

This or That: Richard Junnier's article on the conflict in Israel and Gaza

Incitement and Genocide in Gaza

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A child injured in Gaza cries as she waits for medical attention.

On 7 October 2023, Al-Qassam (Hamas’s militant wing¹) and other Palestinian armed groups massacred nearly 1,200 Israelis and wounded more than 5,000 others.² They kidnapped some 230 more, of which about 130 remain captive, including women and children.³ There were widespread reports of rape and torture.⁴

In retaliation, as of 15 April 2024, 33,207 Palestinians have been killed, 75,933 injured, more than 70,000 housing units destroyed, and 1.7 million displaced.⁵ With an estimated 70% of the dead being women and children,⁶ the Gaza Strip “is the most dangerous place in the world to be a child.”⁷ With Israeli forces poised to attack Rafah, the last refuge for at least 1.5 million displaced Palestinians,⁸ political and military promises to destroy all of Gaza and its population, as detailed below, are apparently about to be fulfilled.

This article discusses the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter “Genocide Convention”), its interpretation by international tribunals, and whether Israel’s alleged intentional genocidal behavior and

incitement fall within the Genocide Convention as presented by South Africa to the International Court of Justice. Where appropriate, statistics and events are updated since South Africa’s 28 December 2023 Application to the Court.

This article concludes finding merit in the argument that Israel is inciting and intentionally committing acts of genocide through its vast and indiscriminate killings and its decimation of Palestinians’ daily ability to survive. This intent is buttressed by Israel’s targeted erasure of Gaza’s history and culture and Israeli political, military, and cultural leaders’ explicit incitement to erase—not just Hamas—but all of Gaza’s civilians, women, and children en masse.

The Genocide Convention

According to Article II of the Genocide Convention:

[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:

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- (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; or
- (e) forcibly transferring children of the group to another group.

Under Article III, genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide are all international crimes whether they occur during peace or war.

Evidencing Alleged Genocidal Acts on Palestinians in Gaza

South Africa invoked the jurisdiction of the International Court of Justice through its Application Instituting Proceedings and Request for the Indication of Provisional Measures on 28 December 2023 (hereinafter “South Africa Application”).⁹ It accuses Israel of four categories of genocidal acts against the distinct group of Palestinians in Gaza:

- (1) Killing large numbers of the Palestinian people;
- (2) Causing serious bodily and mental harm to the Palestinian people;
- (3) Deliberately inflicting conditions on life intended to bring about their physical destruction as a group through (a) expulsion and mass displacement, (b) denying access to adequate food and water, (c) cutting off access to medical care, and (d) deprivation of shelter, clothes, hygiene and sanitation; and
- (4) Imposing measures intended to prevent Palestinian births.¹⁰

We will examine the veracity of the first three categories utilizing both examples cited by South Africa and from independent sources.

Killing the Palestinian people as a group. If indiscriminate killings are widespread with the intent of destroying a group, it becomes a factor in determining whether Israel intends the killing of the Palestinian people as a group.¹¹ It appears tens of thousands of Palestinians in Gaza are being killed indiscriminately, suggesting that they as a people, rather than just Hamas’s military wing, are being targeted.

“Nowhere is safe in Gaza.”¹² Though a lack of independent media reporting makes an accurate count difficult, it is likely more than 30,000 Palestinians have been killed since the end of February 2024, with another 10,000 presumed dead. Israel also claims its forces have killed more than 10,000 fighters in Gaza but has not provided evidence or detailed information to back up this estimate.¹³

According to Gaza’s health ministry, 70% of those killed are women and children; however, casualties recorded in hospitals suggest the rate may be closer to 58%.¹⁴ Historically, Gaza’s health ministry’s conflict estimates have been reliably like those calculated by the UN and Israel.¹⁵ Relying on Israel’s numbers, only one out of three killed are Hamas militants.¹⁶

Mass-indiscriminate attacks have also been reported such as the “Flour Massacre” on 29 February 2024, killing 112 Palestinians and injuring a further 760 as they attempted to collect food aid.¹⁷ Other examples of potentially indiscriminate killings are:

- 19 October 2023—Attack on a church where 450 Christians sought refuge, killing 18 and injuring 12.¹⁸
- 20 October 2023—Attack on homes in al-Nuseirat refugee camp killing 28 civilians including 12 children.¹⁹
- 31 October 2023—Attack on a six-story apartment building in Gaza, without any apparent military target, killing at least 106 civilians including 54 children.²⁰
- 24 December 2023—Air strike on Gaza’s Maghazi refugee camp, killing at least 70.²¹
- 4 January 2024—A quadcopter, fighter jets, and artillery are used to bomb warehouses sheltering civilians in a non-evacuation zone.²²

On 5 December 2023, Amnesty International issued a report claiming that some killings by Israel are indiscriminate citing the use of heavy bombs in densely populated areas.²³ They also examined two airstrikes and “did not find any indication that there were any military objectives . . . or that people in the buildings were legitimate military targets, raising concerns that these strikes were direct attacks on civilians.”²⁴

South Africa cites the utilization of “dumb” (unguided) bombs and heavy bombs weighing up to 2,000 pounds, also in highly dense areas.²⁵ This suggests that targeting is not limited to military aggressors and assets.

It appears that Israel has killed a disproportionate number of civilians through indiscriminate attacks. This suggests that the

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military assaults are on the Palestinians in Gaza rather than an attempt to specifically target Hamas.

Causing serious bodily and mental harm on the Palestinian People is evidenced by high and disproportionate civilian casualties (particularly those of children), degradation, and use of untargeted weapons in high-density areas.

By the beginning of April, more than 70,000 Palestinians had been wounded.²⁶ Burns and amputations are commonplace from the use of white phosphorous (a smoke screen that can burn the inside of flesh) in densely populated areas.²⁷

According to an emergency coordinator with Doctors Without Borders:

our surgeons had to operate on 1-year-olds, 2-year-olds who had to be amputated from one leg or two, one arm or two . . . I'm speechless when I try to think of the future of [these] children. It's generations of children who will be handicapped, who will be traumatized. The very children in our mental health program are telling us that they would rather die than continue living in Gaza now.²⁸

For those without physical wounds, there have been emotional ones caused by inhumane degradation with large numbers of civilians, including children, being arrested, blindfolded, forced naked in the cold, and herded onto trucks and taken to places unknown.²⁹ When released from detention, there are claims of torture; degrading treatment; and deprivation of food, water, shelter, and access to toilets.³⁰

For the voyeuristic, images of mutilated and burned corpses juxtaposed with videos of Israeli armed attacks are circulated on Israeli social media on a Telegram channel called '72 Virgins—Uncensored.³¹

Deliberately inflicting conditions on life intended to bring about Gaza Palestinians' physical destruction as a group. The jurisprudential factors to consider with respect to this element of genocide are: (i) expulsion and mass displacement; (ii) destroying adequate access to food and water; (iii) removing access to medical care; and (iv) deprivation of shelter, clothes, hygiene, and sanitation.³²

Expulsion and mass displacement. By the end of 2023, it was estimated that 85% of Gaza Palestinians were forced out of their homes.³³ Israel had issued a continuous succession of evacuation orders, the first on 13 October 2023, demanding 1.1 million Palestinians move from North Gaza to the South within twenty-four hours.³⁴ Fleeing through major escape arteries and despite being in safe zones, displaced Palestinians were greeted with degrading treatment, arbitrary arrest, and killings.³⁵ Israel has posted detailed maps online dividing Gaza into a patchwork of hundreds of small areas, supposedly to warn of airstrikes but without identifying where the displaced should escape.³⁶ The UN secretary-general has referred to the people of Gaza as "human pinballs—ricocheting between ever-smaller slivers of the south, without any of the basics for survival."³⁷ Even refugee camps don't escape the bombs and shelling.³⁸ From a practical standpoint, these forced evacuations have become permanent as 355,000 homes have been destroyed—approximately 60% of Gaza housing.³⁹ The South Africa Application calls the forced displacements "genocidal, in that they are taking place in circumstances calculated to bring about the physical destruction of Palestinians in Gaza."⁴⁰

Should this displacement continue with an Israeli attack on Rafah, The UN high commissioner for human rights has a dire warning: "A potential full-fledged military incursion into Rafah—where some 1.5 million Palestinians are packed against the Egyptian border with nowhere further to flee—is terrifying, given the prospect that an extremely high number of civilians, again mostly children and women, will likely be killed and injured."⁴¹ As civilians try to leave Rafah to return to the north, they have been greeted with tanks and gunfire.⁴²

There is no doubt that a substantial number of Gaza-Palestinians have been displaced. While this alone is insufficient to prove genocide, this displacement evidences genocide when it is combined with deprivation of food, water, medical care, and other resources necessary for daily survival.⁴³

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Destroying access to adequate food and water. 1.1 million Gazans, around half the population, were experiencing “catastrophic” shortages of food, with around 300,000 now facing famine-scale death rates.⁴⁴ Referring to the population as “human animals,” starting on 9 October 2023, Israel declared a “complete siege,” cutting off electricity, food, water, and fuel to all of Gaza.⁴⁵

As of the end of 2023, only one bakery was operating in Gaza.⁴⁶ According to the WHO, 93% of Gaza is facing a crisis of hunger, and high levels of malnutrition, “experiencing an extreme lack of food and starvation . . .” as part of a “cruel campaign . . . against the whole population of Gaza.”⁴⁷ They further caution of a complete deprivation of “water, food, anything which is necessary for any sort of life.”⁴⁸ These issues are exacerbated by continued bombings on bakeries; water facilities; the last operational mill; and razing of agriculture, including land, crops, orchards, and greenhouses.⁴⁹ Oxfam and Human Rights Watch accuse Israel of using the tactic of starvation as a “weapon of war” against the Palestinians of Gaza.⁵⁰

As of 23 March 2024, about 7,000 aid trucks were waiting for entry from Egypt to Gaza, with international humanitarian agencies blaming Israel in what UN Secretary-General António Guterres has called a “moral outrage.”⁵¹ On 10 April 2024, the Israeli defense minister promised to open up a new border crossing to “flood Gaza with aid,”⁵² but as discussed below, he has also promised that he will allow Gaza “no food, no water, no fuel.”⁵³

Water pipelines have been shut; the only desalination plant is non-functioning; and as of the end of 2023, only 1.5 to 1.8 liters of clean water per person was available each day for drinking, washing, food preparation, sanitation, and hygiene.⁵⁴

Destroying access to medical care. After six months of war, twenty-six out of thirty-six hospitals are shutdown, with the remaining ten barely functioning⁵⁵—out of fuel and medicine, raided by Israeli forces, or damaged in fighting.⁵⁶ There are no working hospitals in North Gaza, where injured patients are “waiting to die.”⁵⁷

At the end of January, at least 311 doctors, nurses, and other health care workers had been killed.⁵⁸ Medics and first responders are detained in secret locations without outside communication.⁵⁹ Targets of aggression include hospital generators, oxygen stations, and water tanks.⁶⁰ Similarly, there have been repeated attacks on ambulances, medical convoys, and first responders.⁶¹ Doctors and medics have been killed and disappeared, including the director of Al Shifa and his staff.⁶²

One emergency medical coordinator compared Al Ahli Arab Hospital as a hospice without a level of care—“no food, no fuel, no water . . . and almost no IV fluids available.”⁶³ The WHO has warned that the situation “could be tantamount to a death sentence” for hospital patients in Gaza.⁶⁴

Scrawled on a white board in a Gaza hospital is “We did what we could. Remember us.” Those were the words of Dr. Mahmoud Abu Nujaila—since killed in a hospital airstrike.⁶⁵ Palestinian hospitals have morphed into “death zones” and scenes of “bloodbath . . . death, devastation and despair . . . place[s] where people are waiting to die.”⁶⁶

While there are narrow parameters allowing a country to attack a hospital, it must do so in accordance with international humanitarian law.⁶⁷ An attack may be justified if the hospital is engaged in military activity beyond that needed for self-defense or to care for wounded enemy combatants not presently engaging in hostilities.⁶⁸ Even under those circumstances, the attacker must: (1) warn the hospital with a timeline allowing for the cessation of military activity or the transport of patients; (2) the attack must adhere to the principle of proportionality and be targeted toward the military activity while protecting patients and civilians; and (3) active measures should be taken to help the hospital resume patient care as soon as possible.⁶⁹ Assuming Israel’s claim that Hamas partially uses hospitals for military activity is correct, between the indiscriminate targeting discussed above, the specific deprivation of materials necessary to care for patients, the complete destruction of the hospitals without a contingency plan to efficiently restore health care services, and the rhetoric promising to erase all of Gaza as discussed below, it seems unlikely that Israel has fulfilled its obligations to qualify for this limited exception.

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Those same calamities discussed above have led to *deprivation of shelter, clothes, hygiene, and sanitation* through the destruction of homes and water and sewage facilities. As of 2 April 2024, the sanitation system delivers less than 5% of its previous output, and there has been US\$18.5 billion in damage to critical infrastructure.⁷⁰

If the facts above are true, there is overwhelming evidence of expulsion and mass displacement; destroying adequate access to food and water; removing access to medical care; and deprivation of shelter, clothes, hygiene, and sanitation.

Evidencing Intent and Incitement to Commit Genocide

Intent to commit genocide is based upon the totality of the circumstances.⁷¹ Israel's specific intent to commit genocidal acts can be proved through a myriad of behaviors. Discussed below is the implicit intent expressed through cultural genocide⁷² as well as more direct expressions including dehumanizing statements from senior public officials, military officers, the soldiers themselves, and other prominent members of Israeli society. These statements do not require much commentary other than many of them also meet the legal definition of direct and public incitement to commit genocide.⁷³

Public Officials

- *The prime minister of Israel*, at first glance potentially referring to Hamas, used references to “bloodthirsty monsters,”⁷⁴ shortly after airstrikes had killed more than 2,670 Palestinians, including 724 children.⁷⁵ Addressing the Knesset, he expressed that Israel was engaged in “a struggle between the children of light and the children of darkness, between humanity and the law of the jungle.”⁷⁶ But any benefit of the doubt that he was solely referring to Hamas and Hezbollah becomes less plausible when he repeatedly invoked the story of Amalek both publicly and then directly to Israeli soldiers and officers.⁷⁷ From Amalek: “Now go, attack Amalek, and proscribe all that belongs to him. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses.”⁷⁸
- *The president of Israel* showed no ambiguity when on 12 October 2023 he expressly made no distinction between militants and civilians when asked about the barrage on Gaza and reducing the impact on more than two million Gaza civilians: “It’s an entire nation out there that is responsible. It’s not true this rhetoric about civilians not aware, not involved . . . and we will fight until we break their back bone.”⁷⁹
- *The Israeli defense minister*, when addressing the Army, explained that they were “imposing a complete siege on

Gaza. No electricity, no food, no water, no fuel. Everything is closed. We are fighting human animals . . .”⁸⁰ and “Gaza won’t return to what it was before. We will eliminate everything.”⁸¹ To accomplish these goals, he announced that he had “removed every restriction” from Israeli forces.⁸²

- *The Israeli national security minister*: “To be clear, when we say that Hamas should be destroyed, it also means those who celebrate, those who support, and those who hand out candy—they’re all terrorists, and they should also be destroyed.”⁸³
- *The Israeli minister of energy and infrastructure*: “All the civilian population in Gaza is ordered to leave immediately . . . They will not receive a drop of water or a single battery until they leave the world.”⁸⁴ He further tweeted “Humanitarian Aid for Gaza? No electrical switch will be turned on, no water hydrant will be opened and no fuel truck will enter . . .”⁸⁵
- *The deputy speaker of the Knesset* proclaimed “Now we all have one common goal—erasing the Gaza Strip from the face of the Earth.”⁸⁶
- *Members of the Knesset* have repeatedly insisted that there are no innocent Palestinians in Gaza, even asserting that “the children of Gaza have brought this upon themselves”⁸⁷ and “there should be one sentence for everyone there—death.”⁸⁸

Military Officials

- *The Israeli coordinator of government activities in the territories* warned “the citizens of Gaza are celebrating instead of being horrified. Human animals are dealt with accordingly. Israel has imposed a total blockade on Gaza, no electricity, no water, just damage. You wanted hell, you will get hell.”⁸⁹
- *Major General Giora Eiland (ret.)* says, with seeming half-hearted caveats: “we have to prevent others from giving assistance to Gaza . . .”⁹⁰ He further stated that “Israel has no interest in the Gaza Strip being rehabilitated.”⁹¹ Undeterred, he explained “[w]hen the entire world says we have gone insane and this is a humanitarian disaster—we will say, it’s not an end, it’s a means.”⁹² As far as the destruction of Gaza to end the Palestinian way of life, he acknowledges that he aims to “create such a huge pressure on Gaza, that Gaza will become an area where people cannot live . . . we should prevent any possible assistance by others . . .”⁹³ As for forced displacement, he promised “Israel needs to create a humanitarian crisis in Gaza . . . [which] will become a place where no human being can exist.”⁹⁴ He also explained that the United States should

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back a hospital bombing “even if there are thousands of bodies of civilians in the streets afterward.”⁹⁵

- *The head of coordination of government activities in the territories* announced “[w]hoever returns here, if they return here after, will find scorched earth. No houses, no agriculture, no nothing. They have no future.”⁹⁶

Israeli Defense Forces

A 95-year-old reservist, dressed in fatigues and driven around in an army vehicle, chants: “finish them off and don’t leave anyone behind. Erase the memory of them. Erase them, their families, mothers and children . . . If you have an Arab neighbour, don’t wait; go to his home and shoot him.”⁹⁷ This was meant to boost morale.⁹⁸

Uniformed soldiers have been filmed singing “May their village burn, May Gaza be erased,”⁹⁹ “we know our motto: there are no uninvolved civilians,” and have been filmed chanting “to wipe off the seed of Amalek.”¹⁰⁰

Prominent Members of Israeli Society

Media reports have called for Gaza to be “erase[d]”¹⁰¹ and turned into a “slaughterhouse.”¹⁰² According to another, “ Hamas should not be eliminated” but rather “Gaza should be razed.”¹⁰³ One media analyst is more explicit: “[t]here are no innocents . . . There is no population. There are 2.5 million terrorists.”¹⁰⁴ A former Knesset member also left no room for ambiguity:

I tell you, in Gaza without exception, they are all terrorists, sons of dogs. They must be exterminated, all of them killed. We will flatten Gaza, turn them to dust, and the army will cleanse the area. Then we will start building new areas, for us, above all, for our security.¹⁰⁵

According to recent polling, 72% of Israelis support the halt of humanitarian aid to Gaza.¹⁰⁶

Cultural genocide of the Palestinian way of life alone does not qualify as genocide under the Genocide Convention, but it can be considered when determining intent to commit genocide.¹⁰⁷ Cultural genocide can be accomplished through the destruction of everyday life; a people’s historical records and sites; religious and cultural institutions; and the mass murder of teachers, journalists, artists, humanitarians, and other people of prominence. The goal is not necessarily to kill members of the group, but to eliminate a civilization. In totality with the *actus reus* described above, in this author’s opinion, it seems clear that an alleged cultural genocide is a part of a larger physical genocide.

Among the destruction are holy places and historic neighborhoods,¹⁰⁸ the Palace of Justice,¹⁰⁹ the Palestinian Archives,¹¹⁰ Gaza’s Old City,¹¹¹ Gaza City’s libraries,¹¹² all four of Gaza’s universities,¹¹³ Gaza’s cultural centers including the Center for Manuscripts and Ancient Documents,¹¹⁴ 8 ancient Gaza sites and landmarks,¹¹⁵ 318 Muslim and Christian religious sites,¹¹⁶ and 74% (352) of schools.¹¹⁷

There have also been killings of cultural leaders: at least 103 journalists,¹¹⁸ at least 209 teachers and educational staff,¹¹⁹ two university presidents,¹²⁰ intellectuals, public figures, eminent scientists, filmmakers, writers, singers, deans of universities, linguists, playwrights, novelists, artists, musicians, poets, and a host of local legends known for their selfless commitment to the indigent.¹²¹

There are also the personal histories—the bulldozing of cemeteries; photographs and family records gone forever along with multi-generation families; and the killing, maiming, and trauma of a generation of children.¹²²

To complete the psychological conquest, the Israeli Army has erected its flag over Gaza City’s Palestine Square.¹²³

Do Palestinian civilians have a duty to overthrow Hamas to be protected by international humanitarian law?

It should be self-evident that civilians and civilizations should not be “erased” over the sins of their governments. In judging the moral culpability of Gaza Palestinians in contributing to their own plight, context is necessary. Here is a simplified encapsulation:

In 1947, in response to the Holocaust, the UN decided that Palestine should be divided into separate Arab and Jewish states.¹²⁴ Israel was established the next year, but hundreds of thousands of Arab Christians and Muslims were already living there.¹²⁵ After three wars between Israel and Arab counties, Israel occupied the West Bank and the Gaza Strip (still recognized by the UN as Palestinian territory) displacing hundreds of thousands of Palestinians.¹²⁶ Since, Israel has expanded their settlements, considered illegal by the UN,¹²⁷ throughout the occupied territories—though in 2005, Israel abruptly withdrew its military and settlements from Gaza.¹²⁸

This created a power vacuum that Hamas, a terrorist organization,¹²⁹ would fill.

Islamic-extremist Hamas’s origin began as an organization called the Islamic Center, which was an Israeli-sanctioned charitable offshoot of the Palestinian chapter of the Muslim Brotherhood.¹³⁰ Hamas itself was founded in 1988 during a Palestinian uprising called the first intifada.¹³¹ In response

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to the uprising, Israel killed thousands and decimated the Gaza economy by blockading food, fuel, and freedom of movement.¹³² Hamas and other liberation organizations responded with brutal civilian killings—including rocket attacks and suicide bombings. This led to more poverty and chaos in Gaza as Hamas and Israel traded horrific attacks, with each blaming the other for instigation.¹³³

From its origin, Hamas's goal is the destruction of Israel who it perceives as an illegal occupier.¹³⁴ Hamas wants a return to its historical territory.¹³⁵ It shunned the peace process of Yassar Arafat's Fatha as ineffective and contrary to Hamas's refusal to recognize Israel and their desire to control all land from the Mediterranean Sea to the Jordan River.¹³⁶

Hamas rose to influence coupling militant resistance with charitable endeavors such as building schools and clinics, and by digging tunnels to create a food supply from Egypt (and a cache of weapons).¹³⁷

As Israeli forces withdrew from Gaza, Hamas decided to participate in the 2005 elections, and an angry and disillusioned populace, demanding change, voted them into power.¹³⁸ Desperate people elect radical governments, but this shocked the world—including Hamas.¹³⁹ This ignited a diplomatic nightmare that ultimately led Hamas to temporarily share power with the Fatah, a part of the Palestine Liberation Organization who were the pursuers of a two-state solution.¹⁴⁰ This did not last long. There was a bloody coup and civil war that killed thousands, and there has not been an election since.¹⁴¹

Today, Palestinians in Gaza live under militaristic authoritative rule that violently represses dissent and its citizens' (especially women's) fundamental human rights.¹⁴² Some, particularly in the Israeli rhetoric exemplified above, argue that the citizens of Gaza have a duty to overthrow their fundamentalist dictatorship to enjoy the protections of international humanitarian law. A review of international law fails to identify any such requirement.

It appears that Israel has engaged in acts of genocide and some of its leaders have engaged in incitement to genocide.

Note that none of the above allegations have been proven before the International Court of Justice. However, the evidence presented, if true, indicates mass indiscriminate killings of the Palestinian people in Gaza, causing them serious bodily and mental harm, and deliberately inflicting conditions on life intended to bring about their physical destruction as a group.

Genocide is an intentional crime. Intent can be proven both explicitly through the words and rhetoric of public and military

officials and the totality of the conduct, including the attempted erasure of a people's culture. In this case, where there are genocidal acts, cultural destruction, and statements inciting genocide from government and military officials, there is a strong case that Israel, as of 15 April 2024, has and is engaging in genocide, as defined by the Genocide Convention, with its political, military, and cultural leaders inciting that genocide.

Israel has a right to defend itself—its right to exist—but even in war, it must do so within the constraints of international humanitarian law. Yes, Hamas is their governing body (through force),¹⁴³ but Palestinians in Gaza have a right to exist, too.



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Editor's Note: This article provides sources and statistics current through 15 April 2024, the date of the article's submission.

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