. 17, 2005) (“*Blagojević* Trial Judgment”).

³⁹ See, e.g., *Akayesu* Trial Judgment, para. 503, quoting *Israeli Government Prosecutor General v. Adolph Eichmann*, Jerusalem District Court, 12 Dec. 1961, ILR vol. 36 (1968) for the causes of serious bodily or mental harm of the group: “starvation, deportation and persecution [...] and by their detention in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation of their rights as human beings, and to suppress them and cause them inhumane suffering and torture.”

⁴⁰ *Blagojević* Trial Judgment, para. 646 (citing *Eichmann*, p. 340). See also para. 650 (stating that “the forced displacement of women, children and elderly people was itself a traumatic experience” particularly when it followed fleeing from an area under a 5-day military offensive while being shot at, being separated from family, and seeing smoke rising from their homes, knowing the displacement was not temporary).

⁴¹ Genocide Convention, art. 2.

⁴² See e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, para. 139 (“*ICJ Croatia 2015 Judgment*”).

⁴³ *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, at para. 126 (Feb. 26, 2007) (“*ICJ Bosnia and Herzegovina Judgment*”); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Preliminary Objections, Judgment, I.C.J. Reports 2008, para 199, <https://www.icj-cij.org/case/118/judgments>.

⁴⁴ *Prosecutor v. Jelisić*, Case No. IT-95-10-A, [Appeal Judgment](#), para. 47 (July 5, 2001) (“*Jelisić Appeal Judgment*”). In fact, explicit manifestations of criminal intent are “often rare in the context of criminal trials.” Inferring intent from relevant facts and circumstances, “prevents perpetrators from escaping convictions simply because such

Evidence of specific intent can include, but is not limited to: the general context, the scale of atrocities, the systematic targeting of victims on account of their membership in a particular group, other culpable acts systematically directed against the same group, or the repetition of destructive and discriminatory acts.⁴⁵ While forcible transfer is not deemed a stand-alone indicia of the intent to destroy, it is a relevant consideration when assessing genocidal intent.⁴⁶ The existence of a plan or policy can also be a factor used to establish specific intent, but it is not required.⁴⁷ Genocidal intent may also be inferred from public speeches and statements by officials.⁴⁸

When considering a request for provisional measures in regard to the unfolding genocide of Rohingya in Myanmar (Burma), the ICJ looked at various United Nations fact-finding missions, reports and resolutions to assess whether it was “plausible” that the underlying acts and genocidal intent were satisfied, and specifically noted “the systematic stripping of human rights, the dehumanizing narratives and rhetoric, the methodical planning, mass killing, mass displacement, mass fear, overwhelming levels of brutality, combined with the physical destruction of the home of the targeted population, in every sense and on every level” to grant provisional measures.⁴⁹

B. The Duty to Prevent Genocide

Article 1 of the Conventions creates a legal duty to prevent genocide.⁵⁰ This undertaking to prevent genocide is not a passive obligation, but rather “implies that each State party must assess whether a genocide or a serious risk of genocide exists.”⁵¹ This obligation to prevent reflects the international community’s collective commitment to ensure that groups are not targeted for destruction because of their identity.

The ICJ has made clear that “a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”⁵² States are required to take all measures “reasonably available to them” to prevent this risk from that moment onwards, “if the State has

manifestations are absent.” *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, [Trial Judgment](#), para. 525 (May 26, 2003).

⁴⁵ *Jelisić* Appeal Judgment, para. 47; *Karadžić* Trial Judgment, para 550.

⁴⁶ *Prosecutor v. Popović et al.* Trial Judgment, para. 824.

⁴⁷ *Jelisić* Appeal Judgment, para. 48.

⁴⁸ See generally *Prosecutor v. Nahimana et al.*, (“Media Trial”), Case No. ICTR-99-52-A, [Appeal Judgment](#) (Nov. 28, 2007).

⁴⁹ *The Gambia* Order, paras. 55-56.

⁵⁰ “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.” Genocide Convention, art. 1.

⁵¹ ICJ *Bosnia and Herzegovina* Judgment, p. 43, at paras 430-431.

⁵² *Id.*, para. 431-32 (stating “[I]t is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed”).

available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent.”⁵³

Whether a State has breached its duty to prevent depends on the State’s ability to effectively influence the actions of the people likely to commit, or already committing, genocide; strong political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events are indicia of capacity to prevent genocide.⁵⁴ States will be held responsible for failing to prevent “if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.”⁵⁵ To the extent they exercise influence, States are required to prevent outside of their territory as well.

C. Complicity in Genocide

Complicity to commit genocide is a standalone crime, triggering both State responsibility and individual criminal responsibility, regardless of position, under the Genocide Convention.⁵⁶ Complicity can only exist when there is a punishable act of genocide by another State or persons, with which the accomplice associates itself.⁵⁷ The International Law Commission’s Articles on State Responsibility apply when assessing the responsibility of States for internationally wrongful acts.⁵⁸ As the ICJ has explained, for purposes of State responsibility under the Genocide Convention, complicity “includes the provision of means to enable or facilitate the commission of the crime . . . it is similar to a category found among the customary rules constituting the law of State responsibility, that of the ‘aid or assistance’ furnished by one State for the commission of a wrongful act by another State.”⁵⁹ It is enough that a State acts with “knowledge of the wrongful act” - in this case genocide - when it provides aid or support; it does not need to share the specific intent to commit genocide.⁶⁰

Complicity requires that some positive action has been taken to furnish aid or assistance to the perpetrators of the genocide.⁶¹ A finding of complicity against a State is found if its “organs were aware that genocide was about to be committed or was under way, and if the aid and assistance supplied, from the moment they became so aware onwards, to the perpetrators of the criminal acts

⁵³ *Id.*, para. 430-31.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ For individual responsibility, *see* ICJ *Bosnia and Herzegovina* Judgment paras. 167, 381; Genocide Convention, Art III(e), Art. 4 (“Persons committing genocide . . . shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”); ICC Statute, art. 6 and 25(3)(c).

⁵⁷ A state or individual can be held responsible for complicity even if the principal perpetrator has not been tried or had liability established. *See* ICJ *Bosnia and Herzegovina* Judgment, para. 182.

⁵⁸ *See* ICJ *Croatia* 2015 Judgment, para. 128.

⁵⁹ ICJ *Bosnia and Herzegovina* Judgment, para. 419.

⁶⁰ *Id.* at paras. 420 (looking to aiding and abetting under the ILC’s Articles of State Responsibility, art. 16) and 421.

⁶¹ *Id.* at para. 432.

or to those who were on the point of committing them, enabled or facilitated the commission of the acts.”⁶²

For individual criminal responsibility, complicity is accomplished by instigation, aiding and abetting or by procuring the means for the commission of the genocide.⁶³ Providing weapons or other instruments and means used in the commission of genocide, knowing that they would be used for that purpose, constitutes a form of complicity.⁶⁴ The accomplice does not have to share with the perpetrator the genocidal intent – the specific intent to destroy a group in whole or in part based on its identity.⁶⁵

III. RELEVANT FACTS

A. Context and Historical Background

“We are not looking back to dig up the evidence of a past crime, for the Nakba is an extended present that promises to continue in the future.”

– Mahmoud Darwish⁶⁶

Since 1947, there have been multiple “genocidal moments” where the Israeli settler-colonial regime has engaged in the mass killing of Palestinians, and their mass expulsion and annexation of their land causing severe physical or mental harm to the Palestinian community. The first such “moment,” the Palestinian Nakba, provides critical context for understanding the ideology and infrastructure upon which Israel is now acting in October 2023, and that Israeli officials are now explicitly invoking.

The Nakba (or “the Catastrophe”) refers to the Zionist militias’ violent campaign of mass displacement and dispossession between 1947 and 1949, resulting in the forced displacement of 85 percent of the Palestinian population, the destruction of 531 Palestinian towns and villages, and the expulsion of some 750,000 Palestinians who became refugees. Palestinians fled or were forced to flee as the armed forces of the Zionist movement (namely, Irgun and Lehi units, as well as the Haganah) carried out a series of mass atrocities, including dozens of massacres, and killing an

⁶² *Id.*

⁶³ *Musema* Trial Judgment, para. 176.

⁶⁴ *Id.* at para. 178.

⁶⁵ *Id.* at para. 181. *See also Prosecutor v. E. Ntakirutimana & G. Ntakirutimana*, Cases Nos. ICTR-96-10-A & ICTR-96-17-A, Appeal Judgement, Dec. 13, 2004, para. 501 (finding that the *mens rea* for aiding and abetting genocide is knowledge of the principal perpetrator’s genocidal intent; the aider and abettor - convicted for complicity in genocide - does not require intent to commit genocide).

⁶⁶ Mahmoud Darwish, *Not to begin at the end*, Al-Ahram Weekly Online, Issue No. 533 (May 10, 2001), <https://web.archive.org/web/20011202055655/http://www.ahram.org.eg/weekly/2001/533/op1.htm>.

estimated 15,000 Palestinians.⁶⁷ In the days preparing for the particularly horrifying massacre in Deir Yassin, where more than 100 Palestinians including children were killed, the Lehi unit “put forward a proposal to liquidate the residents of the village” in order “to break Arab morale.”⁶⁸

Over the past 75 years, successive Israeli governments have pursued deliberate, calculated, and explicit campaigns against Palestinians of forced expulsion, transfer and displacement, killing, fragmentation, arbitrary imprisonment, torture, and denial of fundamental rights.⁶⁹

In the West Bank, under belligerent military occupation since 1967, the Israeli policy of annexation has been marked by a steady, incremental process of forcibly removing Palestinians and concentrating them into enclaves, while transferring its own Israeli civilian population into occupied territory, in violation of Article 49 of the *1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (“Fourth Geneva Convention”). Human rights advocates, journalists and international human rights bodies, such as the United Nations, have extensively documented the combination of administrative measures, discriminatory land regime and dispossession of land and resources, mass detention, as well as state and settler violence over the past decades.⁷⁰ Just this year, several Palestinian communities in the West Bank were forcibly displaced at alarming rates.⁷¹ In response to Palestinian protest and uprisings to these intolerable conditions, the Israeli military has responded with massive military repression, excessive force, killings and collective punishment.⁷²

⁶⁷ Palestinian Central Bureau of Statistics, *PCBS President: Despite tragic circumstances, Palestinians have multiplied seven times since the Nakba (Catastrophe) of 1948* (May 2008), <https://www.pcbs.gov.ps/Portals/pcbs/PressRelease/nakba%2060.pdf>; *The Nakba did not start or end in 1948*, Al Jazeera (May 23, 2017), <https://www.aljazeera.com/features/2017/5/23/the-nakba-did-not-start-or-end-in-1948>. See also Raz Segal, *A Textbook Case of Genocide: Israel has been explicit in what it's carrying out in Gaza. Why isn't the world listening?*, Jewish Currents (Oct. 13, 2023), <https://jewishcurrents.org/a-textbook-case-of-genocide>; *The Palestinian Nakba (“Catastrophe”)*, Institute for Middle East Understanding (IMEU) (Apr. 5, 2023), <https://imeu.org/article/quick-facts-the-palestinian-nakba>; *Fact Sheet: The Palestinian Nakba & The Establishment of Israeli Apartheid*, IMEU (May 8, 2013), <https://imeu.org/article/the-nakba-65-years-of-dispossession-and-apartheid#massacres%20and%20atrocities>.

⁶⁸ See BADIL, *Massacres and the Nakba: Remembering the Victims of Sabra & Shatila*, 7 Al-Majdal Magazine (2000), <https://www.badil.org/publications/al-majdal/issues/items/489.html>.

⁶⁹ See, e.g., *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, Human Rights Watch (Apr. 27, 2021), <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>.

⁷⁰ See generally Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese (Sept. 21, 2022), U.N. Doc. A/77/356, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/598/03/PDF/N2259803.pdf?OpenElement>.

⁷¹ See, e.g., *Israel forcibly transfers the community of ‘Ein Samia*, B’Tselem (May 23, 2023), https://www.btselem.org/press_releases/20230523_ein_samia_forcible_transfer; *Palestinian community compelled to relocate amid Israeli settlement practices*, OCHA (May 25, 2023), <https://ochaopt.org/content/palestinian-community-compelled-relocate-amid-israeli-settlement-practices> (mentioning several communities since 2022). Cases of specific communities have garnered significant international attention over the years, most recently, Masafer Yatta, Khan Al Ahmar, and the neighborhoods of Silwan and Sheikh Jarrah.

⁷² *Trigger-Happy: Israel's Excessive Use of Force in the West Bank*, Amnesty International (Feb. 2014), https://www.amnesty.org.uk/files/mde150022014en_0.pdf; *A Demonstration of Power: Israel's Excessive Use of*

For the past sixteen years in Gaza, Palestinians have been subjected to Israel’s land, sea, and air closure, while living under belligerent occupation. At the time Israel instituted the closure, it declared Gaza – with its then-population of approximately 1.8 million people – “hostile territory” and the population “the enemy.”⁷³ Israel’s closure policy has resulted in a denial of fundamental rights, including the right to freedom of movement; life and physical security; adequate standard of living, including the right to adequate food, water, housing; right to health; right to education and to work; right to family; and the right to self-determination.⁷⁴ Palestinians in Gaza have suffered from severe shortages of food, sanitary and clean drinking water, electricity, essential medical services and treatment including medicine, and critical infrastructure. Many basic necessities are provided – and withheld – at the will of Israel, Western governments, and international humanitarian aid agencies.⁷⁵ Palestinians in Gaza who require life-saving or emergency medical treatment can only access such medical care outside of Gaza. However, Palestinians are required to secure permits from Israeli authorities to leave the Strip, and these are systematically delayed or denied.⁷⁶

Israeli authorities regularly subject Palestinians, particularly in Gaza, to multiple forms of collective punishment, including sustained military campaigns. These campaigns, including the ongoing military assault on Gaza, have each resulted in the mass killings of Palestinian civilians, including children. Over the course of the 16-year closure, and prior to the current military attack, Israel carried out at least five mass military attacks on the Palestinian civilian population and attacked the “Great March of Return” protests, killing more than 5,365 Palestinians, including journalists, medical workers, and unarmed protestors:⁷⁷

Force resulting in the Killing of Non-Violent Palestinian Protestors and Demonstrators during 2014 and 2015, Al Haq (May 7, 2016), <https://www.alhaq.org/advocacy/6415.html>; *The Misuse of Tear Gas by Israeli Army Personnel in the Israeli Occupied Territories*, Amnesty International (June 1, 1988), <https://nakba.amnesty.org/wp-content/uploads/2018/11/AmnestyDoc.pdf>.

⁷³ Press Release, Israeli Prime Minister’s Media Adviser, *Security Cabinet declares Gaza hostile territory* (Sept. 19, 2007), <https://www.un.org/unispal/document/auto-insert-195603>. See PCHR, Al Mezan & Al Haq submission to ICC on Closure of Gaza as a CAH: Persecution (Nov. 2016), <https://ccrjustice.org/sites/default/files/attach/2016/11/GAZA%20CLOSURE%20FOR%20ICC%20November%202%202016.pdf>.

⁷⁴ See PCHR, Al Mezan & Al Haq submission to ICC on Closure of Gaza as a CAH: Persecution, *supra* note 73 (detailing all the denials of fundamental rights).

⁷⁵ See, e.g., *Israel’s apartheid against Palestinians*, Amnesty Int’l (Feb. 1, 2022), <https://www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/#:~:text=Israel%20has%20been%20systematically%20committing,documented%20by%20Amnesty%20and%20others>.

⁷⁶ *Id.* See also, Medical Aid for Palestinians and Al-Mezan Center, *Delayed, Denied and Deprived: Collective Punishment of Palestinian Patients in Gaza in the Context of Israel’s 15-year Blockade* (June 2022), <https://www.map.org.uk/downloads/map-al-mezan-access-to-health-online.pdf>.

⁷⁷ *Occupied Palestinian Territory Humanitarian Facts and Figures*, OCHA, at 6, <https://www.un.org/unispal/wp-content/uploads/2017/12/OCHAFACTSHEET-211217.pdf>.

- (1) On December 27, 2008, Israel launched a 22-day military assault, known as “Operation Cast Lead.” Israeli forces killed nearly 1,400 Palestinians, the majority of whom were civilians, including 440 children, 111 women, and 108 elderly. In the aftermath of the assault, a UN-appointed fact finding mission found that Israel had committed war crimes and crimes against humanity.⁷⁸
- (2) Between November 14 and November 21, 2012, Israel carried out an 8-day campaign, known as “Operation Pillar Defense,” launching over 1,500 air strikes and killing at least 174 Palestinians – the majority of which were civilians including 33 children and 13 women.⁷⁹
- (3) Between July 8 and August 26, 2014, Israel carried out a 51-day military assault against Palestinians in Gaza, which killed 2,251 Palestinians, including 551 children and 299 women. At least 11,231 Palestinians were injured, including 3,540 women and 3,436 children. As a result of these injuries, about one-third of them will suffer from life-long disabilities,⁸⁰ as was the case for then 15-year-old Attiya Fathi Al-Nabaheen, who was shot by Israeli forces in the spine, leaving him quadriplegic. During his lifetime, Attiya “survived six full-scale military bombardments on Gaza and a shooting that left him paralyzed,” and was killed in the current hostilities on October 8, 2023, along with 12 members of his family when Israeli forces targeted the four-story house of the Al-Nabaheen family without prior warning.⁸¹
- (4) Beginning in May 2018, Palestinians in Gaza organized weekly, peaceful mass demonstrations demanding the right of return for the millions of Palestinian refugees who were forcibly expelled by Israel, and demanding an end to Israel’s then-11-year illegal

⁷⁸ See Report of the United Nations Fact Finding Mission on the Gaza Conflict (Goldstone Report), 12th Sess., Agenda Item 7, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/158/66/PDF/G0915866.pdf?OpenElement>.

⁷⁹ *Israel: Gaza Airstrikes Violated Laws of War*, Human Rights Watch (Feb. 12, 2013), <https://www.hrw.org/news/2013/02/12/israel-gaza-airstrikes-violated-laws-war>; Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, ¶ 6, U.N. Doc. A/HRC/22/35/Add.1 (Mar. 6, 2013), https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.35.Add.1_AV.pdf.

⁸⁰ See *2014 Gaza Conflict*, United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), <https://www.unrwa.org/2014-gaza-conflict>; Report of the Detailed Findings of the UN Independent International Commission of Inquiry established pursuant to Human Rights Council Resolution S-21/1, 29th Sess., Agenda Item 7 (June 22, 2015), U.N. Doc. A/HRC/29/CRP.4, <https://www.ohchr.org/en/hr-bodies/hrc/co-i-gaza-conflict/commission-of-inquiry>; Al Haq, *Divide and Conquer: A Legal Analysis of Israel’s 2014 Military Offensive Against the Gaza Strip* (2015), https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/DIVIDE.AND.CONQUER.pdf.

⁸¹ *Attiya Fathi Al-Nabaheen Killed in Targeted Israeli Airstrike in Gaza After Long Legal Battle in Israeli Courts*, Al Mezan Center for Human Rights (Oct. 12, 2023), <https://mezan.org/public/en/post/46285/Attiya-Fathi-Al-Nabaheen-Killed-in-Targeted-Israeli-Airstrike-in-Gaza-After-Long-Legal-Battle-In-Israeli-Courts>.

blockade. Israel deployed tanks, military vehicles, and soldiers, and it ordered soldiers, including snipers, to “shoot anyone within several hundred [meters] of the fence.”⁸² More than 150 Palestinians were killed in the demonstrations and at least 10,000 Palestinians were injured, including 1,849 children, 424 women, and 115 journalists. At least 5,814 Palestinians suffered hits from live ammunition during these peaceful demonstrations.⁸³

- (5) Between May 10-21, 2021, Israel again escalated military violence against Palestinians in Gaza after protests erupted across occupied Palestine in response to the forced removal of Palestinians from their homes in Sheikh Jarrah, Jerusalem. As a result, 261 Palestinians were killed in Gaza, including 67 children and 41 women.⁸⁴ Half of the Palestinians killed during this escalation were killed by air-launched explosive weapons.⁸⁵ One series of airstrikes launched on May 16, 2021 hit three apartment buildings, killing 22 members across four generations of the El-Qoulaq (al-Kawlaq) family, 15 members across at least three generations of the Abu al-Ouf family, and 5 members of the Ishkontana family.⁸⁶ Altogether, 44 civilians were killed, including 18 children. ”⁸⁷

For years, Israeli officials have made clear that these attacks on Palestinians, which have resulted in large numbers of deaths and caused serious bodily and mental harm to Palestinians in Gaza, are deliberate. During the 2014 bombardment in Gaza, the Special Advisers of the UN Secretary-General on the Prevention of Genocide and on the Responsibility to Protect issued a warning in response to “flagrant use of hate speech in the social media, particularly against the Palestinian population” and the dehumanization of Palestinians and calls for their killing, while reasserting the prohibition of such incitement under international law.⁸⁸

⁸² *Six Months On: Gaza’s Great March of Return*, Amnesty Int’l (Nov. 2021), <https://www.amnesty.org/en/latest/campaigns/2018/10/gaza-great-march-of-return/>.

⁸³ See Report of the Detailed Findings of the UN Independent International Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory, 40th Sess., Agenda Item 7 (Mar. 18, 2019), U.N. Doc. A/HRC/40/CRP.2, https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session40/Documents/A_HRC_40_74_CRP2.pdf.

⁸⁴ *Overview: November 2021*, OCHA (Nov. 3, 2021), <https://www.ochaopt.org/content/overview-november-2021>.

⁸⁵ *Data on Casualties*, OCHA, <https://www.ochaopt.org/data/casualties>.

⁸⁶ Karin Laub & Fares Akram, *Gaza’s bereaved civilians fear justice will never come*, AP News (June 2, 2021), <https://apnews.com/article/gaza-middle-east-israel-palestinian-conflict-fd2b4ee45e5cde322c8ea6fa23e90a5e>. See also *Gaza’s Deadly Night: How Israeli Airstrikes Killed 44 People*, N.Y. Times (June 24, 2021), <https://www.nytimes.com/video/world/middleeast/100000007787471/israel-airstrikes-gaza.html?smid=nytcore-ios-share&referringSource=articleShare> (“The strikes were the deadliest of the Israeli 11-day campaign in May.” According to the New York Times’ investigation, “the Israeli military used advanced, precision-guided bombs,” to hit the families’ neighborhood over 20 times, and, in direct contrast to the Israeli military’s statements that the strikes were “carefully targeted,” the investigation demonstrates that Israel launched these bombs “without warning on a densely packed neighborhood and with limited intelligence about what they were attacking.”).

⁸⁷ *Gaza’s Deadly Night: How Israeli Airstrikes Killed 44 People*, *supra* note 86.

⁸⁸ Press Release, Statement by the Special Advisers of the Secretary-General on the Prevention of Genocide, Mr. Adama Dieng, and on the Responsibility to Protect, Ms. Jennifer Welsh, on the situation in Israel and in the

The current crime being committed against Palestinians in Gaza is the culmination of what the Israeli government, backed by much of the United States and with the support of many western powers, started in 1948. It is the completion of what has thus far been Israel’s “incremental genocide”⁸⁹ against Palestinians.

B. The Current “Genocidal Moment”

*“It’s an entire nation out there that is responsible. It’s not true this rhetoric about civilians not being aware, not involved. It’s absolutely not true.” - Israeli President Isaac Herzog*⁹⁰

Since Prime Minister Netanyahu’s declaration of “war” on October 7, 2023, at least 3,000 Palestinians in Gaza have been killed. More than one million people have been internally displaced. The number of fatalities do not include those killed at Al-Ahli al-Arabi Hospital on October 17, 2023, and are also expected to climb further as families struggle “to recover the bodies of their loved ones from under the rubble.”⁹¹ Authorities in Gaza City have had to store bodies in ice cream freezer trucks as they prepared to dig mass graves to accommodate all the bodies.⁹² Entire families have been eliminated, and over 1,030 children have been killed.⁹³

As set out below, prior to and alongside these acts of mass killings and targeting of civilian infrastructure, Israeli officials in the political and military hierarchy have made clear, unambiguous, statements that reveal an intent to destroy the Palestinian population in Gaza, including by creating conditions of life calculated to bring about the population’s destruction (in whole or in part). These statements include referring to the entire Palestinian population of Gaza, without distinction (be it civilians vs combatants/those directly participating in hostilities, or children/elderly) as “the enemy” or “terrorists” who need to be, and whose communities will be, “clear[ed] out.” In their public statements and speeches, Israeli officials used dehumanizing

Palestinian Occupied Territory of Gaza Strip (July 24, 2014), <https://www.un.org/en/genocideprevention/documents/media/statements/2014/English/2014-07-24-Special%20Advisers%27%20Statement%20on%20the%20situation%20in%20Israel%20and%20the%20occupied%20Gaza%20strip.pdf>.

⁸⁹ See, e.g., Ilan Pappé, *A Brief History of Israel’s Incremental Genocide*, in *On Palestine* (Noam Chomsky & Ilan Pappé eds., Haymarket 2015), pp. 147-154.

⁹⁰ Paul Blumenthal, *Israeli President Says There Are No Innocent Civilians in Gaza*, HuffPost (Oct. 13, 2023), https://www.huffpost.com/entry/israel-gaza-isaac-herzog_n_65295ee8e4b03ea0c004e2a8.

⁹¹ *Israel/OPT: Appalling Gaza “evacuation order” must be rescinded by Israel immediately*, Amnesty International (Oct. 13, 2023), <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-appalling-gaza-evacuation-order-must-be-rescinded-by-israel-immediately/>.

⁹² Nidal al-Mughrabi, *As Gaza death toll rises, bodies are stored in ice cream trucks*, Reuters (Oct. 15, 2023), <https://www.reuters.com/article/israel-palestinians-gaza-bodies-idAFKBN31F0B2>.

⁹³ Mohammed Abudoun, *Palestinian death toll from Israeli attacks on Gaza rises to 2,670*, AA (Oct. 16, 2023), <https://www.aa.com.tr/en/middle-east/palestinian-death-toll-from-israeli-attacks-on-gaza-rises-to-2-670/3021056>.

language, describing Palestinians in Gaza as “human animals,” and “bloodthirsty monsters.” They have also been unequivocal in the goal of maximum harm: “the emphasis is on damage and not on accuracy” using “fire of a magnitude that the enemy has not known.”

Messages by current government officials have been amplified by former government officials and reservists, both domestically and internationally, using similar dehumanizing language and echoing calls for killing, causing serious bodily or mental harm, and the creation of conditions of life calculated to bring about the destruction of the Palestinian population in Gaza.

Based on inferences that can be drawn from such statements and the conduct that follows by Israeli forces, over the course of the first week of Israel’s attack, an increasing number of experts, observers, and scholars have warned that Israel is attempting, inciting, if not actually committing genocide, through these attacks against the Palestinian population in Gaza.⁹⁴ The Findings that follow this section affirm the warnings.

In the following pages, this document compiles day-by-day summaries of the main Israeli statement, actions and the effects of those actions on the Palestinian population of Gaza.⁹⁵ Following the conduct by Israel that presents at least a plausible and credible case of genocide, statements and actions showing assistance, support and facilitation by the United States and U.S. officials for Israel’s campaign are pulled out in text boxes. Placing the U.S. conduct in a timeline against the Israeli conduct makes clear what the United States knew or should have known when it made the decision to provide or continue to provide Israel with massive and critical political, economic and military support for its actions taken against the Palestinian population.⁹⁶ U.S. unconditional military and diplomatic support has preceded October 7. As of May 2021, the United States has blocked at least 53 UN security council resolutions critical of Israeli human rights and international law violations.⁹⁷ Israel is the largest cumulative recipient of United States foreign

⁹⁴ *Public Statement: Scholars Warn of Potential Genocide in Gaza*, Third World Approaches to Int’l L. Rev. (Oct. 17, 2023), <https://twailr.com/public-statement-scholars-warn-of-potential-genocide-in-gaza/>; Raz Segal, *A Textbook Case of Genocide*, Jewish Currents (Oct. 13, 2023), <https://jewishcurrents.org/a-textbook-case-of-genocide>.

⁹⁵ CCR credits this Paper, and particularly the pages that follow, could not have been possible without the documentation Palestinian organizations have collected and disseminated, including testimonies and first-hand accounts from the Palestinian people, to maintain a real-time public record of Israel’s crimes and atrocities against them. See *Gaza Strip*, Al-Haq, <https://www.alhaq.org/advocacy/gaza-strip>; *Press Releases 2023*, Al Mezan Center for Human Rights, <https://www.mezan.org/en/Archive/2/2023>; *Gaza Strip*, Defense for Children International-Palestine, <https://www.dci-palestine.org/>; *Press Releases*, PCHR, <https://pchrghaza.org/en/category/press-releases/>. See also Al-Haq, Al Mezan Center for Human Rights & PCHR, *Joint Urgent Appeal to UN Special Procedures on Israel’s Total Warfare on Gaza’s Civilian Population* (Oct. 11, 2023), https://www.alhaq.org/attached_uploads/download/2023/10/12/final-urgent-appeal-to-special-procedures-on-gaza-11-oct-1697135190.pdf.

⁹⁶ Jeremy M. Sharp, Cong. Rsch. Servs., RL33222, *U.S. Foreign Aid to Israel* (Mar. 1, 2023), <https://sgp.fas.org/crs/mideast/RL33222.pdf>.

⁹⁷ Creede Newton, *A history of the US blocking UN resolutions against Israel*, Al Jazeera (May 19, 2021), <https://www.aljazeera.com/news/2021/5/19/a-history-of-the-us-blocking-un-resolutions-against-israel>; *Israel: US*

assistance since World War II. Since 1946, the United States has sent \$260 billion (inflation-adjusted) dollars in military and economic aid to Israel. In 2022 alone, the United States sent Israel \$4.8 billion dollars in military aid.⁹⁸ As set out in the Findings, there is a plausible and credible claim that the United States has breached its obligations under the Genocide Convention to prevent genocide, and instead is crossing the line to complicity in genocide.

A note on the timeline: the examples offered are in no way comprehensive of the crimes currently being committed, particularly in light of the rapidly evolving situation, nor should they be understood as discounting the ongoing nature of Israeli domination of and crimes against the Palestinian people for the last 75 years.

OCTOBER 7, 2023

Israeli Statements and Conduct Advancing Genocide

On October 7, in a televised address, Israeli Prime Minister Benjamin Netanyahu declared war: “Citizens of Israel, we are at war. Not in an operation or in rounds but at war.”⁹⁹ He announced that Israel had started “clear[ing] out the communities that have been infiltrated by terrorists.”¹⁰⁰ He further disclosed that he had “ordered an extensive mobilization of reserves and that [Israel] return fire of a magnitude that the enemy has not known.”¹⁰¹ Warning of the acts of genocide to follow, directed at the Palestinian population of Gaza as a whole, he stated: “The enemy will pay an unprecedented price.”¹⁰² Netanyahu ordered the more than two million Palestinians in Gaza to “get out now” despite the fact that they have nowhere to go due to Israel-imposed closure, threatening that “[Israel] will be everywhere and with all our might.”¹⁰³ In addition to the announcement of a mass forced expulsion of Gaza’s civilians, Israel’s Energy Minister Israel Katz also announced an order cutting off all electricity to the entire Gaza Strip. “What was will not be.”¹⁰⁴ Israeli member of Knesset Ariel Kallner stated: “Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 1948.”¹⁰⁵

Veto on Settlements Undermines International Law, Human Rights Watch (Feb. 18, 2011), <https://www.hrw.org/news/2011/02/18/israel-us-veto-settlements-undermines-international-law>.

⁹⁸ U.S. Foreign Aid to Israel, *supra* note 96.

⁹⁹ Wall Street Journal, *Israeli Prime Minister Declares War on Palestinian Militants Hamas*, WSJ News YouTube at 00:01-00:07 (Oct. 7, 2023), <https://www.youtube.com/watch?v=1PsOw7hxiXs> (“Citizens of Israel, we are at war. Not in an operation or in rounds but at war.”).

¹⁰⁰ *Id.* at 00:17-00:25.

¹⁰¹ *Id.* at 00:25-00:34.

¹⁰² *Id.* at 00:35-00:37.

¹⁰³ *Promising merciless war on Hamas, Netanyahu says Israel will ‘avenge this black day*, The Times of Israel (Oct. 8, 2023), <https://www.timesofisrael.com/promising-merciless-war-on-hamas-netanyahu-says-israel-will-avenge-this-black-day/>.

¹⁰⁴ Israel Katz, Israel Energy Minister, Twitter (Oct. 7, 2023), https://twitter.com/Israel_katz/status/1710695021769265450.

¹⁰⁵ Ariel Kallner, Member of Knesset, Twitter (Oct. 7, 2023), <https://twitter.com/ArielKallner/status/1710769363119141268>. Kallner’s post was also widely reported on and translated. *See, e.g.*, Joseph Krauss, *Israel’s recent call for mass evacuation echoes catastrophic 1948 Palestinian*

Following these calls, Israeli forces launched airstrikes – targeting and destroying houses and multi-story buildings with residential units.¹⁰⁶ Israel’s suspension of fuel and electricity to Gaza has deliberately inflicted mass humanitarian suffering: with the Israeli source of electricity cut off, it made the Gaza Power Plant the sole power source for the entire Strip, meaning that as soon as its fuel ran out, the entire Strip would be cut off from electricity, except for individual private generators, until they, too run out of fuel.¹⁰⁷ The UN warned of fuel running out within a matter of days.¹⁰⁸ Within the same day, Israel’s attack led to the killing of at least 232 Palestinians and the injuring of at least 1,700 others.¹⁰⁹ At least 20,000 Palestinians had been internally displaced and sought shelter in 44 UNRWA schools in Gaza.¹¹⁰

U.S. Support for Israel’s Campaign

In the immediate aftermath of Israel declaring war against Gaza, President Biden affirmed that the United States “stand[s] ready to offer all appropriate means of support to the Government and people of Israel,” and declared, “[m]y Administration’s support for Israel’s security is rock solid and unwavering.”¹¹¹ Executive agency officials, including Cabinet Secretary members, also reaffirmed the United States’ unequivocal support of Israel.¹¹²

exodus, PBS NewsHour (Oct. 13, 2023), <https://www.pbs.org/newshour/world/in-israels-call-for-mass-evacuation-palestinians-hear-echoes-of-their-original-catastrophic-exodus>.

¹⁰⁶ *Escalation in the Gaza Strip and Israel: Flash Update #2*, UN Office for the Coordination of Humanitarian Affairs (OCHA) (Oct. 8, 2023), <https://www.ochaopt.org/content/escalation-gaza-strip-and-israel-flash-update-2>.

¹⁰⁷ Jonathan Yerushalmy, *Crisis in Gaza: why food, water and power are running out*, The Guardian (Oct. 17, 2023), <https://www.theguardian.com/world/2023/oct/17/crisis-gaza-why-food-water-power-running-out>.

¹⁰⁸ *Id.*

¹⁰⁹ Maayan Lubell, et. al., *Israel vows ‘might vengeance’ after surprise attack*, Reuters (Oct. 7, 2023), <https://www.reuters.com/world/middle-east/sirens-warning-incoming-rockets-sound-around-gaza-near-tel-aviv-2023-10-07/>.

¹¹⁰ *Escalation in the Gaza Strip and Israel: Flash Update #1 as of 18:00*, UN Office for the Coordination of Humanitarian Affairs (Oct. 7, 2023), https://ochaopt.org/content/escalation-gaza-strip-and-israel-flash-update-1?_gl=1*_1mxkcr3*_ga*MTMyMTE5NjQzMj4xNjkxNDY5MzQ3*_ga_E60ZNX2F68*MTY5NzI0NjA4OC4xMC4wLjE2OTcyNDYwODguNjAuMC4w.

¹¹¹ The White House, *Statement from President Joe Biden Condemning Terrorist Attacks in Israel* (Oct. 7, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/07/statement-from-president-joe-biden-condemning-terrorist-attacks-in-israel/>.

¹¹² See U.S. Dep’t of State, *Secretary Blinken’s Calls with Israeli President Herzog and Foreign Minister Cohen* (Oct. 7, 2023), [https://www.defense.gov/News/Releases/Release/Article/3551614/readout-of-secretary-of-defense-lloyd-j-austin-iiis-call-with-israeli-minister/#:~:text=Secretary%20Austin%20has%20directed%20his,has%20the%20support%20it%20needs](https://www.state.gov/secretary-blinkens-calls-with-israeli-president-herzog-and-foreign-minister-cohen/#:~:text=The%20Secretary%20reaffirmed%20the%20United,Israel's%20right%20to%20defend%20itself;U.S. Dep’t of Defense, <i>Readout of Secretary of Defense Lloyd J. Austin III’s Call With Israeli Minister of Defense Yoav Gallant</i> (Oct. 7, 2023), <a href=).

OCTOBER 8, 2023
Israeli Statements and Conduct Advancing Genocide

On October 8, Israel’s Ambassador to the U.S. Michael Herzog was asked in a CNN interview about minimizing the loss of Palestinian life.¹¹³ In response, Ambassador Herzog baselessly accused the UN of exaggerating the deaths of Palestinian civilians, questioned the credibility of all Palestinian sources or eyewitness accounts, suggesting that a significant portion of civilian deaths are “terrorists.”¹¹⁴ He declared that Israel “send[s] warning to the population to evacuate” when densely civilian populated areas are subject to Israeli airstrikes, proclaiming that: “That’s with all the way we’ve always operated.”¹¹⁵

By October 8, the death toll rose to at least 413 Palestinians killed, including 78 children and 41 women, and 2,300 injured.¹¹⁶ Of the 123,538 Palestinians displaced, over half were sheltering across 64 UNRWA schools.¹¹⁷ Israeli airstrikes directly hit one of these schools.¹¹⁸ Israel also targeted and destroyed residential structures in Gaza, at times with no evacuation warnings to residents.¹¹⁹ Israel destroyed 159 housing units and severely damaged another 1,210.¹²⁰ As a result of Israel Energy Minister Katz’s October 7 order to cut all electricity, hospital patient admissions were rising.¹²¹ Newborns, dialysis patients, and patients requiring medical procedures or surgery “were among the worst impacted.”¹²² Households in Gaza suffered immediate water shortages.¹²³

¹¹³ ‘OUR 9/11’: Israeli ambassador to the U.S. discusses reaction to Hamas attack, CNN (Oct. 8, 2023), <https://www.pbs.org/newshour/show/our-9-11-israeli-ambassador-to-the-u-s-discusses-reaction-to-hamas-attack> (referencing the killing of over 1,400 Palestinians, including over 500 children, during the last major Israeli ground operation).

¹¹⁴ *Id.* (“These numbers are usually conflated, and usually the Palestinians they base themselves on Palestinian sources in Gaza. They include hundreds of terrorists who are killed while trying to kill our citizens. So let’s be very careful about these numbers. I would – I think we should give it time to understand what’s happening.”).

¹¹⁵ *Id.*

¹¹⁶ 413 Palestinians killed in ongoing Israeli airstrikes on Gaza, Ministry of Health Confirms, Palestinian News & Info Agency (Oct. 8, 2023), <https://english.wafa.ps/Pages/Details/138034>.

¹¹⁷ Escalation in the Gaza Strip and Israel: Flash Update # 2, OCHA (Oct. 8, 2023), <https://www.ochaopt.org/content/escalation-gaza-strip-and-israel-flash-update-2>.

¹¹⁸ *Id.*

¹¹⁹ *Id.* See also Urgent: Israel Announces Total Warfare on Gaza’s Civilian Population, Employing Starvation as a Weapon, Palestinian Centre for Human Rights (Oct. 9, 2023), <https://pchgaza.org/en/urgent-israel-announces-total-warfare-on-gazas-civilian-population-employing-starvation-as-a-weapon/>.

¹²⁰ *Id.*

¹²¹ Gaza’s hospitals on verge of blackout after Israel cuts electricity supplies, Middle East Eye (Oct. 8, 2023), <https://www.middleeasteye.net/news/gaza-hospitals-struggle-cope-israel-cuts-electricity>.

¹²² *Id.*

¹²³ *Id.* (“We woke up this morning, and no water was flowing from the faucets due to a 20-hour power outage. We tried running the generators and other backup power sources for a few hours, but it wasn’t sufficient to provide water for our extended family.”)

U.S. Support for Israel's Campaign

On October 8, U.S. Secretary of Defense Austin Lloyd directed the Navy's "most advanced aircraft carrier and its heavily armed strike group," the USS Gerald R. Ford Carrier Strike Group, to the coast of Israel.¹²⁴ He announced that additionally, the U.S. "will be rapidly providing the Israel Defense Forces with additional equipment and resources, including munitions," that will "begin moving today and arriving in the coming days."¹²⁵ He further reaffirmed that "[s]trengthening our joining force posture, in addition to the materiel support that we will rapidly provide to Israel, underscores the United States' ironclad support for the Israel Defense Forces and the Israeli people."¹²⁶

OCTOBER 9, 2023

Israeli Statements and Conduct Advancing Genocide

On October 9, Israeli Minister of Defense Yoav Gallant ordered a complete siege on the Gaza Strip, using dehumanizing language to describe the Palestinian population, while announcing collective punishment aimed at creating conditions that would cause serious physical harm, if not death, to the Palestinian population in Gaza: "There will be no electricity, no food, no fuel, everything is closed. We are fighting human animals and we act accordingly."¹²⁷ The Minister also threatened to "bomb those attempting to provide aid to the Gaza Strip,"¹²⁸ and summoned an unprecedented 300,000 reservists.¹²⁹

¹²⁴ Charles R. Davis & Jake Epstein, *The US is sending its most advanced aircraft carrier and its heavily armed strike group to Israel's coast and will supply the country with more weapons and ammo*, Business Insider (Oct. 8, 2023), <https://www.businessinsider.com/us-moves-carrier-group-capable-of-firing-guided-missiles-to-israel-2023-10>.

¹²⁵ U.S. Dep't of Defense, *Statement From Secretary Lloyd J. Austin III on U.S. Force Posture Changes in the Middle East* (Oct. 8, 2023), <https://www.defense.gov/News/Releases/Release/Article/3551716/statement-from-secretary-lloyd-j-austin-iii-on-us-force-posture-changes-in-the/#:~:text=The%20first%20security%20assistance%20will,Forces%20and%20the%20Israeli%20people>.

¹²⁶ *Id.*

¹²⁷ Israeli Minister of Defense Yoav Gallant, Twitter (Oct. 9, 2023), <https://twitter.com/yoavgallant/status/1711335592942875097>. See also Human Rights Watch, Twitter (Oct. 9, 2022), <https://twitter.com/hrw/status/1711424885908791505/>.

¹²⁸ *Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence*, United Nations Office of the High Commissioner (Oct. 12, 2023), <https://www.ohchr.org/en/press-releases/2023/10/israeloccupied-palestinian-territory-un-experts-deplore-attacks-civilians>.

¹²⁹ *Israel and Palestinian war: What you need to know right now*, Reuters (Oct. 8, 2023), <https://www.reuters.com/world/middle-east/israel-palestinian-war-what-you-need-know-right-now-2023-10-09/>.

By this day, over 500 Palestinians, including at least 91 children, had been killed.¹³⁰ Israeli airstrikes attacked refugee camps in Al Shati and Jabalia. In Jabalia, airstrikes hit a public market area in the refugee camp, killing at least 50 Palestinians and injuring 120, and a residential building in central Jabalia.¹³¹ Israel also bombed the Rafah crossing at the Gaza-Egyptian border, effectively closing the crossing and completely blockading all Palestinians – from movement or supplies – in Gaza.¹³²

U.S. Support for Israel's Campaign

As Israel deliberately inflicted on Palestinians “conditions of life calculated to bring about [Palestinians’] physical destruction,” and after widespread reports of civilian areas being deliberately targeted, President Biden, along with other leaders of its Western allies – France, Germany, Italy, and the United Kingdom - released a statement declaring their commitment to remaining “united and coordinated . . . to ensure Israel is able to defend itself, and to ultimately set the conditions for a peaceful and integrated Middle East region.”¹³³ In so doing, each named country explicitly provided Israel with the diplomatic and political means to facilitate its blockade of the most essential necessities to survival in Gaza.

By at least October 9 if not earlier, white phosphorus artillery shells with U.S. Department of Defense identification codes were positioned in Sderot, outside Gaza, and were likely the ones launched towards Gaza on October 11.¹³⁴

¹³⁰ Ruwaida Amer, *Thousands of Gaza residents take refuge in UN schools from Israel air raids*, Al Jazeera (Oct. 9, 2023), <https://www.aljazeera.com/news/2023/10/9/thousands-of-gaza-residents-take-refuge-in-un-schools-from-israel-air-raids>. See also *91 Palestinian children in Gaza killed in Israeli assault*, DCI-Palestine (Oct. 9, 2023), https://www.dci-palestine.org/91_palestinian_children_in_gaza_killed_in_israeli_assault.

¹³¹ Ahmed Asmar, *At least 50 Palestinians killed in Israeli airstrike on Jabalia refugee camp, northern Gaza*, Anadolu Ajansi (AA) (Oct. 9, 2023), <https://www.aa.com.tr/en/middle-east/at-least-50-palestinians-killed-in-israeli-airstrike-on-jabalia-refugee-camp-northern-gaza/3012782>. See also Al Jazeera, *Reports of mass casualties as Israeli air attack hits refugee camp in Gaza* (Oct. 9, 2023), <https://www.aljazeera.com/news/2023/10/9/reports-of-mass-casualties-as-israeli-air-attack-hits-refugee-camp-in-gaza>.

¹³² *UN experts deplore attacks on civilians, supra note 128. See also Days 4-5: Israel destroys entire residential neighborhoods and intensifies mass killings of Palestinians in Gaza*, Palestinian Center for Human Rights (Oct. 11, 2023), <https://pchgaza.org/en/days-4-5-israel-destroys-entire-residential-neighborhoods-and-intensifies-mass-killings-of-palestinians-in-gaza/>

¹³³ The White House, *Joint Statement on Israel* (Oct. 9, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/09/joint-statement-on-israel/>. The statement was addressed from “President Macron of France, Chancellor Scholz of Germany, Prime Minister Meloni of Italy, Prime Minister Sunak of the United Kingdom, and President Biden of the United States.”

¹³⁴ *Citizen Evidence Lab. Identifying the Israeli army's use of white phosphorous in Gaza*, Amnesty International (Oct. 13, 2023), <https://citizenevidence.org/2023/10/13/israel-opt-identifying-the-israeli-armys-use-of-white-phosphorus-in-gaza/>.

OCTOBER 10, 2023
Israeli Statements and Conduct Advancing Genocide

*“Gaza will eventually turn into a city of tents.” - Israeli security official*¹³⁵

On October 10th, IDF spokesperson Daniel Hagari announced that the Israeli military had already dropped “hundreds of tons of bombs,”¹³⁶ adding that “the emphasis is on damage and not accuracy.”¹³⁷ Israeli Major General Ghassan Alian, the head of the Coordinator of Government Activities in the Territories (“COGAT”) explicitly stated the intention to destroy Palestinian life in Gaza: “Human animals must be treated as such. There will be no electricity and no water [in Gaza], there will only be destruction. You wanted hell, you will get hell.”¹³⁸ Reservist Major General Giora Eiland wrote in the Israeli newspaper Yedioth Ahronoth: “Creating a severe humanitarian crisis in Gaza is a necessary means to achieve the goal,” declaring that “Gaza will become a place where no human being can exist.”¹³⁹

Amid growing Israeli airstrikes, the death toll rose to over 900, including at least 260 children.¹⁴⁰ More than 4,600 Palestinians had been injured.¹⁴¹ Israel’s attacks increasingly targeted and killed healthcare workers and journalists.¹⁴² The UN warned that 400,000 Palestinians in Gaza did not

¹³⁵ Ishaan Tharoor, *As Israel ramps up war with Hamas, backers cheer destruction of Gaza*, Wash. Post (Oct. 13, 2023), <https://www.washingtonpost.com/world/2023/10/13/israel-rhetoric-gaza-response-retribution-punishment/>. See also *The fourth day of the war: heavy barrages throughout the country, terrorists were eliminated in the south*, News 13 (Oct. 11, 2023), <https://13tv.co.il/item/news/politics/security/day-4-903742131/>.

¹³⁶ James Reynolds, *More Hamas militants ‘cross into Israel’ as death toll in bloody war with Hamas rises to 1,900 and resident are told to head to safe rooms*, Daily Mail (Oct. 10, 2021), <https://www.dailymail.co.uk/news/article-12617107/hamas-militants-cross-israel-safe-rooms.html>. See also Jack Khoury, *At Least 770 Dead as the Israeli Air Force Bombs the Gaza Strip*, Haaretz (Oct. 10, 2023), <https://www.haaretz.com/israel-news/2023-10-10/ty-article/.premium/at-least-770-dead-as-the-israel-air-force-bombs-the-gaza-strip/0000018b-1a53-df31-a99f-7fd3bd1e0000>.

¹³⁷ Bethan McKernan & Quique Kierszenbaum, *‘Emphasis is on damage, not accuracy’: ground offensive into Gaza seems imminent*, Guardian (Oct. 10, 2023), <http://www.theguardian.com/world/2023/oct/10/right-now-it-is-one-day-at-a-time-life-on-israels-frontline-with-gaza>.

¹³⁸ Gianluca Pacchiani, *COGAT chief addresses Gazans: ‘You wanted hell, you will get hell’*, Times of Israel (Oct. 10, 2023), https://www.timesofisrael.com/liveblog_entry/cogat-chief-addresses-gazans-you-wanted-hell-you-will-get-hell/.

¹³⁹ Giora Eiland, *It's time to rip off the Hamas band-aid*, YNet News (Oct. 12, 2023), <https://www.ynetnews.com/article/sju3uabba> (originally published in Hebrew on Oct. 10, 2023, <https://www.ynet.co.il/yedioth/article/yokra13625377>).

¹⁴⁰ *922 Palestinians martyred, including 260 children in Gaza bombings*, Al Mayadeen English (Oct. 11, 2023), <https://english.almayadeen.net/news/politics/922-palestinians-martyred-including-260-children-in-gaza-bom>.

¹⁴¹ *Id.*

¹⁴² *Hostilities in the Gaza Strip and Israel: Flash Update #4*, OCHA (Oct. 10, 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-4>.

have running water due to the damage sustained by Israeli airstrikes and actions.¹⁴³ Israeli officials threatened to bomb aid trucks delivering life-saving relief supplies to the Gaza Strip.¹⁴⁴

U.S. Support for Israel's Campaign

During a press conference on October 10, President Biden reasserted unconditional, unequivocal backing of Israeli acts, stating that the United States “will make sure Israel has what it needs to take care of its citizens, defend itself, and respond to this attack.” He also perpetuated an Israeli disinformation campaign, rooted in the dehumanization of Palestinians whereby he claimed that he “saw” images of beheaded children and infants when no such pictures existed.¹⁴⁵ It was a full day before his staff issued a “clarification” that neither he, nor his staff, had actually seen photos of beheaded children, and that there were no confirmed reports or photos of beheaded children or babies.¹⁴⁶ In his much-anticipated first speech, President Biden did not once mention Palestinian civilian deaths, and rather only a passing reference to international law standards.¹⁴⁷

Department of State spokesperson Matthew Miller was asked whether the United States was aware of the number of Palestinians killed and whether the U.S. will “call on Israel to cease its . . . effort now in cutting off medicine, water, humanitarian aid [and electricity]” to Gaza.¹⁴⁸ He refused to speak to the number of Palestinians killed by Israel and instead, justified Israel’s collective punishment of the entire population: “[L]et me start by saying that we are in the early days of Israel’s response. Israel has a right to conduct an aggressive response to respond to the terrorism that’s been committed against its citizens. We expect them to follow international law, we believe that they will, and we will remain in close contact with them about it.”¹⁴⁹

¹⁴³ Jack Khoury, *At Least 770 Dead as the Israeli Air Force Bombs the Gaza Strip*, Haaretz (Oct. 10, 2023), <https://www.haaretz.com/israel-news/2023-10-10/ty-article/.premium/at-least-770-dead-as-the-israel-air-force-bombs-the-gaza-strip/0000018b-1a53-df31-a99f-7fd3bd1e0000>.

¹⁴⁴ Sinai for Human Rights, Twitter (Oct. 10, 2023), <https://twitter.com/sinaifhr/status/1711720386545525214?s=46&t=qngTGJteAvWJnLCYF7K9fQ>. See also *Israel threatens to bomb Egypt aid trucks heading to Gaza*, Middle East Monitor (Oct. 10, 2023), <https://www.middleeastmonitor.com/20231010-israel-threatens-to-bomb-egypt-aid-trucks-heading-to-gaza/>.

¹⁴⁵ Matthew Chance et. al., *Israeli official says government cannot confirm babies were beheaded in Hamas attack*, CNN (Oct. 12, 2023), <https://www.cnn.com/2023/10/12/middleeast/israel-hamas-beheading-claims-intl/index.html>.

¹⁴⁶ *Id.*

¹⁴⁷ The White House, *Remarks by President Biden on the Terrorist Attacks in Israel* (Oct. 10, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/10/remarks-by-president-biden-on-the-terrorist-attacks-in-israel-2/#:~:text=stand%20with%20Israel,.We%20stand%20with%20Israel,There%20is%20no%20excuse.>

¹⁴⁸ U.S. Dep’t of State, *Questioning by Said Erakat to Spokesperson Matthew Miller Dep’t of State Daily Press Briefing*, at 14:53-17:27 (Oct. 10, 2023), <https://video.state.gov/detail/videos/top-stories/video/6338801203112/departments-of-state-daily-press-briefing---october-10-2023?autoStart=true>.

¹⁴⁹ *Id.*

OCTOBER 11, 2023

Israeli Statements and Conduct Advancing Genocide

IDF spokesperson Lt. Col. Jonathan Concrucus reported that the 300,000 reservists, including “infantry, armored soldiers, artillery corps and many other soldiers from the reserves,” were “close to the Gaza Strip,”¹⁵⁰ threatening a ground invasion into the 25 mile-long stretch of land.

Israeli forces intentionally targeted medical teams. Palestinian Red Crescent Society issued a statement condemning the killing of four of its paramedics, in less than half an hour” in a single day, “despite prior coordination.”¹⁵¹

Israeli forces also used white phosphorus in densely populated areas across Gaza, in direct violation of international law.¹⁵² The chemical weapon causes severe burns (“down to the bone”). White phosphorous can be fatal even if exposed on only 10 percent of a human body, and causes generational birth defects.¹⁵³

As of this date, Israeli attacks had killed at least 1,100 Palestinians and injured 5,339.¹⁵⁴ The number of displaced Palestinians increased to at least 340,000, nearly 218,600 of whom were sheltering across 92 UNRWA schools in the Strip.¹⁵⁵ Gaza’s sole power plant shut down after its last fuel reserves ran out under Israel’s siege over the entire Strip,¹⁵⁶ resulting in the loss of electricity for over 2 million Palestinians, except for those who had smaller generators. Israel’s shutdown of Gaza’s electricity was devastating for injured civilians who had survived Israeli airstrikes and were in hospital. The spokesperson for the Palestinian Ministry of Health in Gaza

¹⁵⁰ Niamh Kennedy et. al., *Israel calls up roughly same number of combined reservists as available to US military reserve force*, CNN (Oct. 11, 2023), https://www.cnn.com/middleeast/live-news/israel-hamas-war-gaza-10-11-23/h_3dd3dcece18e2f71ea1a23aeb190836b.

¹⁵¹ Palestine Red Crescent Society, *The Palestine Red Crescent Society Demands Accountability for the Killing of Four of its Paramedics in Gaza* (Oct. 11, 2023), <https://www.palestinercs.org/public/files/image/2023/Gaza%20Statement%2011.10.2023%20Final.pdf>.

¹⁵² *Questions and Answers on Israel’s Use of White Phosphorus in Gaza and Lebanon*, Human Rights Watch (Oct. 12, 2023), <https://www.hrw.org/news/2023/10/12/questions-and-answers-israels-use-white-phosphorus-gaza-and-lebanon> (“Human Rights Watch verified videos taken in Lebanon and Gaza on October 10 and 11, 2023, respectively, showing multiple airbursts of artillery-fired white phosphorus over the Gaza City port and two rural locations along the Israel-Lebanon border, and interviewed two people who described an attack in Gaza.”).

¹⁵³ *Id.*

¹⁵⁴ *Hostilities in the Gaza Strip and Israel: Flash Update #5*, OCHA (Oct. 11, 2023), https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-5?_gl=1*vm5iqu*_ga*MTMyMTE5NjQzMjM4NDY5MzQ3*_ga_E60ZNX2F68*MTY5NzUyMTE3OC4yMS4wLjE2OTc1MjExNzguNjAuMC4w.

¹⁵⁵ *UN experts deplore attacks on civilians*, *supra* note 128.

¹⁵⁶ Ibrahim Dahman, *Gaza’s sole power station stops working as fuel runs out, after Israel orders ‘complete’ blockade*, CNN (Oct. 11, 2023), <https://www.cnn.com/2023/10/11/middleeast/gaza-power-plant-shuts-down-intl/index.html>.

warned that life-saving machines in hospitals were running on generators and would “soon stop working,” causing mass Palestinian injuries and deaths.¹⁵⁷

U.S. Support for Israel’s Campaign

On the morning of October 11, “President Biden and Vice President Harris spoke with Prime Minister Netanyahu to discuss ongoing U.S. support for Israel as Israel defends itself and protects its people.”¹⁵⁸

OCTOBER 12, 2023

Israeli Statements and Conduct Advancing Genocide

The Israeli military ordered the entire population of northern Gaza – over one million people including UN staff and civilians sheltered in UN facilities – to relocate to southern Gaza within 24 hours.¹⁵⁹

After previous threats to bomb aid trucks from Egypt,¹⁶⁰ Israeli Minister of Energy Israel Katz affirmed Israel's continued blockade of humanitarian assistance, with complete disregard for the serious bodily harm such action would cause to all Palestinians, including the risk of death: “Humanitarian aid to Gaza? No electrical switch will be turned on, no water hydrant will be opened and no fuel truck will enter until the Israeli abductees are returned home. Humanitarianism for humanitarianism. And no one will preach us morality [*sic*].”¹⁶¹

¹⁵⁷ Mohammed R. Mhawesh, *Time running out at Gaza hospitals amid power blackout after Israeli siege*, Al Jazeera (Oct. 12, 2023), <https://www.aljazeera.com/features/2023/10/12/time-running-out-for-gaza-families-with-hospitals-facing-power-blackout>.

¹⁵⁸ The White House, *Readout of President Biden and Vice President Harris’ Call with Prime Minister Netanyahu* (Oct. 11, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/11/readout-of-president-biden-and-vice-president-harris-call-with-prime-minister-netanyahu/>.

¹⁵⁹ United Nations, *Israel must rescind evacuation order for northern Gaza and comply with international law: UN expert* (Oct. 13, 2023), <https://www.un.org/unispal/document/israel-must-rescind-evacuation-order-for-northern-gaza-and-comply-with-international-law/>.

¹⁶⁰ Sinai for Human Rights, Twitter, *supra* note 144. *See also Israel threatens to bomb Egypt aid trucks heading to Gaza*, *supra* note 144.

¹⁶¹ Nicola Slawson, *First Thing: no power, water or fuel for Gaza until hostages are freed, Israel says*, The Guardian (Oct. 12, 2023), <https://www.theguardian.com/us-news/2023/oct/12/first-thing-no-power-water-fuel-gaza-until-hostages-freed-israel-says#:~:text=Israel%20Katz%2C%20Israel's%20energy%20minister.one%20will%20preach%20us%20morality.%E2%80%9D>.

As of this date, 1,537 Palestinians had been killed, including 500 children and 276 women, and 6,612 injured.¹⁶² On this day alone, Israeli forces killed 250 people, including 44 members of the Shebab family – 16 of whom were children between the ages of 2 and 14.¹⁶³ Within 24 hours, 338,000 Palestinians had been displaced across the Gaza Strip. Two-thirds of those displaced were sheltering in 92 UNRWA schools. Filled with civilians taking refuge, 88 schools were struck by Israeli strikes, including 18 UNRWA schools and 70 Palestinian Authority schools.¹⁶⁴ The total number of United Nations Relief workers killed climbed to 12.¹⁶⁵ Ambulances, including medical personnel were targeted and killed during humanitarian missions to evacuate Palestinians.¹⁶⁶ Over 2,500 housing units had become uninhabitable due to severe damage or destruction.¹⁶⁷ By this date, Israel carried out 34 attacks on the health sector in the Gaza Strip¹⁶⁸ and Israeli airstrikes hit seven “significant water and sewage facilities serving more than one million people.”¹⁶⁹

U.S. Support for Israel’s Campaign

On October 12, hours before Israel commanded the evacuation of 1.1 million residents of northern Gaza, Secretary Blinken traveled to Israel and held private and public meetings with Israeli officials.¹⁷⁰ He publicly reaffirmed the United States’ unconditional backing of Israel in a press conference: “[the United States] will always be there, by your side,” stating that the same message was delivered by President Biden to Prime Minister Netanyahu “from the moment this crisis

¹⁶² Reuters, *1,537 Palestinians killed and 6,612 wounded in Israeli strikes, Gaza health ministry says* (Oct. 12, 2023), <https://www.reuters.com/world/middle-east/1537-palestinians-killed-6612-wounded-israeli-strikes-gaza-health-ministry-2023-10-12/>.

¹⁶³ Mohammed al-Hajjar, *Israel-Palestine war: 250 killed in Gaza's deadliest morning*, Middle East Eye (Oct. 12, 2023), <https://www.middleeye.net/news/israel-gaza-war-deadliest-morning-gaza-strikes#:~:text=Israeli%20air%20strikes%20killed%20at,two%20and%2014%20years%20old.>

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Abed Abu Riash & Federica Marsi, *Gaza medics say Israel targeting ambulances, health facilities*, Al Jazeera English (Oct. 12, 2023), <https://www.aljazeera.com/news/2023/10/12/war-crime-gaza-medics-say-israel-targeting-ambulances-health-facilities#:~:text=The%20Palestine%20Red%20Crescent%20Society.today%2C%20despite%20prior%20coordinati on%E2%80%9D.>

¹⁶⁷ *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*, United Nations (Oct. 12, 2023), <https://press.un.org/en/2023/db231012.doc.htm>.

¹⁶⁸ *Gaza: Nowhere to go, as humanitarian situation reaches ‘lethal low’*, Statement from the United Nations Team in Palestine, United Nations (Oct. 13, 2023), <https://unsdg.un.org/latest/stories/gaza-nowhere-go-humanitarian-situation-reaches-%E2%80%98lethal-low%E2%80%99>.

¹⁶⁹ *Today’s top news: Occupied Palestine Territory, Afghanistan*, United Nations Office for the Coordination of Humanitarian Affairs (Oct. 12, 2023), <https://www.unocha.org/news/todays-top-news-occupied-palestinian-territory-afghanistan-0>. See also *12 United Nations relief workers have been killed in Gaza, UN says, as humanitarian crisis grows*, CNN (Oct. 12, 2023), https://www.cnn.com/middleeast/live-news/israel-news-hamas-war-10-12-23/h_fa3d501e16d8fe4222a8a315c02b56e9.

¹⁷⁰ Jennifer Hansler, *Blinken pledges US will never falter from supporting Israel as he likens Hamas’ crimes to ISIS*, CNN (Oct. 12, 2023), <https://www.cnn.com/2023/10/12/politics/blinken-israel-visit/index.html>.

began.”¹⁷¹ He also reaffirmed the constant communication between Israeli officials and U.S. officials “on a daily – even an hourly – basis.”¹⁷² Blinken declared that the United States’ material support to Israel includes “supplying ammunition, interceptors to replenish Israel’s Iron Dome, alongside other defense material,” with the first shipment of support having already arrived.¹⁷³

Secretary of Defense Austin also confirmed that the U.S. was “working urgently to get Israel what it needs including munitions and iron drone interceptors,” all under the auspices of Israel “need[ing]” such material support to defend itself.¹⁷⁴ These statements from Blinken and Austin about increasing ammunition support were made the day it was widely reported that Israel used white phosphorous on civilian areas.¹⁷⁵

Rather than condemning Israel’s “evacuation” order, U.S. National Security Council (“NSC”) spokesman John Kirby issued a defense: “[The Israeli Defense Forces are] trying to move civilians out of harm’s way and giving them fair warning.”¹⁷⁶ However, medical professionals in Gaza revealed an entirely different reality: “The fighter jets are demolishing entire streets block by block,” and “[t]here is no place to hide, no time to rest. Some places are being bombed on consecutive nights.”¹⁷⁷ Meanwhile, documentation and real-time testimony inside Gaza consistently revealed Israeli airstrikes directly targeting civilians, including those trying to move from northern Gaza to the south.¹⁷⁸

¹⁷¹ U.S. Dep’t of State, *Secretary Antony J. Blinken and Israeli Prime Minister Benjamin Netanyahu After Their Meeting* (Oct. 12, 2023), <https://www.state.gov/secretary-antony-j-blinken-and-israeli-prime-minister-benjamin-netanyahu-after-their-meeting-2/>.

¹⁷² *Id.*

¹⁷³ *Id.* (“In the same press conference, Israeli Prime Minister Netanyahu recognized the United State’s complete support to Israel: “Mr. Secretary, your visit is another tangible example of America’s unequivocal support for Israel,” thanking America “for standing with Israel, today, tomorrow, and always.”).

¹⁷⁴ *U.S. support for Israel is “rock solid,” Secretary Austin says after NATO meeting*, CBS News YouTube at 01:09-01:26 (Oct. 13, 2023), https://www.youtube.com/watch?v=Iae_xqox0SA.

¹⁷⁵ See *Questions and Answers on Israel’s Use of White Phosphorus in Gaza and Lebanon*, *supra* note 152.

¹⁷⁶ Akbar Shahid Ahmad, *Stunning State Department Memo Warns Diplomats: No Gaza ‘De-Escalation Talk’*, HuffPost (Oct. 13, 2023) https://www.huffpost.com/entry/state-department-internal-emails-gaza-israel_n_65296395e4b0a304ff6ff95d.

¹⁷⁷ *Indiscriminate violence and the collective punishment of Gaza must cease*, Médecins Sans Frontières (Oct. 12, 2023), <https://www.doctorswithoutborders.org/latest/indiscriminate-violence-and-collective-punishment-gaza-must-cease>.

¹⁷⁸ See, e.g., OCHA, *Hostilities in the Gaza Strip and Israel: Flash Update #6*, Reliefweb (Oct. 13 2023), <https://reliefweb.int/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-6>; Bisan Ctr. for Rsrch. & Dev. et al., *Gaza Debrief: Palestinian Civil Society and the Israeli Assault on Gaza*, Facebook Live (Oct. 13, 2023), https://m.facebook.com/events/225814516924943?active_tab=about. See also Bethan McKernan & Sufian Taha, *Gaza civilians afraid to leave home after bombing of ‘safe routes’*, The Guardian (Oct. 15, 2023), <https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>. The Palestinian human rights organization Al-Haq used aerial photos and social media posts to geolocate the site of an Israeli airstrike on a road the Israeli army had previously classified as a ‘safe route.’ “Everything and everyone can be targeted in Gaza. Every day of reporting might be our last day of reporting. We have actually already lost at least nine fellow journalists, who have been covering events on the ground or were at their homes at the time of the attack.” Middle East Eye, Twitter (Oct. 12, 2023), <https://twitter.com/MiddleEastEye/status/1712463960602243511>.

In response to a question from a reporter about whether the United States would withhold military aid to Israel until they create a humanitarian corridor, NSC Coordinator Kirby responded: “We are providing [Israel] military aid as we speak. So, no, there’s no plans of — of holding back military assistance. We wouldn’t do that. The President has been talking now for three days about how we’re going to keep giving them the capabilities that they need.”¹⁷⁹ Later, NSC Coordinator Kirby stated that the U.S. is “actively having conversations with the Israelis and the Egyptians about a safe passage corridor so that people who want to leave can leave,”¹⁸⁰ and having “conversations” about humanitarian goods.¹⁸¹

OCTOBER 13, 2023

Israeli Statements and Conduct Advancing Genocide

On October 13, Israeli President Isaac Herzog announced: “It’s an entire nation out there that is responsible. It’s not true – this rhetoric about civilians not aware, not involved, it’s absolutely not true.”¹⁸² Israel infantry released their first official account of ground raids into Gaza, with Israeli Prime Minister Netanyahu declaring: “We are striking our enemies with unprecedented might . . . I emphasise that this is only the beginning.”¹⁸³ Minister of Energy and Infrastructure Israel Katz declared “All the civilian population in [G]aza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world.”¹⁸⁴ UN and international humanitarian organizations warned of the catastrophe that would result from Israel’s forcible relocation of Palestinians in Gaza, and appealed to rescind its evacuation order.¹⁸⁵

¹⁷⁹ The White House, *Press Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby* (Oct. 12, 2023), <https://www.whitehouse.gov/briefing-room/press-briefings/2023/10/12/press-briefing-by-press-secretary-karine-jean-pierre-and-nsc-coordinator-for-strategic-communications-john-kirby-21/>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *The Lead with Jake Tapper, Transcripts*, CNN (Oct. 13, 2023), <https://transcripts.cnn.com/show/cg/date/2023-10-13/segment/02>. See also, e.g., Paul Blumenthal, *Israeli President Says There Are No Innocent Civilians in Gaza*, HuffPost (Oct. 13, 2023), https://www.huffpost.com/entry/israel-gaza-isaac-herzog_n_65295ee8e4b03ea0c004e2a8.

¹⁸³ ‘Only the beginning’ says Netanyahu as Israel makes first raids into Gaza, Reuters (Oct. 13, 2023), <https://www.reuters.com/world/middle-east/now-is-time-war-says-israels-military-chief-2023-10-12/>. See also Israeli PM, Youtube (Oct. 13, 2023), <https://www.youtube.com/watch?v=T4HXaZ20M6Q>.

¹⁸⁴ Israel Katz, Twitter (Oct. 13, 2023), https://twitter.com/Israel_katz/status/1712876230762967222.

¹⁸⁵ See United Nations, *Israel must rescind evacuation order for northern Gaza and comply with international law: UN expert, supra* note 159 (“The humanitarian system in Gaza is already at breaking point. Gaza’s infrastructure has been devastated by indiscriminate bombardments from air, land and sea, and those currently displaced have nowhere to go,’ the expert said. ‘Tripling the displaced population overnight will decimate and permanently alter the civilian population of Gaza,’ she warned.”); *Israel/OPT: Appalling Gaza “evacuation order” must be rescinded by Israel immediately*, Amnesty International (Oct. 13, 2023), <https://www.amnesty.org/en/latest/news/2023/10/israel->

Meanwhile, current and previous Israeli government officials voiced acceptance, if not support, for the suffering it would cause the Palestinian population as a whole. For example, IDF spokesperson Lieutenant Colonel Jonathan Conricus stated, “We will not allow anything into the Gaza strip that supports the fighting ability of Hamas. If it comes to the price of inconvenience for the population, so be it.”¹⁸⁶ The influential former diplomat Danny Ayalon, who served as Israel’s Former Deputy Foreign Minister and former Ambassador of Israel to the United States, said in an interview with Al Jazeera that “there is ‘endless space’ for Gaza’s civilians in Egypt’s Sinai Desert and that they should all be moved there.”¹⁸⁷ “The idea is – and this is not the first time it will be done – the idea is for them to leave over to the open areas where we and the international community will prepare the infrastructure . . . tent cities with food and with water.”¹⁸⁸ Meanwhile, the Israeli military dropped leaflets all across the northern parts of the Gaza Strip ordering Palestinian civilians to vacate their homes and all public shelters and move to a so-called “Humanitarian Aid Zone” that is close to the Rafah crossing with Egypt.¹⁸⁹

The views of Israeli officials that Palestinians are less than human and should be destroyed were promoted by the 95-year old Israeli army reservist Ezra Yachin, who was reportedly called for his reserve duty to “boost morale” ahead of any ground incursions,¹⁹⁰ and while dressed in military fatigues declared in a clip widely circulated on social media that has more than 2.2 million views, speaking to other soldiers, in statements aimed at inciting others to act:

“Be triumphant and finish them off and don’t leave anyone behind. Erase the memory of them. *Erase them, their families, mothers and children. These animals can no longer live.* . . . Every Jew with a weapon should go out and kill them. If you have an Arab neighbour, don't wait, go to his home and shoot him. . . . We want to invade, not like before, *we want to enter and destroy what’s in front of us, and destroy houses, then destroy the ones after it.* With all of our forces, complete destruction, enter and destroy. As you can see, we will

[opt-appalling-gaza-evacuation-order-must-be-rescinded-by-israel-immediately/](#) (“‘With this order, Israeli forces are setting in motion the mass forced displacement of more than 1.1 million people from Gaza City and the entire northern part of the Gaza Strip. It has sowed panic among the population and left thousands of internally displaced Palestinians now sleeping on the streets, not knowing where to flee to or where they can find safety amid a relentless bombing campaign by Israel and merciless collective punishment measures. This order must be rescinded immediately,’ said Agnès Callamard, Amnesty International’s Secretary General.”)

¹⁸⁶ Helen Regan et al., *Israel tells 1.1 million Gazans to evacuate south. UN says order is ‘impossible’*, CNN (Oct. 13, 2023), <https://www.cnn.com/2023/10/13/middleeast/israel-gaza-hamas-war-friday-intl-hnk/index.html#:~:text=Israel%20has%20stood%20firm%20in,population%2C%20so%20be%20it.%E2%80%9D>.

¹⁸⁷ *Israeli diplomat: There’s endless space in Egypt’s Sinai Desert for Gaza’s civilians*, Middle East Monitor (Oct. 14, 2023), <https://www.middleeastmonitor.com/20231014-israeli-diplomat-theres-endless-space-in-egypts-sinai-desert-for-gazas-civilians/> (citing *Are Israel and Hamas guilty of war crimes?*, Al Jazeera (Oct. 13, 2023), at 16:40-17:07, <https://www.aljazeera.com/program/upfront/2023/10/13/are-israel-and-hamas-guilty-of-war-crimes>).

¹⁸⁸ Al Jazeera, *supra* note 187 at 16:45-17:07.

¹⁸⁹ Abeer Salman, *Gaza residents say IDF dropped leaflets from planes ordering them to evacuate south*, CNN (Oct. 13, 2023), https://www.cnn.com/middleeast/live-news/israel-news-hamas-war-10-13-23/h_65692c9ecb7e2e94320df83fdf30cfc7.

¹⁹⁰ My Israel, Twitter (Oct. 10, 2023), <https://twitter.com/MyIsraelorgil/status/1711732148573499547>.

witness things we've never dreamed of. *Let them drop bombs on them and erase them.*"¹⁹¹ (emphases added).

Yachin was a member of the Zionist Lehi unit involved in the above-referenced Deir Yassin massacre.¹⁹²

The number of Palestinians killed had risen to at least 1,843; at least 7,088 Palestinians had been injured and 423,000 displaced.¹⁹³ Despite Israel announcing a "safe route" for civilians to evacuate from north Gaza to the south, journalists in Gaza reported that Israeli forces "targeted ambulances, cars, and buses" of people seeking safety.¹⁹⁴ Israeli airstrikes bombed three convoys carrying Palestinian evacuees to southern Gaza," killing 70, the majority of whom were women and children.¹⁹⁵ Both the Forensic Architecture investigative unit at Palestinian human rights organization, Al-Haq, and the BBC, used aerial photos and social media posts to geolocate the site of a strike by the Israeli army on a convoy of vehicles carrying civilians fleeing airstrikes in Gaza. Seventy people in the convoy died when the strike while traveling on Salah-al-Din Road, one of the two roads that the Israeli army had previously identified as a "safe route" south.¹⁹⁶ Many Palestinians chose not to heed the Israeli evacuation orders, deeming them a "trick," especially after the designated safe route was bombed.¹⁹⁷

Between October 7-13, WHO had documented 37 attacks resulting in the killing of healthcare workers, and damage to 13 healthcare facilities and at least 15 ambulances.¹⁹⁸ Such targeted attacks of humanitarian and medical assistance have further restricted life-saving assistance, including to "emergency obstetric and newborn care."¹⁹⁹ As reports of a ground operation circulated, Palestinians in Gaza started circulating statements with their wills, self-written eulogies, and

¹⁹¹ Middle East Eye, "*These animals can no longer live,*" Twitter (Oct. 13, 2023), at 00:00-00:33, <https://twitter.com/MiddleEastEye/status/1712918166437806294>.

¹⁹² *I fought in the Lehi*, Israeli Defense Forces (Nov. 29, 2021), <https://www.idf.il/en/mini-sites/our-soldiers/i-fought-in-the-lehi/>; Tzvi Fishman, *Lehi Fighter Recalls 1948 Battle At Deir Yassin*, Jewish Press (May 21, 2020), <https://www.jewishpress.com/indepth/interviews-and-profiles/lehi-fighter-recalls-1948-battle-at-deir-yassin/2020/05/21/>.

¹⁹³ United Nations Population Fund, *Crisis in Palestine* at 1 (Oct. 13, 2023), https://www.unfpa.org/sites/default/files/resource-pdf/UNFPA-Situation-Report_Palestine_13Oct2023.pdf.

¹⁹⁴ Mohammed El Kurd, *A testimony from a young journalist in Gaza named Bisan*, Twitter (Oct. 13, 2023), <https://twitter.com/m7mdkurd/status/1712863526665003266>.

¹⁹⁵ Yasmine Salam, *Inside Gaza's overrun hospitals, scenes of chaos and horror*, NBC News (Oct. 13, 2022), <https://www.nbcnews.com/news/world/gaza-overrun-hospitals-chaos-rcna120408>.

¹⁹⁶ Bethan McKernan & Sufian Taha, *Gaza civilians afraid to leave home after bombing of 'safe routes' - Analysis of aerial photos and social media posts confirms attack on road identified as safe by Israeli army*, The Guardian, (Oct 15, 2023), https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes?CMP=share_btn_tw.

¹⁹⁷ Gaza-based journalist @wizard_bisan1 posted videos of the reactions at a Gaza hospital after the bombing: "It was a trick." wizard_bisan1, Instagram (Oct. 13, 2023), <https://www.instagram.com/reel/CyV-mYLMMS/?igshid=NjZiM2M3MzIxNA==>.

¹⁹⁸ United Nations Population Fund, *Crisis in Palestine*, supra note 193, at 2.

¹⁹⁹ *Id.*

goodbyes, knowing of their impending death and reflecting the serious mental harm they experienced.²⁰⁰

U.S. Support for Israel’s Campaign

On October 13, U.S. Defense Secretary Austin traveled to Israel to meet with Prime Minister Benjamin Netanyahu, Minister of Defense Yoav Gallant, and the Israeli War Cabinet.²⁰¹ He proclaimed that the Pentagon was prepared to deploy additional U.S. military aid to Israel, further explaining that “munitions, air defense capabilities and other equipment and resources” were already “rapidly flowing” to Israel.²⁰² Additionally, Secretary Austin and Israeli Defense Minister Yoav Gallant held a joint press conference, in which Israeli Defense Minister Gallant said:

I briefed the secretary on strategic developments in our region, and the chief of staff together with the IDF leadership shared our operations. Defense cooperation and U.S. support in the Pentagon, in the White House, in the Congress ensure freedom of operation and enforce our capabilities. In fact, today we will receive the second aircraft carrying essential munition to the IDF. U.S. deployment of assets on land, in air and at sea sends a strong message to both partners and enemies in the region. On behalf of Israel's defense establishment and on behalf of our citizens, Mr. Secretary, thank you very much.²⁰³

Secretary Austin, when “asked about the likelihood of civilian casualties in Gaza as Israeli troops prepare to mount a major ground assault there,” responded that “Israel had the right to defend itself,” and maintained that “[Israeli forces] are professional, they are disciplined and they are focused on the right things.”²⁰⁴

²⁰⁰ Omer Faruk Madanoglu, *Gazans begin sharing wills online after reports of land operation by Israel*, AA (Oct. 13, 2023), <https://www.aa.com.tr/en/middle-east/gazans-begin-sharing-wills-online-after-reports-of-land-operation-by-israel/3019246>.

²⁰¹ U.S. Dep’t of Defense, *Readout of Secretary of Defense Lloyd J. Austin III’s Visit to Israel* (Oct. 13, 2022), <https://www.defense.gov/News/Releases/Release/Article/3557211/readout-of-secretary-of-defense-loyd-j-austin-iiis-visit-to-israel/>.

²⁰² U.S. Dep’t of Defense, *Secretary of Defense Lloyd J. Austin III Joint Press Conference With Israeli Defense Minister Yoav Gallant in Tel Aviv, Israel* (Oct. 13, 2023), <https://www.defense.gov/News/Transcripts/Transcript/Article/3556642/secretary-of-defense-loyd-j-austin-iii-joint-press-conference-with-israeli-def/>.

²⁰³ *Id.* See also Oren Liebermann et al., *US sending second carrier strike group, fighter jets to region as Israel prepares to expand Gaza operations*, CNN (Oct. 15, 2023), <https://www.cnn.com/2023/10/14/middleeast/us-aircraft-carrier-eisenhower-israel-gaza-intl-hnk-ml/index.html>.

²⁰⁴ Eric Schmitt, *U.S. Expanding Military Presence Near Israel*, N.Y. Times (Oct. 15, 2023), <https://www.nytimes.com/2023/10/15/us/politics/us-military-israel-gaza.html> (quoting *Joint Press Conference With Israeli Defense Minister*, *supra* note 202).

OCTOBER 14, 2023
Israeli Statements and Conduct Advancing Genocide

On October 14, Israeli Minister Gideon Sa'ar, who is part of the “war cabinet,” stated that the Gaza Strip “must be smaller at the end of the war” and, evincing both intention and no fear in announcing that intention to the international community would cause it to lose support, that “we must make the end of our campaign clear to everyone around us.”²⁰⁵

Tzipi Navon, a close adviser and office manager for Prime Minister Benjamin Netanyahu’s wife, Sara Netanyahu, publicly called on Israel to torture Palestinians in Gaza: “We keep saying to flatten Gaza, flatten Gaza, and I think that's not enough [...] It won’t calm the storm of emotions, it won’t dull the intensity of the rage and pain that can’t find an outlet for them.”²⁰⁶ She proposed that “the people of Gaza should be captured and tortured ‘one-by-one’ by pulling out their nails and skinning them alive” and that men’s genitals should be cut off, fried, and fed to the captured.²⁰⁷

Israel commanded the Palestinian Red Crescent Society (“PRCS”) Al Quds Hospital in Gaza City to evacuate, initially setting a first deadline of 6:00 a.m.²⁰⁸ PRCS refused to comply with the order, as it was “offering life-saving services to a large number of Palestinian patients and wounded, including critical cases in the Intensive Care Unit (ICU) and [c]hildren in incubators.”²⁰⁹ The World Health Organization (“WHO”) warned that Israel’s evacuation orders to the 22 hospitals in northern Gaza is a “death sentence” for over 2,000 inpatients, including newborns in incubators, women with pregnancy complications, and other Palestinians in critical conditions requiring intensive care, life support, and hemodialysis.²¹⁰ In addition to the injured, tens of thousands of

²⁰⁵ *Israeli minister says Gaza Strip ‘must be smaller by the end of the war,’* Guardian (Oct. 14, 2023), <https://www.theguardian.com/world/2023/oct/15/egypt-moves-troops-to-gaza-border-amid-fears-of-expulsion-of-palestinians>.

²⁰⁶ *Israel-Palestine war: Sara Netanyahu's adviser calls for torture of Gaza residents involved in killing Israelis,* Middle East Eye (Oct. 14, 2023), <https://www.middleeasteye.net/news/israel-palestine-war-sara-netanyahu-advisor-torture-gazans-rant>. See also *Sara Netanyahu’s advisor spreads poison against leftists: “The traitors continue to incite,”* YNet (Oct. 14, 2023), <https://www.ynet.co.il/news/article/rjscwxobt>. (“There should be an area that is classified as a security zone where whoever enters is intercepted.”)

²⁰⁷ *Id.* (Navon also added, “Save their tongues for last, so we can enjoy his screams, his ears so he can hear his own screams, and his eyes so he can see us smiling.”)

²⁰⁸ *Palestine Red Crescent Society, PRCS Statement on Al Quds Hospital Evacuation Order* (Oct. 14, 2023), <https://www.palestinerics.org/public/files/image/2023/News/102023/14102023/Al%20Quds%20Hospital%20Evacuation%20Order.pdf>. Mid-day Saturday, Israeli forces revised the deadline to evacuate to 16:00.

²⁰⁹ *Id.* (PRCS “cannot evacuate the hospital, and by its humanitarian mandate is bound to continue the provision of services to the sick and wounded.”)

²¹⁰ *Evacuation orders by Israel to hospitals in northern Gaza are a death sentence for the sick and injured,* World Health Organization (Oct. 14, 2023), <https://www.who.int/news/item/14-10-2023-evacuation-orders-by-israel-to-hospitals-in-northern-gaza-are-a-death-sentence-for-the-sick-and-injured>. See also, e.g., *Gaza: Israel warns Al-Awdeh Hospital will be bombed,* Middle East Monitor (Oct. 14, 2023), <https://www.middleeastmonitor.com/20231014-gaza-israel-warns-al-awdeh-hospital-will-be-bombed/>.

displaced Palestinians are sheltering in or around hospitals, “treating them as havens from violence” and “protec[ing] the facilities from potential attacks.”²¹¹

By October 14, Israel launched over 6,000 bombs over Gaza - the equivalent to a “quarter of a nuclear bomb” – killing at least 2,370 Palestinians including at least 721 children and 390 women.²¹² Specifically, on what was the eighth day of its military assault in Gaza, Israel, killed “at least 14 Palestinians every hour,”²¹³ and annihilated entire family lines killing “[a]ll the living generations of 45 families, entirely wiping them from the Gaza Civil Registry.”²¹⁴ Israel continued to bomb civilians, injuring 9,250 Palestinians²¹⁵ and destroying at least 2,650 residential buildings, 71 schools, 145 industrial facilities, 61 media headquarters, 18 mosques, and severely damaging approximately 70,000 residential units and dozens of ancient churches and mosques.²¹⁶ 820,000 Palestinians have been displaced, more than half after Israeli air raids demolished or damaged their homes.²¹⁷ UNRWA issued a statement urging Israeli officials to protect civilian life: “UNRWA shelters in Gaza and northern Gaza are no longer safe. This is unprecedented.”²¹⁸

U.S. Support for Israel’s Campaign

On October 14, the UNRWA Commissioner-General warned that Palestinians were at risk of dying from severe dehydration due to Israel’s complete siege on Gaza.²¹⁹ The electricity blackout, which has been sustained since October 11, has strained the water supply, and after Israel threatened to bomb Egypt aid trucks attempting to deliver essential supplies including fuel – which is desperately needed to make water available to the more than 2 million people in Gaza – no

²¹¹ *Id.*

²¹² *Israel Kills 14 Palestinians Every Hour in Its Brutal Attack on Gaza - Israel Dropped Equivalent to a Quarter of a Nuclear Bomb*, Euro-Med Human Rights Monitor (Oct. 14, 2023), <https://euromedmonitor.org/en/article/5860/Israel-Kills-14-Palestinians-Every-Hour-in-Its-Brutal-Attack-on-Gaza-%E2%80%93-Israel-Dropped-Equivalent-to-a-Quarter-of-a-Nuclear-Bomb>.

²¹³ *Id.*

²¹⁴ Al Jazeera English, Twitter (Oct. 14, 2023), <https://twitter.com/AJEnglish/status/1713278768414892508>. See also Ruwaida Amer, *Even refugee camps aren’t safe from Israeli bombs in Gaza*, Al Jazeera (Oct. 17, 2023), <https://www.aljazeera.com/news/2023/10/17/even-refugee-camps-arent-safe-from-israeli-bombs-in-gaza#:~:text=At%20least%2045%20three%2Dgeneration,the%20rubble%20of%20bombed%20homes>.

²¹⁵ *Israel Kills 14 Palestinians Every Hour in Its Brutal Attack on Gaza - Israel Dropped Equivalent to a Quarter of a Nuclear Bomb*, *supra* note 212. See also United Nations, *UN expert warns of new instance of mass ethnic cleansing of Palestinians, calls for immediate ceasefire*, OHCHR (Oct. 14, 2023), <https://www.ohchr.org/en/press-releases/2023/10/un-expert-warns-new-instance-mass-ethnic-cleansing-palestinians-calls>.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Gaza: Forcing patients to flee hospitals a ‘death sentence’ warns WHO*, UNRWA (Oct. 14, 2023), <https://news.un.org/en/story/2023/10/1142347>.

²¹⁹ *A Matter of Life and Death: Water Runs Out For 2 Million People in Gaza*, UNRWA (Oct. 14, 2023), <https://www.unrwa.org/newsroom/official-statements/matter-life-and-death-water-runs-out-2-million-people-gaza>.

humanitarian aid assistance has been able or permitted to enter.²²⁰ Salah-al-Din Road – one of the two roads the Israeli army identified as a safe route to evacuate to southern Gaza – was bombed, killing 70.²²¹ Still, on October 14, President Biden “spoke with Prime Minister Netanyahu to reiterate unwavering U.S. support for Israel.”²²² The same day, the Pentagon announced the deployment of a second carrier strike group, the USS Dwight D. Eisenhower Strike Group, which includes a guided-missile cruiser and two guided-missile destroyers,²²³ and U.S. Air Forces Central announced deploying “fighter jets” and “ground-attack jets” to the region.²²⁴

OCTOBER 15, 2023

Israeli Statements and Conduct Advancing Genocide

On October 15, Prime Minister Netanyahu stated that the entire nation is behind Israel’s soldiers, who “understand the scope of the mission” and stand ready “to defeat the bloodthirsty monsters who have risen against [Israel] to destroy us.”²²⁵ The Israeli military announced its intention to target Gaza City, the most populous center of Gaza.²²⁶ Israeli military hostilities have so far killed over 2,670 Palestinians, including 724 children and more than 47 families “made up of

²²⁰ *Id.*; *Israel threatens to bomb Egypt aid trucks heading to Gaza*, *supra* note 144; *More aid flights arrive in Egypt’s Sinai, awaiting passage to Gaza*, Reuters (Oct. 14, 2023) <https://www.reuters.com/world/middle-east/more-aid-flights-arrive-egypts-sinai-awaiting-passage-gaza-2023-10-14>.

²²¹ Bethan McKernan & Sufian Taha, *Gaza civilians afraid to leave home after bombing of ‘safe routes’*, The Guardian (Oct. 15, 2023), <https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes> (The Forensic Architecture investigative unit at the Palestinian human rights organization Al-Haq used aerial photos and social media posts to geolocate the site of the strike, sharing its findings with the Guardian. The BBC’s Verify unit came to the same conclusion.). *See also As evacuation orders expire in northern Gaza, MSF calls for protection of civilians*, Médecins Sans Frontières, (Oct. 15, 2023), <https://www.doctorswithoutborders.org/latest/evacuation-orders-expire-northern-gaza-msf-calls-protection-civilians>.

²²² The White House, *Readout of President Biden’s Call with Prime Minister Netanyahu of Israel* (Oct. 14, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/14/readout-of-president-bidens-call-with-prime-minister-netanyahu-of-israel-3/#:~:text=President%20Biden%20discussed%20with%20Prime.all%20efforts%20to%20protect%20civilians>.

²²³ U.S. Dep’t of Defense, *Statement from Secretary of Defense Lloyd J. Austin III on Deployment of USS Eisenhower Carrier Strike Group to the Eastern Mediterranean* (Oct. 14, 2023), <https://www.defense.gov/News/Releases/Release/Article/3557560/statement-from-secretary-of-defense-lloyd-j-austin-iii-on-deployment-of-uss-eis/>.

²²⁴ Oren Liebermann et al., *US sending second second carrier strike group, fighter jets to region as Israel prepares to expand Gaza operations*, CNN (Oct. 15, 2023), <https://www.cnn.com/2023/10/14/middleeast/us-aircraft-carrier-eisenhower-israel-gaza-intl-hnk-ml/index.html>.

²²⁵ *Israel-Hamas war: Biden says Gaza occupation would be ‘big mistake’ - as it happened*, The Guardian (Oct. 15, 2023), <https://www.theguardian.com/world/live/2023/oct/15/israel-hamas-war-live-us-sends-second-aircraft-carrier-to-deter-hostile-actions-against-israel-ground-assault-on-gaza-looms?filterKeyEvents=false&page=with:block-652bd4058f081db0948419d5>.

²²⁶ Peter Kenyon & Joe Hernandez, *Blinken says the crossing to Egypt will open to aid as Israel prepares to strike Gaza*, NPR (Oct. 16, 2023), <https://www.npr.org/2023/10/15/1206006186/israel-defense-forces-says-its-information-to-strike-gaza-city>.

500 Palestinians” who have been entirely wiped off from the Gaza Civil Registry; 9,600 have been injured.²²⁷ Nearly 1 million Palestinians have already been displaced.²²⁸

U.S. Support for Israel’s Campaign

Secretary Blinken announced on October 15 that: “We will stand with [Israel] today, tomorrow, and every day, and we’re doing that in word and also in deed.”²²⁹ He added, “we’ve backed that up not only with the words that we’re saying, but with what we’re actually doing, including the deployment of [U.S.] aircraft carrier battle groups.”²³⁰

OCTOBER 16, 2023

Israeli Statements and Conduct Advancing Genocide

Israeli Prime Minister Netanyahu, during remarks he made on October 16, stated: “This is a struggle between the children of light and the children of darkness, between humanity and the law of the jungle.”²³¹ This assertion was made the day the death count of Palestinian children surpassed 1000.²³²

²²⁷ 724 Palestinian children killed in Gaza as Israel targets civilians, DCI-Palestine (Oct. 14, 2023), <https://www.dci-palestine.org/724-palestinian-children-killed-in-gaza-as-israel-targets-civilians>; Gaza: 2,670 Palestinians killed, since the start of escalation on the morning of 7 October, and 9,600 citizens were injured, Palestinian Ministry of Health (Oct. 15, 2023), <https://www.moh.gov.ps/portal/gaza-2670-palestinians-killed-since-the-start-of-escalation-on-the-morning-of-7-october-and-9600-citizens-were-injured/>; Nidal Al-Mughrabi & Emily Rose, Israel vows to demolish Hamas as troops prepare to move on shattered Gaza, Reuters (Oct. 15, 2023), <https://www.reuters.com/world/middle-east/gaza-braces-israeli-ground-assault-fears-conflict-spreading-grow-2023-10-15/>; Yakoota Al Ahmad, Over last week, Israel killed 47 families in Gaza made up of 500 Palestinians: News agency, AA (Oct. 15, 2023), <https://www.aa.com.tr/en/middle-east/over-last-week-israel-killed-47-families-in-gaza-made-up-of-500-palestinians-news-agency/3020636#:~:text=Citing%20reports%20from%20hospitals%20in,out%20from%20the%20civil%20registry.%E2%80%9D>.

²²⁸ Thousands at risk of dying in Gaza hospitals, cut off by Israel from fuel, water and supplies, PBS (Oct. 15, 2023), <https://www.pbs.org/newshour/world/thousands-at-risk-of-dying-in-gaza-hospitals-cut-off-by-israel-from-fuel-water-and-supplies>.

²²⁹ U.S. Dep’t of State, Secretary Antony J. Blinken Remarks to the Press (Oct. 15, 2023), <https://www.state.gov/secretary-antony-j-blinken-remarks-to-the-press-12/>.

²³⁰ *Id.*

²³¹ Ministry of Foreign Affairs, Excerpt from PM Netanyahu’s remarks at the opening of the Winter Assembly of the 25th Knesset’s Second Session (Oct. 16, 2023), <https://www.gov.il/en/departments/news/excerpt-from-pm-netanyahu-s-remarks-at-the-opening-of-the-knesset-s-winter-assembly-16-oct-2023>.

²³² One Palestinian child in Gaza killed every 15 minutes by Israeli forces, DCI-Palestine (Oct. 16, 2023), <https://www.dci-palestine.org/one-palestinian-child-in-gaza-killed-every-15-minutes-by-israeli-forces#:~:text=Ramallah%2C%20October%2016%2C%202023%E2%80%9494,bombardment%20and%20unprecedented%20internal%20displacement>

On October 16, UNRWA cautioned that “concerns over dehydration and waterborne diseases are high given the collapse of water and sanitation services, including today’s shutdown of Gaza’s last functioning seawater desalination plant.”²³³ While one line of water had been turned on “for three hours only in the [s]outh of the Gaza Strip,” UNRWA stressed that this development “does not solve the urgent water needs” given that “[o]nly 14 percent of the population in the Strip benefited from this three-hour opening of the water line.”²³⁴ First-hand testimony on October 16 from people living in Gaza confirmed the drastically deteriorating situation with access to potable water, food and other supplies.²³⁵

By October 16, Israeli hostilities had killed at least 2,670, and injured 9,600.²³⁶ 1 million Palestinians in Gaza had been displaced,²³⁷ and 1,000 were reported to be missing – believed to be buried under rubble.²³⁸ Despite Israel’s order for Palestinians in Gaza to evacuate to southern Gaza, Israeli Air Forces continued striking Khan Younis and other southern areas.²³⁹ “[O]vernight airstrikes were the heaviest yet, and the bombing carried throughout the day.”²⁴⁰ According to one resident in Khan Younis reported: “We were inside the house when we found bodies scattering, flying in the air - bodies of children who have nothing to do with the war.”²⁴¹

U.S. Support for Israel’s Campaign

On October 16, it was reported that Secretary Austin has ordered 2,000 U.S. military troops “to prepare to deploy in support of Israel,” an action which has added an additional lawyer of support and backing of Israel.”²⁴² According to Department of Defense Deputy Press Secretary Sabrina Singh: “Since leaving Israel, [Secretary Austin] has held calls with [Minister of Defense] Gallant . . . on a near daily basis and will likely have another call today,” declaring that “[w]e are working to meet Israel’s needs, which include air defense, precision guided munitions,

²³³ UNRWA Situation Report #7 on the Gaza Strip and the West Bank - 16 October 2023 as of 18:00 (Day 9), UNRWA (Oct. 17, 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-7-gaza-strip-and-west-bank>.

²³⁴ *Id.*

²³⁵ Hussein Hammad, *Testimonies from Al Mezan staff in Gaza: Hussein*, Al Mezan Center for Human Rights, (Oct. 16 2023), <https://www.mezan.org/en/post/46292>.

²³⁶ UNRWA Situation Report #7, *supra* note 233 (documenting that on average, 267 Palestinians in Gaza have been killed per day or 11 every hour).

²³⁷ *Id.*

²³⁸ Nidal Al-Mughrabi, *In Gaza, people resort to drinking salty water, garbage piles up*, Reuters (Oct. 16, 2023), <https://www.reuters.com/world/middle-east/gaza-people-resort-drinking-salty-water-garbage-piles-up-2023-10-16/>.

²³⁹ UNRWA Situation Report #7, *supra* note 233.

²⁴⁰ Nidal Al-Mughrabi et. al., *Talks fail to let aid reach Gaza; Israel evacuates Lebanon border*, Reuters (Oct. 16, 2023), <https://www.reuters.com/world/middle-east/gaza-border-crossing-set-reopen-israeli-troops-prepare-ground-assault-2023-10-15/> (eyewitness account by Abed Rabayaa, “whose neighbour’s house in Khan Younis, the main city in the southern part of the enclave, was hit overnight.”).

²⁴¹ *Id.*

²⁴² Ellen Mitchell, *Pentagon puts troops on notice to prepare to deploy to support Israel: reports*, The Hill (Oct. 16, 2023), <https://thehill.com/policy/defense/4259025-pentagon-puts-troops-on-notice-to-prepare-to-deploy-to-support-israel-reports/>.

artillery and medical supplies.”²⁴³ The same day, Secretary Blinken held a seven hour meeting with the Israeli war cabinet.

The White House announced that President Biden will make an extraordinary wartime trip to Israel to reassert Israel’s “right and duty to defend itself”²⁴⁴ and “demonstrate his steadfast support” for the country.²⁴⁵

IV. FINDINGS

Applying the facts as set out in Section III, to the law, as explained in Section II, we make the following findings.

A. Israel’s Responsibility for Genocide

Based on the foregoing statements and actions undertaken by current and former Israeli officials, and the deadly impact, serious physical and mental harm, and intention and increasing effect of conditions imposed calculated to bring about the physical destruction of the Palestinian population under siege in Gaza, there is a plausible and credible case that Israel is committing genocide against the Palestinian population in Gaza, as a significant part of the overall Palestinian population, as a protected group.

The statements by Israeli officials, former officials, and Israeli citizens whose remarks have received wide attention because of their prominence have repeatedly and consistently dehumanized the Palestinian population in Gaza, labeling the entire population as “enemy,” “terrorists, or “human animals,” and called for it to be punished, attacked without any limitations or distinctions on the targets, and “cleared.”²⁴⁶ Indeed, certain statements made clear that the goal was “destruction,” whether by an unprecedented bombing campaign or a humanitarian crisis.

²⁴³ U.S. Dep’t of Defense, *DOD Remains Resolute in Support of Israel* (Oct. 16, 2023), <https://www.defense.gov/News/News-Stories/Article/Article/3558715/dod-remains-resolute-in-support-of-israel/>.

²⁴⁴ *President Joe Biden will visit Israel in high-stakes trip*, CNN (Oct. 16, 2023), <https://edition.cnn.com/2023/10/16/politics/joe-biden-israel-visit/index.html>.

²⁴⁵ The White House. “Statement from Press Secretary Karine Jean-Pierre on President Biden’s Travel to Israel and Jordan.” (Oct. 16, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/16/statement-from-press-secretary-karine-jean-pierre-on-president-bidens-travel-to-israel-and-jordan/>.

²⁴⁶ This campaign is not the first time that such language has been used against the Palestinian population, and indeed, since the closure was declared in 2007, Israel has referred to Gaza as a hostile entity and its population as the enemy. *See, e.g.*, PCHR, Al Mezan & Al Haq submission to ICC on Closure of Gaza as a CAH: Persecution, *supra* note 73.

Clear inference of genocide can be drawn not only from the words used, but also by the fact that they have been followed up with actions aimed at achieving the goal, such as: a siege and closure that is creating the conditions of life to bring about the destruction of the group, in whole or in part by cutting off food, water, electricity and fuel for the entire Palestinian population in Gaza; the resulting denial of access to healthcare due to lack of fuel and electricity as well as the bombing of medical staff, ambulances, multiple medical facilities and hospitals; the denial of safety by bombing civilians and civilian infrastructure, including apartment buildings resulting in the killing of entire families and at least 3,000 Palestinians, including at least 1,030 children; the bombing of schools, religious sites and critical infrastructure; and giving orders for mass evacuations in short periods of time in a closed area under bombardment, causing terror across the population and in a context where such displacement is understood as intended to be permanent. Terror or serious mental harm is also caused by bombing places after declaring them safe – such as the safe route that the Israeli army designated when instructing people to flee – or places that are expected to be safe and where civilians take refuge, like schools and hospitals.

Many Israeli officials make clear that the entire population of Gaza is the object of the attack, and although some Israeli officials invoke “ Hamas ”²⁴⁷ as the purported object, the collective nature of the attack against the entire territory of Gaza with its population of more than 2,200,000 people, necessarily implicates the entire Palestinian population as the target. That nearly half of the people killed to date are children, and where half of the total population currently being subjected to “ no electricity, no food, no fuel ” in the context of a mass bombardment is under 18, is a clear indicator that the object of Israel’s campaign of destruction is not limited, but is rather the population as a whole. In this sense, the civilian population of Gaza is being singled out for attack under the current military bombardment and siege, with the only purported justification by some for this attack being that they share the same territorial space or political sympathy with Hamas, and have the goal of ending the siege and occupation.

Accordingly, Israel has met the elements of the crime of, at minimum, attempt to commit genocide, and there is a plausible and credible case that the elements are met for genocide. Through the statements and actions of the Israeli government it has made clear that the Palestinian civilian

²⁴⁷ Israel and often members of the international community use the term “ Hamas ” without explanation or apparent limitations. Hamas (an acronym for “ Islamic Resistance Movement ”) is a political party, serving as de facto governing authority in the Gaza Strip, where it fulfills administrative governmental functions, such as running schools, health sector, social affairs, policing, and security. The civil servants who carry out such administrative functions are civilians. Armed resistance groups exist, and operate within the Gaza Strip, which remains under prolonged belligerent occupation, an international armed conflict under international humanitarian law (IHL). Some of these - such as al Qassam Brigade - are associated with Hamas, and form part of its military wing. However, as recognized under IHL, a clear distinction must be drawn between the political wings and the military wings of all organizations/groups. As such, a clear distinction must be drawn between those members of Hamas who are carrying out solely civilian functions, who must never be targeted, and those members who participate in armed resistance or directly participate in hostilities, who can be directly targeted under and in accordance with IHL. Moreover, and critically, civilians in Gaza must be granted the full protections of international humanitarian law, irrespective of political affiliation.

population of the Gaza Strip (the group) is the intended target of Israel’s siege and bombardment campaign. Israel and its officials demonstrate the intention to destroy the Palestinian population in Gaza through the following actions: (1) a siege and closure that is creating the conditions of life to bring about the destruction of the group, in whole or in part by systematically expelling members of the group from their homes, and creating circumstances that would “lead to a slow death,” such as the lack of proper housing, water, shelter, clothing, hygiene, sanitation, or proper food while attacking or denying medical care; (2) a bombing campaign of civilians and civilian infrastructure causing the death of thousands Palestinians, nearly half of whom are children; and (3) by causing serious bodily or mental harm to Palestinians in Gaza, including through the trauma and injuries caused by a continual bombing campaign across the Gaza Strip and the orders to “evacuate,” which are not only impossible to comply with in the time and space, but also in a context where such displacement is understood as intended to be permanent.

B. The United States Failure in its Duty to Prevent Genocide

Since October 7, 2023, the United States and its senior officials, up to and including President Biden, have made no statements calling on Israel to cease its attack on the Palestinian population in Gaza, and through their actions, have demonstrated no effort to use its considerable - and incomparable - influence to deter acts that underlie genocide. On the contrary, U.S. officials have offered encouragement, support and affirmation of the campaign that Israel has undertaken, while reportedly preventing their diplomats from speaking of a ceasefire. As Secretary Blinken reiterated in his address to Netanyahu during in his trip to the Middle East on October 12 – even after five days of siege and unrelenting bombing on Gaza, including the use of white phosphorus bombs that apparently had been provided by the United States, with the U.N. warning, among others, of additional mass casualties due to the cut off of basic necessities like food, water, fuel and electricity – “[w]e will always be there by your side.”

The United States bears responsibility for failing to comply with its obligations to prevent genocide against the Palestinian population in occupied Gaza: it failed to take any measures to deter Israel’s actions since first learning of the serious risk of genocide, including by Israeli Defense Minister’s dehumanizing statement of a total siege – “*no electricity, no food, no fuel, everything is closed*” - on the Palestinian population of Gaza on October 9, 2023.²⁴⁸ The United States and Israel have

²⁴⁸ In addition to the detailed account below, see Al-Haq, Al Mezan Center for Human Rights & Palestinian Centre for Human Rights (PCHR), *Joint Urgent Appeal to UN Special Procedures on Israel’s Total Warfare on Gaza’s Civilian Population* (Oct. 11, 2023), https://www.alhaq.org/cached_uploads/download/2023/10/12/final-urgent-appeal-to-special-procedures-on-gaza-11-oct-1697135190.pdf. According to the Joint Appeal:

Since 7 October, Israel’s attacks have targeted and destroyed residential homes and buildings, killing civilians and wiping out entire Palestinian families often without issuing precautionary warnings, in addition to the targeting of mosques, medical facilities and ambulances, water, electricity and sewage infrastructure, high-rise buildings, commercial areas and buildings, public institutions, schools and universities. . . .

strong political links, as both parties have consistently asserted, across multiple administrations and governments, and reaffirmed without qualification since October 7, 2023.

The United States has the ability to exercise influence on the state of Israel, as evidenced by the long-term and “unbreakable” political, economic, diplomatic and military links, and the significant amount of military assistance it provides – the largest to any country in the world, which it chooses to not condition.²⁴⁹ An example of the United States’ clear ability to influence Israel’s actions in the current war was when, after nearly a week of cutting off basic necessities to life to the 2.2 million people in Gaza, Israeli Minister of Energy Israel Katz told reporters that the decision to resume water supply to southern Gaza was made during the call between Netanyahu and Biden.²⁵⁰ It is also evidenced by the near daily communications between Israeli and U.S. officials, in which the United States offers continued support - not calls to change course. Instead of using its influence to call on Israel to end the siege on, and bombing of, the Palestinian population in Gaza, particularly after statements by Israeli officials made their intent to try to destroy, if not achieve the destruction of, the Palestinian population in Gaza evident, the United States continued to offer Israel unconditional support.

All States should take notice of their duty to prevent genocide and take all measures to forestall the commission of genocide; that the duty to prevent incurs State responsibility; and that a claim can be brought before the International Court of Justice for breaching the obligation to prevent genocide.²⁵¹

Because of the affirmative steps the United States has taken to aid or assist Israel, its breaches of international law must also be assessed as complicity in genocide.²⁵²

C. U.S. Complicity in Genocide

Since October 7, 2023, the United States, and its senior officials up to and including President Biden, offered to supply “all appropriate means of support” and did in fact supply material aid and assistance to Israel to further its military campaign in and siege of Gaza. The United States provided munitions, military equipment, fighter jets and other material assistance, while also moving two aircraft carriers with heavily armed strike groups into the area, with the pledge to

[S]ince the aggression, Israel closed the Erez and Kerem Shalom crossings, denying the entry of humanitarian supplies, including medical supplies or the exit of Palestinians from Gaza for treatment. This is in addition to cutting off water and electricity off the two million population in Gaza.

²⁴⁹ U.S. Foreign Aid to Israel, *supra* note 96.

²⁵⁰ Barak Ravid, Twitter (Oct. 15, 2023), <https://twitter.com/barakravid/status/1713560293106708636?s=21>.

²⁵¹ *See, e.g., The Gambia Order* (regarding the genocide against the Rohingya).

²⁵² ICJ *Bosnia and Herzegovina* Judgment, para. 432 (distinguishing between the obligation to prevent and complicity in genocide).

urgently “get Israel what it needs” in support of its campaign against Gaza. This aid, and the daily pledges of unqualified and unconditioned support, have been made with full knowledge of Israeli statements and Israel’s action from which genocidal intent against the Palestinian civil population can be inferred as set out in Findings, Section A. Senior U.S. officials have made trips to Israel to discuss the forms of support Israel needs, including military and diplomatic. They have been in continual contact with senior Israeli officials, with discussions happening regularly at the level of President Biden and Prime Minister Netanyahu, with the visit planned between the two for October 18. At no point has the United States called on Israel to cease its siege and bombardment campaign against the Palestinian population in Gaza.

Furthermore and critically, the material assistance and pledges of assistance and encouragement have never diminished, and in fact, continued, after Israeli officials clearly stated the goal of subjecting the entire civilian population of Palestine to conditions of life intended to destroy the group in whole or in part, through the killing of Palestinians by indiscriminate bombardment, including after the death toll of children surpassed 1,000. It continued after the deprivation of the most essential necessities to sustain human life reached a point where the Palestinian population was largely without food, water, electricity, and fuel, with the attendant devastating impacts on their access to medical assistance and health.

Two critical junctures serve to demonstrate how during each moment of escalation carried out by Israeli occupying forces, the United States remained resolute in its diplomatic, political, and military aid, assistance and support of Israel. On October 9th, Israeli Minister of Defense Gallant ordered a complete siege on the Gaza Strip, using dehumanizing language to describe the Palestinian population, by announcing, “[t]here will be no electricity, no food, no fuel, everything is closed. We are fighting human animals and we act accordingly.” President Biden’s reaction was a pledge to provide Israel “what it needs” and repeating disinformation and propaganda, while remaining silent about Israel’s killing of over 900 Palestinians, including at least 260 children, as well as health care workers and journalists, its injuring of more than 4,600 Palestinians, and the warning by the United Nations that 400,000 Palestinians in Gaza did not have running water due to the damage sustained by Israeli airstrikes and actions. Then, as Israel issued its “evacuation” order to 1.1 million Palestinians under bombardment and under a full closure order and siege on October 12th, Secretary Blinken publicly said that the United States “will always be there, by your side” during a press conference in Israel, and declared that the United States would continue to provide material support to Israel, including ammunition. Secretary of Defense Austin also confirmed that the U.S. was “working urgently to get Israel what it needs including munitions.” Neither U.S. official offered any rebuke to the “evacuation” order or concern for the deaths, serious physical or mental harm, or conditions of life it would impose on the Palestinian population. Instead, with knowledge of Israel’s action, the United States pledged to increase ammunition and other military support, affirmed again on October 13, 2023 when Secretary of Defense Austin was in Israel. Indeed, Secretary of State Blinken made clear that these were not simply empty pledges:

“we’ve backed that up not only with the words that we’re saying, but with what we’re actually doing, including the deployment of [U.S.] aircraft carrier battle groups.”

Accordingly, there is a plausible and credible case to be made that the United States’ actions to further the Israeli military operation, closure, and campaign against the Palestinian population in Gaza, with the knowledge of Israel’s intention to destroy the Palestinian population in Gaza through killings, causing serious mental and physical harm, and creating conditions of life calculated to bring about its physical destruction in whole or in part, rise to the level of complicity in genocide.
