

# THE QUESTION OF GENOCIDE



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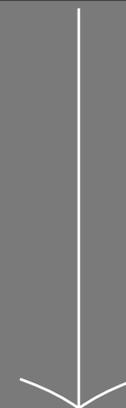
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Since Israel's military assault on Gaza following Hamas' Oct 7 attacks on Israeli civilians and soldiers, prominent scholars, lawyers, members of the media, and others have raised questions of whether Israel's actions amount to genocide, and sparked a debate over what remedies such a finding could make available. This event brings together scholars, lawyers and policy experts to discuss and debate the case for concluding that genocide is taking place in Gaza and Palestine, as well as what the international community can and should do to stop an ongoing genocide and achieve accountability and justice for the victims. The event will further the public understanding the relevance of the framework of genocide and how it can be applied to hold accountable both perpetrators and those who aid and abet the crime. It will also help add pressure to what has been a long-stalled process of investigation and prosecution of crimes committed in Israel and Palestine.



# THE QUESTION OF GENOCIDE

My mom is telling me: "We are left with one option, to accept death. It doesn't matter if we move or not, any minute now is our last. They say leave Khan Younis for Rafah then strike Rafah. We have no where to go. If we die at least we die in the house not out on the streets..."

- Tweet from Jehan Alfarra (@j\_alfarra) on December 1, 2023, following the resumption of Israeli airstrikes on Gaza

Jehan was born and raised in Gaza, and is now working as a multimedia journalist based in London.



Adam Shapiro  
DAWN



Mike Merryman-Lotze  
AFSC



Jihad Abusalim  
The Jerusalem Fund



Katherine Gallagher  
Center for Constitutional Rights



Raz Segal  
Stockton University



Elisa von Joeden-Forgey  
Lemkin Institute



Shannon Fyfe  
George Mason University



A. Dirk Moses  
City College of New York

"You must remember what Amalek did to you."  
- **Benjamin Netanyahu, Prime Minister**

"I have ordered a complete siege on Gaza. No electricity, no food, no water, no fuel. Everything is closed. We are fighting human animals, and we'll act accordingly."  
- **Yoav Gallant, Minister of Defense**

"Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 48."  
- **Ariel Kallner, MK (Likud)**



# THE QUESTION OF GENOCIDE

**Jehad Abusalim** is the Executive Director of The Jerusalem Fund in Washington, DC. He is a PhD Candidate in the History and Hebrew & Judaic Studies joint program at New York University. His main area of research is Palestinian and Arab perceptions of the Zionist idea and project before 1948 and Gaza's political and social history. An accomplished speaker and writer, Jehad combines his passion for history with his commitment to activism and policy change work. Jehad edited the book *Light in Gaza: Writings Born of Fire* published by Haymarket Books in 2022.

**Shannon Fyfe** is an Assistant Professor of Philosophy at George Mason University, where she is also a Faculty Fellow in the Institute for Philosophy and Public Policy, and an Adjunct Professor at the Antonin Scalia Law School. Dr. Fyfe is an expert in international criminal law, and her work provides a philosophical framework for defending or criticizing our practices of holding individuals accountable for their participation in mass violence. She is the co-author of *International Criminal Tribunals: A Normative Defense* (with Larry May).

**Katherine Gallagher** is a Senior Staff Attorney at the Center for Constitutional Rights, where she represents victims of serious human rights violations and international crimes by government officials or corporations in civil actions in U.S. federal court, in other national courts under universal jurisdiction, before U.N. bodies including the Committee Against Torture, and at the International Criminal Court, where she has served as legal representative for victims in the Situations of Afghanistan (U.S. torture) and Palestine.

**Elisa von Joeden-Forgey** is the Co-Founder and Executive Director of the Lemkin Institute for Genocide Prevention. She previously was Endowed Chair in Holocaust and Genocide Studies at Keene State College and Dr. Marsha Raticoff Grossman Professor of Holocaust and Genocide Studies at Stockton University, where she started the first graduate-level academic certificate program in Genocide Prevention.

**Mike Merryman-Lotze** is the American Friends Service Committee's Just Peace Global Policy Director. Prior to this role, he coordinated AFSC's Israel-Palestine and Middle East policy work for thirteen years. Mike also worked as a researcher with the Palestinian human rights organization Al-Haq in the West Bank during the Second Intifada period and worked in Save the Children UK's Jerusalem office as their Child Rights Program Director.

**A. Dirk Moses** is the Anne and Bernard Spitzer Professor of International Relations at the Colin Powell School for Civic and International Leadership at the City College of New York. He is the author and editor of many publications on genocide, including *The Problems of Genocide: Permanent Security and the Language of Transgression* (2021) and is senior editor of the *Journal of Genocide Research*.

**Raz Segal** is Associate Professor of Holocaust and Genocide Studies and Endowed Professor in the Study of Modern Genocide at Stockton University. Dr. Segal has held a Harry Frank Guggenheim Fellowship, a Fulbright Fellowship, and was recently a Senior Fellow at the Vienna Wiesenthal Institute for Holocaust Studies. His publications include *Genocide in the Carpathians: War, Social Breakdown, and Mass Violence, 1914-1945*; and *Days of Ruin: The Jews of Munkács During the Holocaust*.

**Adam Shapiro** is Director of Advocacy for Israel/Palestine at Democracy for the Arab World Now (DAWN), leading advocacy efforts on accountability for human rights abuses and to shift US foreign policy in line with international and human rights law. For ten years, Adam served as Head of Communications & Visibility for the Ireland-based international human rights organization Front Line Defenders. Adam is a documentary filmmaker and was a co-founder of the International Solidarity Movement (ISM) in Palestine.



“There is no intact house in the area or on our street. Everything has been destroyed by the occupation. Agricultural lands have been destroyed, and many trees were burned. I cried a lot when I saw this great destruction, this war against civilians in the Gaza Strip. All the neighbors are crying over their destroyed homes. It feels like an earthquake hit the place and left nothing intact.”  
- Saeed Qadeeh, 55-year-old farmer from Khuza’a, to the east of Khan Younis

## Agenda

2:00	Welcome	Adam Shapiro
2:08	Context - AFSC	Mike Merryman-Lotze
2:16	Textbook Case of Genocide	Raz Segal
2:25	Red Alert for Gaza	Elisa von Joeden-Forgey
2:33	Why the International Community Made it So Difficult to Prosecute The Crime of Genocide	Dirk Moses
2:41	Nakba & Genocide	Jehad Abusalim
2:50	The Question of Intent	Shannon Fyfe
2:58	US Legal Liability for the Unfolding Genocide	Katie Gallagher
3:06	Break	
3:15	Roundtable Discussion	
4:15	End	



# EXECUTIVE SUMMARY

## *Introduction*

The following report is a summary of the proceedings at “The Question of Genocide,” a workshop convened by [Democracy for the Arab World Now](#) (DAWN), in partnership with the [American Friends Service Committee](#) (AFSC), the [Lemkin Institute for Genocide Prevention](#), [Law for Palestine](#), and the [Center for Constitutional Rights](#) on December 4, 2023 at the Church Center for the United Nations in New York. The workshop gathered scholars, lawyers, diplomats, and foreign policy experts to examine the facts and the law for a determination of whether Israel is committing the crime of genocide against Palestinians in Gaza.

On October 7, Hamas attacked Israeli military bases, military installations and soldiers, as well as civilians and civilian targets, killing 368 soldiers and 785 civilians, according to official reports [published](#) by Israeli media outlet, Ynet. Hamas also took Israeli civilians and soldiers captive and held them in Gaza. Subsequently, Israel launched an unprecedented military assault on Gaza that has caused widespread devastation and destruction to the Palestinian population. As of January 4, Israel has [killed](#) more than 22,000 Palestinians, of whom [approximately](#) 70% are women and children, and wounded

more than 57,000. An unknown number of thousands are still buried under the rubble of destroyed buildings, and the war is ongoing, so these casualty figures are expected to rise. To date, more than half of the infrastructure of Gaza, including housing, hospitals, heritage sites, schools, agricultural lands, and shops, has been destroyed or damaged, including 60 percent of all homes. An [estimated](#) 1.9 million Palestinians are reportedly displaced.

Upon launching its military assault on Gaza, the Israeli government announced that it was cutting the fuel and [water supply](#) to the territory. On October 9, Defense Minister Yoav Gallant [stated](#), “I have ordered a complete siege on Gaza. No electricity, no food, no water, no fuel.” It has also denied humanitarian access to the population, severely [restricting](#) any inflow of medicine and humanitarian assistance. As the [occupying power](#) of Gaza under international law, Israel is required to provide for the basic needs of the population. By imposing a blockade on items essential to the survival of the population, [restricting](#) humanitarian access, [destroying](#) more than a third of the territory’s housing, conducting a military assault that has indiscriminately and deliberately killed massive numbers of civilians, Israel has intentionally made the conditions for life impossible for Palestinians in Gaza.

Expert speakers at the event included: Raz Segal, Associate Professor of Holocaust and Genocide Studies and Endowed Professor in the Study of Modern Genocide at Stockton University; Mike Merryman-Lotze, the American Friends Service Committee's Just Peace Global Policy Director; Elisa von Joeden-Forgey, the Co-Founder and Executive Director of the Lemkin Institute for Genocide Prevention; A. Dirk Moses, the Anne and Bernard Spitzer Professor of International Relations at the Colin Powell School for Civic and International Leadership at the City College of New York and Senior Editor of the [Journal of Genocide Research](#); Jihad Abusalim, the Executive Director of the Jerusalem Fund and a Ph.D. candidate in the History and Hebrew & Judaic Studies joint program at New York University; Shannon Fyfe, an Assistant Professor of Philosophy at George Mason University and former advisor to the Syria Justice and Accountability Centre; and Katherine Gallagher, a Senior Staff Attorney at the Center for Constitutional Rights. Following the presentation, 30 participants from leading human rights, humanitarian, advocacy, and policy organizations deliberated on the findings presented.

The academic and legal experts presented their findings, based on an evaluation of the evidence and applicable law, that Israel is committing a genocide against Palestinians in Gaza, according to the

legal definition of genocide under the [Convention on the Prevention and Punishment of the Crime of Genocide \(Genocide Convention\)](#). They provided evidence of intent to commit genocide, evaluating the statements and actions of Israeli officials since the commencement of the conflict on October 7, including explicit declarations by senior Israeli military and government officials of the intent to destroy the Palestinian population in Gaza as a whole and actions undertaken to create conditions of life calculated to bring about their physical destruction. One expert also made the case that there is an ongoing genocide against the Palestinian people in all of Palestine since the earliest days of the conflict, including prior episodes of mass killing and forced expulsion ([1948 Nakba](#) and [1967 Naksa](#)), and measures to physically destroy the Palestinian people (including the ongoing siege of Gaza and the 56-year military occupation of Palestinian territories, which includes wanton killings, land expropriation, forced displacement, and restrictions on items essential to civilian survival).

Participants in the workshop also assessed the responsibility of the international community under international law to act to prevent genocide and/or to intervene once an ongoing genocide is identified, and to punish the perpetrators. They considered the challenges to prosecuting the crime of genocide under the Genocide Convention

and opportunities to seek justice and accountability through legal avenues, including international courts. The workshop specifically examined the duty of the United States to prevent genocide by exercising its political, military and economic influence over Israel as a close ally and its possible complicity in Israel's crimes as it continues to transfer weapons to Israel and block U.N. resolutions calling for a ceasefire.

Following opening remarks, the workshop consisted of two sessions. During the first session, seven speakers gave presentations, followed by an open discussion between workshop presenters and participants. During the second session, participants deliberated and expanded on the expert findings under the Chatham House rule, meaning that participants were free to use information shared during the discussion, but the identities and affiliations of the participants could not be revealed.

## *Session I*

### **I. Raz Segal, Associate Professor of Holocaust and Genocide Studies and Endowed Professor in the Study of Modern Genocide at Stockton University,**

was the first presenter. Segal, author of the October 13 [article](#), "A Textbook Case of Genocide," expanded on his argument that Israel's attack in Gaza offered an undisputable case of genocide. He outlined evidence of an ongoing genocidal process in four areas:

- a. expressions of intent to destroy by people with command authority;
- b. dehumanization and demonization of Palestinians;
- c. incitement to genocide in Israeli media, politics, and public spaces; and
- d. the unprecedented level of killing and destruction.

"We have to be clear that this is a very unique case, indeed textbook, in the way that intent is articulated openly and explicitly in an unashamed way," Segal said.

Segal offered examples of language used by Israeli political and military leaders portraying all Palestinians in Gaza as the targets of Israel's military campaign. This includes Prime Minister Benjamin Netanyahu's repeated invocation of the Biblical story of Amalek, a people that were in conflict with ancient Israelites. In multiple stories in the Bible, God commands the Israelites to "blot out the remembrance of Amalek

from under heaven” ([Deuteronomy 25:17-19](#)) and “Now go and attack[a] Amalek, and utterly destroy all that they have, and do not spare them. But kill both man and woman, infant and nursing child, ox and sheep, camel and donkey.” ([Samuel 15:3](#)). Other examples include Defense Minister Yoav Gallant’s declaration of the siege on Gaza, depriving the people in the territory of water, electricity, fuel, food, and humanitarian assistance, in which he referred to Palestinians in Gaza as savages and human animals; and Netanyahu and former Prime Minister Naftali Benett’s repeated characterization of Palestinians as Nazis. The purpose of these statements, according to Segal, was to justify the brutality of the military attack: “If we’re fighting Nazis or savages, then no law applies. There are no restrictions. Everything is permitted in order to defeat this ultimate evil.”

Segal next outlined the extreme and unprecedented level of incitement in Israeli media and on social media, and among Israeli politicians. He presented examples of incitement by Israeli journalists, such as Israeli correspondent for Israel Public Broadcasting Roy Sharon’s [post on X](#), “If in order to finally eliminate the military capabilities of Hamas, we need a million bodies, then let there be a million bodies.” “It really recalls, and is far worse in my view, than the media incitement in the Rwandan case, which it is worth reminding everyone led to a [media case in ICTR](#),” Segal said. The political sphere is also full of incitement to genocide, such as politician Avigdor Lieberman’s post on X, who said, “There are no innocent people in Gaza,” and Ariel Kallner’s message to the Knesset, who said, “Right now, one goal: Nakba! A

Nakba that will overshadow the Nakba of 48.” Finally, violent language is pervasive in public spaces, including banners hanging on highways in Israel calling on the Israeli army to annihilate Gaza.

**2. Mike Merryman-Lotze, the American Friends Service Committee’s Just Peace Global Policy Director** spoke next, outlining the history of ethnic cleansing, partition, and dehumanization of Palestinians in the region. After providing humanitarian assistance to Palestinian refugees in Gaza for two years following the 1948 Nakba, the American Friends Service Committee refused to extend its stay, urging Israeli officials and the international community to uphold the refugees’ right to return to their homes. “We stated that failure to address refugee rights would lead to long-term political morass and continued violence, and here we are today,” Merryman-Lotze said.

In 1948, the Jewish population formed a slim minority in the area set aside for the new state of Israel, constituting 30 percent of the population in the northern regions and less than one-percent in the south, according to Merryman-Lotze. If the refugees had been permitted to return, the Jewish population would remain as a minority. “The reality is that without ethnically cleansing the Palestinian population that was present in areas set aside for the Jewish state by partition, it would never have been possible to establish a state with a distinct Jewish character and political culture,” Merryman-Lotze said. “Ethnic cleansing was always a necessary part of the establishment of

Israel as a Jewish state.”

Merryman-Lotze argued that the paradigms of partition and ethnic cleansing continue to dominate present realities in the region. For example, rather than address the roots of the conflict, peace processes have aimed at upholding the Jewish state and its demographic majority through a limited focus on a two-state solution and ethnic separation. Moreover, these historic injustices continue to drive dehumanization and demonization of Palestinians through deadly violence and a brutal blockade, manifest in the current attack on Gaza. For Israel and its supporters, “peace needs to be achieved not to do justice, not to secure Palestinian rights, but because of the threat posed by Palestinian birth rates. Palestinians, by nature of being Palestinian, are viewed as a danger to the state of Israel. Calls for ethnic cleansing and finishing the job of 1948 never left the political stage,” Merryman-Lotze said.

**3. Elisa von Joeden-Forgey, the Co-Founder and Executive Director of the Lemkin Institute for Genocide Prevention** presented the evidence gathered by the Institute over the past two years of an impending genocide in Israel-Palestine. She characterized the current era as one in which genocide is being normalized globally, referring to the concurrent genocide perpetrated against the Armenian population of Nagorno-Karabakh/Artsakh. “The West seems to be stepping back from its claims to endorse a post-

1945 rules-based order to advocating for supporting genocidal processes around the world,” Joeden-Forgey said.

Joeden-Forgey described the genocide prevention toolbox developed by the Lemkin Institute to identify 10 patterns of genocide. She presented several principles that underpin the Institute’s understanding of genocide: genocide occurs with impunity in part with the complicity of global actors; genocide takes place in an internationalist, rather than strictly national, framework; genocide is not just a legal or sociological concept, but a material reality that has defined the lives of millions of people at any given time in the modern world; and finally, genocide matters, and recognizing genocidal processes is crucial to establishing peace.

The Lemkin Institute has issued four Genocide Alerts warning that genocidal processes are impending or ongoing for Israel-Palestine since May 2021, with its final alert prior to October 7 released in July 2023:

Israel-Palestine has been on our radar due to the settler-colonial origins of the state, its perpetration of the Nakba, the continuous occupation of increasingly large swatches of Palestinian land since 1948, frequent denials of Palestinian identity and ongoing, structural and episodic violence against Palestinians, in the context of severe military and rhetorical or discursive asymmetry,

Joeden-Forgey said. The institute has warned of the growing commitment by the Israeli state and society to completely eradicate Palestinian identity and life, which Joeden-Forgey says is unfolding in real time. “There was ample opportunity for the world to recognize the threat of genocide in Israel, and so many missed opportunities to prevent it,” she said.

**4. A. Dirk Moses, the Anne and Bernard Spitzer Professor of International Relations at the Colin Powell School for Civic and International Leadership at the City College of New York, and Senior Editor of the *Journal of Genocide Research***, explained how international law was deliberately designed to make it difficult to prosecute the crime of genocide.

When the U.N. Genocide Convention was crafted, the Holocaust was treated as the archetype of genocide, cast as a unique event rather than one in a long string of inhumanities. The victims of the Holocaust, who were not involved in military conduct or killed by military necessity but rather targeted for their identity, shaped the modern idea of the victim-type in global imagination. Moreover, genocide, rather than crimes against humanity and war crimes, became the gold standard for the recognition of victim groups.

Moses argued that the states that drafted the Genocide Convention

used the Holocaust as its paradigm, in part with the purpose to distinguish genocide from mass violence inflicted during warfare or population expulsions. He pointed to the phrase “as such” in the legal definition of genocide, which states that genocide is “committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.” “As such” requires that victim groups are targeted solely on the basis of their identity. Consequently, millions have died in wars that cannot be legally categorized as genocide. “Killing masses of civilians is acceptable, if regrettable, if motivated by military goals...victory not destruction,” Moses said.

In the case of Gaza, the goal of eradicating Hamas has been used to circumvent accusations of genocide. “Today, the international law of genocide is working as it was designed to, allowing states to ruthlessly exterminate security threats while making it difficult to apply that law,” Moses said. “By the reasoning of international lawyers who support the Israeli campaign in Gaza, there are no limits to the number of civilians who can be killed incidentally in the pursuit of its military objectives. To root out the 40,000 Hamas fighters there, how many civilians will die, and a similar number be wounded?”

**5. Jihad Abusalim, the Executive Director of The Jerusalem Fund and a Ph.D. Candidate in the History and Hebrew & Judaic Studies joint program at New York University** described the historical context of Gaza in

The Nakba, explained Abusalim, represents the establishment of a Jewish majority state through terrorism and the destruction of Palestinian life, which Israel aims to maintain and expand with the support of major colonial/Western powers. The aims of the Zionist project include the “geographic and demographic transformation and reengineering of Palestine, prioritizing one ethnic and religious group’s language, culture, national symbols, historical narrative and institutions at the expense of another,” as Abusalim stated.

Following the Nakba, Palestinian attempts to return to their homes were met with Israeli violence. “The Gaza Strip, despite its impoverishment, isolation and lack of resources, became a stage for the reemergence of Palestinian national aspirations post-1948,” Abusalim said. Over the years, Israel has deployed blockades, fragmentation, isolation, colonization, assassinations, mass bombardment and other strategies to repress resistance movements. “They seemed indifferent to the fact that Gaza was home to people who are part of a nation with unresolved questions of liberation, independence, and the right to live with dignity and reclaim their rights,” he continued.

Abusalim, who grew up in Gaza, said that violence and death are constants in people’s daily lives. “Living in Gaza has meant being engulfed by explicit, spectacular violence from bombardment and incursions, as well as the more subtle forms of violence that have led people to use the term, ‘We’re suffocating,’ to describe their daily psychological and emotional state,” he said. Simple, mundane tasks, including going

to school, harvesting crops, treating sewage, importing basic goods, and lighting up a home are exhausting ordeals. Yet Abusalim argued that the current assault on Gaza represents Israel’s failure to manage and control the lives of Palestinians through regulated violence and an attempt to reassert control through mass murder.

**6. Shannon Fyfe, Assistant Professor of Philosophy at George Mason University and former advisor to the Syria Justice and Accountability Centre**, described the use of international criminal law as a justified and valuable tool in response to Israel’s attack on Gaza.

Fyfe argued in favor of the expressionist justification for international criminal law, which asserts that “social practices like punishment carry meanings and transmit messages apart from their consequences.” She explained, “We punish people who commit genocide to express to the rest of the world, not just to them individually, that what they have done is wrong. We want the rest of the world to see that what is happening in Gaza is wrong.”

Fyfe brought focused attention the phrase “as such” in the Genocide Convention, which reads in relevant part:

Article II. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole

or in part, a national, ethnical, racial or religious group, as such [italics added for emphasis]: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

She argued that the inclusion of “as such” requires that an act can only meet the legal definition of genocide if it involves intent to destroy a group based on identity or national hatred, as distinct from a military objective. In the case of the attack on Palestinians in Gaza, if Israel is motivated by military objectives such as destroying Hamas or saving the hostages, and it can do so by means other than destroying a significant portion of the Palestinian population, it should choose them. However, Fyfe argued that Israel could meet the “as such” requirement, since Israel does not need to destroy the Palestinian population to meet these aims and therefore is not motivated purely by military objectives.

Fyfe further argued against thinking about using international criminal law in terms of a hierarchy or choice among the crimes of genocide, war crimes and crimes against humanity. “War crimes, crimes against humanity and genocide are distinct crimes because they have distinct elements. By all means, we should be collecting and presenting the

evidence of genocidal intent, but we shouldn’t forget about war crimes and crimes against humanity,” she said.

**7. Katie Gallagher, a Senior Staff Attorney at the Center for Constitutional Rights (CCR)**, presented the legal evidence for the failure of the United States to uphold its duty under international and customary law to prevent genocide. She described CCR’s [complaint](#) in U.S. federal court against U.S. President Joe Biden, Secretary of State Antony Blinken and Secretary of Defense Lloyd Austin on behalf of two Palestinian human rights organizations, Al-Haq and Defense for Children International-Palestine (DCI-P), and eight individual Palestinians in the United States and in Gaza. The complaint charges that the United States government has failed in its duty under international law to exercise its influence over Israel to prevent genocide and is indeed complicit in Israel’s genocidal campaign due to its ongoing military and political support.

According to the CCR complaint, Israeli authorities have expressed a clear intent and have executed measures to destroy and/or inflict conditions aimed at destroying the Palestinian population in Gaza. The complaint describes how Israeli authorities have used dehumanizing language and expressed intent to destroy and displace Palestinians, in fulfillment of the criteria set forth in the Genocide Convention, which states that genocide means committing one of a number of acts “with the intent to destroy, in whole or in part, a national,

ethnic, racial or religious group, as such.” One of those acts includes “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” Israel has imposed an unrelenting siege, deprived Palestinians of the conditions of life necessary for survival, and launched an unprecedented bombing campaign to destroy Gazan life and infrastructure.

States have a legal duty to prevent genocide under the Genocide Convention and customary law. “Israeli officials say what they mean and do what they say,” Gallagher said. “There is no doubt—it is black letter law—that those states who actually are in a position to influence a state, that is suspected or reasonably suspected of committing genocide, need to take all measures it can.” The duties of a state to prevent genocide under international law depend on its capacity to influence the decisions of the perpetrator, based on its political, military, financial and other ties. In the case of the U.S., this could include stopping weapons transfers, supporting a ceasefire in the U.N. Security Council and/or breaking the siege on Gaza through the delivery of humanitarian assistance at the levels that are required.

The United States, Gallagher argued, is in a unique position to influence Israel’s actions, considering Israel’s dependence on the U.S. for military aid, economic assistance and political support. Instead, U.S. officials have demonstrated unconditional political and military support for Israel, Gallagher explained. They have traveled to advise Israeli military officials, expedited the delivery of weapons, including

precision bombs, and blocked ceasefire resolutions at the United Nations. “Not only do we have a failure in the duty to prevent, it crosses the line to another crime in the Genocide Convention, and that’s complicity in genocide. Procuring weapons is one of the identified means for aiding and abetting genocide,” Gallagher said. Article III of the Genocide Convention lists “complicity in genocide” as a punishable act, and according to the CCR complaint, furnishing aid or assistance to the perpetrator of genocide, including providing means to enable or carry out the crime, with knowledge of the perpetrator’s intent to commit genocide, constitutes complicity.



*Jehad Abusalim, the Executive Director of The Jerusalem Fund and a Ph.D. Candidate in the History and Hebrew & Judaic Studies joint program at New York University presents during the public portion of the expert roundtable on December 4, 2023.*

# THE QUESTION OF GENOCIDE

"She was the soul of my soul."

-Khaled Nabhan, A Palestinian grandfather who lost both his grandchildren, Reem and Tareq



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**A donkey drawing a cart moves past the ruins of houses destroyed in Israeli strikes during the conflict, amid a temporary truce between Israel and the Palestinian group Hamas, in Khan Younis in the southern Gaza Strip November 28, 2023. (REUTERS/Fadi Shana)**



**Palestinians look for survivors under the rubble of a destroyed building following an Israeli airstrike in Khan Younis refugee camp, southern Gaza Strip, Monday, Nov. 6, 2023. Entire generations of Palestinian families in the besieged Gaza Strip have been killed in airstrikes in the ongoing Hamas-Israel war. (AP Photo/Mohammed Dahman)**



**A Palestinian woman checks the damage as she walks through rubble in front of her home in Gaza city early on Aug. 8, 2022, following a cease fire between Israel and Palestinian militants. Israel agreed last night to an Egyptian proposed truce with in Gaza with Islamic Jihad after three days of intense conflict.(MAHMUD HAMS, AFP Via Getty Images)**

## *Session II*

During the second session, presenters and participants at the workshop deliberated whether a genocide is unfolding in Gaza, the legal, political, and normative dimensions of a case for genocide, and how lawyers and experts could present the case of genocide in international courts.

Most of the participants agreed that Israel's military assault on Palestinians in Gaza, coupled with clear declarations of intent, meets multiple criteria of the crime of genocide, including: mass killing; causing serious bodily and mental harm; and deliberately inflicting conditions of life to bring about the physical destruction of the Palestinian people in Gaza. Several participants agreed that the intent for genocide was clearly expressed when Israeli authorities, after the October 7 attack by Hamas, declared a siege on the Palestinian population as a whole in Gaza, subsequently creating conditions, including cutting off electricity and water, to deny the basic necessities of life and precipitate its destruction. One participant said that Israel's warnings and demands to Palestinians to evacuate from their homes and relocate to another part of Gaza are not mitigating factors, but rather an indicator of genocide. They added that forcing people from their homes into so-called "safe areas", and then targeting those very areas, as well as medical infrastructure, and depriving people of access to basic necessities, are all underlying acts of genocide.

Participants deliberated the argument set forth by Israeli authorities that its military campaign is an act of self-defense that is necessary to eradicate Hamas, likening Israeli operations to those of the international coalition against ISIS, and not an act of genocide. One participant posed the question of whether Israel's subjective claim of self-defense negates the requirement under the Genocide Convention that an act of genocide is committed with the intent to destroy a group. Another responded that self-defense is not a legitimate justification for the crime of genocide. They elaborated that all civilians in Gaza have been subjected to an indiscriminate and deliberate bombing campaign that has not been restricted to Hamas or militants actively participating in hostilities, and thus satisfies the "as such" component of the Convention definition that a national group must be targeted on the basis of its identity.

Participants also examined the case for genocide within the historical context of the Israel-Palestine conflict. One participant raised the question of when the genocide in Gaza began: did it begin with the 1948 Nakba, is it the cumulation of years of occupation and siege of Palestinian territory by the state of Israel, or did it start on October 7 with the Hamas attack?

On the question of whether the crime of genocide is being committed against Palestinians in Gaza, participants discussed the principles of distinction, necessity and proportionality under international humanitarian law. One participant noted that Israeli authorities have

argued that their military campaigns, including the current one, are conducted in self-defense and that they take measures to adhere to international law to justify high civilian death tolls. However, other participants noted that in the case of the crime of genocide, there are no legal justifications under international law. Once the intent to commit genocide is established, the principles of military necessity, distinction, and proportionality in the context of conventional armed conflict may not be directly applicable or justifiable since genocide itself violates fundamental norms of international law and human rights.

While largely agreeing that Israel is committing the crime of genocide, the workshop participants deliberated whether lawyers should present the case for genocide in international courts, and whether that should be the only legal effort, or one of many legal strategies involving legal challenges based on genocide, war crimes and crimes against humanity. One participant posed the question of whether international courts would be more likely to prosecute crimes perpetrated by the state of Israel in Gaza as genocide, or rather as war crimes or crimes against humanity against individual perpetrators, which would be less politically burdensome. Some suggested it could be more effective or politically plausible to present accusations of war crimes or crimes against humanity in order to achieve accountability and justice. Another participant suggested that war crimes and crimes against humanity would be used to argue for the criminal liability of individuals responsible for enacting these crimes, but would leave

the state unchallenged. Another participant asserted that the crime of genocide need not be prosecuted to the exclusion of war crimes or crimes against humanity. Rather, understanding that genocide, war crimes and crimes against humanity are taking place creates a full, layered picture of the situation, and seeks to address both state responsibility and individual accountability.

Those in favor of making a legal argument that Israel is perpetrating the crime of genocide against the Palestinian people argued that it opens up unique legal avenues that would not be available in cases of war crimes or crimes against humanity. Several participants concurred that under the Genocide Convention, the determination that a genocide is underway triggers the duty to prevent by state actors. One participant said that the duty to prevent is powerful and clear cut in international law, regardless of the stance of policymakers. In the United States, the case for genocide opens up avenues for accountability and litigation, as in the CCR filing. Regarding the duty to prevent, another participant identified officials in the United States beyond top government officials who could be accused of complicity in violating the Genocide Convention if they do not oppose the policies and stances of their leadership. For instance, government officials, such as staff in the State Department, Pentagon and Congressional offices, as well as in respective agencies in other countries, could have an obligation to disobey orders from their superiors if those orders support the crime of genocide. The duty to prevent may also implicate trade unions and corporations involved in weapons sales

and transfers.

Participants debated the likelihood that the International Court of Justice (ICJ) or the International Criminal Court (ICC) would prosecute the crime of genocide. While some participants were skeptical about the effectiveness and will of the ICJ and ICC in cases involving Israel-Palestine, others called for greater efforts to push for justice and accountability through these international courts. One participant suggested that there is a political opening to secure a ruling from the ICJ and called on civil society groups and activists to place pressure on U.N. missions and their respective governments and embassies to press for a formal submission to the court. They referred to other rulings from the ICJ on Israel-Palestine, including a 2004 [advisory opinion](#) on the legal consequences of the construction of a wall in occupied Palestinian territory and the ongoing [consideration](#) of the legality of Israel's occupation of Palestinian territories. Another participant said that many of the Israeli political and military officials who are currently perpetrating the crime of genocide have also committed crimes in the past, some of which have been referred to the ICC, and can be convicted for a number of crimes. They named Benny Gantz, currently serving in Israel's so-called War Cabinet, who served as Minister of Defense between 2020-2022 and chief of General Staff of the IDF from 2011-2015, and Prime Minister Netanyahu, who has served as Israel's prime minister for most of the past decade.

Another argument in favor of making a case for genocide raised

by many of the participants is the normative power of framing and defining the situation as one of genocide. One participant argued that genocide breaks the normative framework in which discussions about Gaza - and Palestinians more broadly - have taken place. For example, while U.N. bodies and international human rights organizations have investigated and documented war crimes and crimes against humanity committed by Israel in Gaza in the past, Israel has asserted that these are mere instances of unfortunate collateral damage from proportional and necessary acts of self-defense that adhere to international humanitarian law. However, the evidence of the intent to commit genocide (Israeli officials' statements) undermines such defenses when assessing the crime of genocide (see above). Moreover, recognizing that a genocide is taking place would make it impossible to return to the status quo of blockade and continued violence after a potential ceasefire, they argued. Another participant added that the normative power of the genocide framing is important because Palestinians are in danger not only in Gaza, but also in the West Bank and inside Israel. One participant noted that legal arguments can have tremendous power in disseminating information and knowledge throughout society, by means of the media and civil society, and shifting public opinion over time.

Looking ahead, one participant said that while a ceasefire might end the current violence, it would not end the genocide, because the conditions that have been created in Gaza by Israel's military assault are detrimental to the survival of Palestinians in the long-term.

Considering the vast scale of devastation, including the destruction to the health system, lack of access to basic necessities like food and water, and the inability of Palestinian authorities to carry out basic functions like collecting garbage, the participant argued that it could take decades for Gaza to recover and rebuild conditions for life.

## ***Conclusion***

The workshop considered evidence that Israel is perpetrating the crime of genocide against Palestinians in Gaza. Many participants were in agreement that Israel both intends to commit genocide and is carrying out a genocidal military campaign against Palestinians. This includes explicit declarations by Israeli officials of their intent to destroy the Palestinian population in Gaza as a whole, through a military campaign inflicting unprecedented devastation and mass killing against the population at large. Contracting Parties to the the Genocide Convention [undertake](#) to act to prevent genocide and punish the perpetrators (Article I). Given a finding that Israel is perpetrating the crime of genocide, states are compelled to act to stop the genocide and ensure that their own actions do not abet or enable the crime. The workshop identified strategies and tactics for legal experts, civil society groups and states to end the violence, hold perpetrators accountable and achieve justice for victims, including by making the legal case for genocide in international courts and launching advocacy campaigns to end political and military support for Israel.

DAWN is grateful to the attendees for their participation and insight. This summary is meant to capture key points of the discussion and debate and is not a comprehensive account.

# THE QUESTION OF GENOCIDE

