



September 5, 2025

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Your Excellency:

We are deeply concerned by the United Nations staff's letter to you asking you to label Israeli actions in the Gaza Strip as genocide.¹ The analysis below shows that such labeling would be contrary to the law and facts. The determination of the illegality of civilian casualties during an armed conflict requires a very careful legal analysis under International Humanitarian Law (IHL) which cannot, and should not, be done on the basis of politically motivated and biased reports and statements.² There is no evidence that Israel deliberately targets civilians, let alone targeting civilians due to their Palestinian identity with the specific intent to destroy Palestinians as a group.

The European Centre for Law and Justice (ECLJ) is a non-governmental organization located in Strasbourg, France, dedicated to the promotion and protection of human rights around the world. The ECLJ has held Special Consultative status with the United Nations Economic and Social Council since 2007.³ The ECLJ has a special interest in the peaceful resolution of the Hamas-Israeli conflict and has been engaged in the issues related to the conflict for over a decade. ECLJ attorneys have participated through both oral and written submissions before the International Criminal Court (ICC) and multiple organs of the United Nations on issues related to armed conflicts.⁴

¹ Emma Farge, *Hundreds of UN Staff Pressure Rights Chief to Call Gaza a Genocide, Letter Shows*, REUTERS (Aug. 29, 2025), <https://www.reuters.com/world/middle-east/hundreds-un-staff-pressure-rights-chief-call-gaza-genocide-letter-shows-2025-08-28/>.

² *ECLJ Written Statement to UN Human Rights Council Regarding Israeli Security Forces*, ACLJ (May 26, 2025), <https://aclj.org/israel/eclj-written-statement-to-un-human-rights-council-regarding-israeli-security-forces>.

³ European Center for Law and Justice, U.N. DEP'T ECON. & SOC. AFFAIRS, <http://esango.un.org/civilsociety/> (accessed by searching "European Centre for Law and Justice" in the iCSO Database).

⁴ *ECLJ Written Statement to UN Human Rights Council Regarding Israeli Security Forces*, *supra* note 2; ECLJ Amicus Brief, Observations with Respect to the Situation in the State of Palestine on behalf of the European Centre for Law and Justice, Case No. ICC-01/18 (13 Mar. 2020) https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01009.PDF.

LEGAL ANALYSIS UNDER 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, *as such*:

- (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.⁵

This definition provides three elements which must be present for the enumerated acts (i.e., killing, bodily injury, physical destruction, etc.) to constitute genocide. Put simply, to constitute genocide, non-combatants must be deliberately killed, seriously harmed, or physically destroyed *because of* their national, ethnic, racial, or religious identity, with the *specific intent to destroy* the group in whole or in part.

First, to constitute genocide, “killing,” “bodily harm,” and “physical destruction” must be *unjustified/unlawful*, i.e., civilians/non-combatants are intentionally killed or seriously harmed. War is a violent activity, which involves death and destruction of both enemy combatants and military facilities as well as the incidental and collateral death and destruction of non-combatants and civilian facilities. During an armed conflict, targeting enemy combatants and military facilities is lawful. While any incidental harm to non-combatants and civilian facilities is sad and unfortunate, as long as the targeting of military targets satisfies the requirements of distinction, necessity, and proportionality, any incidental, collateral harm is also lawful. As such, casualties in both instances (enemy combatant casualties and incidental non-combatant casualties) are not unlawful, nor are they war crimes or genocide. It is only *intentionally* targeting civilians which constitutes a crime.⁶

In *Prosecutor v. Krstic*, Radislav Krstic was found guilty for genocide against Muslim men of fighting age in Srebrenica.⁷ In that case, the tribunal held that a significant factor of establishing the necessary *mens rea* for genocide was that there was a deliberate killing of civilians in the targeted people group.⁸ The tribunal acknowledged that initially combatants were targeted, but at some point a decision was made “to capture and kill all the Bosnian Muslim men indiscriminately. No effort thereafter was made to distinguish the soldiers from the civilians.”⁹

⁵ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 Dec. 1948, entered into force 12 Jan. 1951), 78 UNTS 277.

⁶ See *Prosecutor v. Krstic*, Case No. IT-98-33-T, ¶ 546 (Int’l Crim. Trib. for the Former Yugoslavia, Aug. 2, 2001) [hereinafter *Krstic*], <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf> (“The Trial Chamber is ultimately satisfied that murders and infliction of serious bodily or mental harm were committed with the intent to kill all the Bosnian Muslim men of military age . . . [because] [a]ll of the executions systematically targeted Bosnian Muslim men of military age, regardless of whether they were civilians or soldiers”).

⁷ See *id.* at ¶ 727.

⁸ See *id.* at ¶ 546.

⁹ *Id.* at ¶ 547.

To say that Israel is deliberately targeting civilians is absurd. The Israeli military is the only military in the world that requires approval by a group of military lawyers, not accountable to the military chain of command, before each military strike is carried out. Every bombing and every strike go through a rigorous process of evaluation under IHL rules of distinction and proportionality. Israel does not target civilians. In fact, it takes every possible precaution to protect civilian lives. Collateral damage is a sad reality of war. Mistakes can be made on the battlefield. But neither lawful collateral damage nor mistakes constitute war crimes, much less acts of genocide.

Further, in determining the legality of collateral harm, one must also not disregard the party that is intentionally causing harm to civilians by using them as human shields. Hamas's use of protected facilities and turning them into legitimate military targets¹⁰ is widely known. A comprehensive list can be found at the link provided in the footnote showing evidence of Hamas's conducting operations from civilian facilities during the current conflict.¹¹

Assuming *arguendo* that some of the Israeli strikes are later determined to be in breach of the IHL rules, such a determination cannot be made without considerable evidence not available to the UN and would still not constitute acts of genocide unless the additional two requirements discussed below are met.

Second, to constitute genocide, the deliberate killing of civilians must be done with the *specific intent (dolus specialis) to destroy, in whole or in part*, a national, ethnic, racial, or religious group.¹² In *Bosnia and Herzegovina v. Serbia and Montenegro*, the International Court of Justice (ICJ) concluded that

civilian members of the protected group were *deliberately* targeted by Serb forces in Sarajevo and other cities. However, reserving the question whether such acts are in principle capable of falling within the scope of [the Genocide Convention], the Court [did] not find sufficient evidence that the alleged acts were committed with the specific intent to destroy the protected group in whole or in part.¹³

The Court held that it must be established that “the massive killings of members of the protected group were committed *with the specific intent (dolus specialis)* on the part of the perpetrators to destroy, in whole or in part, the group as such.”¹⁴

¹⁰ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Commentary of 1958 art. 19, Aug. 12, 1949, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-19/commentary/1958?activeTab=undefined> (last visited Sept. 5, 2025).

¹¹ *Press Releases*, ISRAEL DEFENSE FORCES, <https://www.idf.il/en/mini-sites/idf-press-releases-israel-at-war/> (last visited Sept. 5, 2025).

¹² See *Krstic*, *supra* note 6, at ¶ 544 (“The critical determination still to be made is whether the offences were committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”).

¹³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. and Herz. v. Serb. and Montenegro), Judgment, I.C.J. Reports 2007, ¶ 328 (Feb. 26) <https://www.icj-cij.org/sites/default/files/case-related/91/091-20070226-JUD-01-00-EN.pdf> (emphasis added).

¹⁴ *Id.* at ¶ 277 (emphasis added).

A State that intends to destroy a civilian population group in whole or in part does not comply with applicable laws of armed conflict. It does not invest significant resources to help the civilian population evacuate areas of hostility. It does not secure humanitarian corridors to facilitate the evacuation of civilians from combat zones. It does not provide medical supplies to the targeted group. Israel not only is doing all of these things but is doing much more.¹⁵

It appears that those accusing Israel of committing genocide base their conclusion on the number of overall casualties reported by Hamas. To them, the high number of casualties seems to equal genocide. Notably, the accuracy of the numbers provided by the Hamas-run ministry is questionable as even the UN reports those numbers with a disclaimer.¹⁶ Further, the number of casualties provided by the Hamas-run ministry does not distinguish between combatants and non-combatants or exclude lawful collateral casualties. The numbers do not account for how many of those who died were Hamas and Palestinian Islamic Jihad (PIJ) terrorists and how many were civilians. The numbers do not account for how many died as a result of Hamas' or PIJ's faulty rockets. The numbers do not account for how many died in the civilian facilities that Hamas had turned into legitimate military targets by operating from those facilities and forcing civilians to stay—a fact commonly known and adequately proven. The numbers do not account for incidental civilian casualties while Israel targeted legitimate military objectives after taking every precaution to spare civilian lives. No honest legal body would conclude that even a minority of the deaths were a result of Israel's violating IHL, let alone amounting to genocide.

Third, and most importantly, to constitute genocide, civilians must be killed *because of* their national, ethnic, racial or religious identity. In other words, *the reason for* targeting civilians was their national, ethnic, racial, or religious identity.¹⁷ This is one of the most crucial inquiries under the Genocide Convention.

The International Criminal Tribunal for Rwanda emphasized this element stating that “the Tutsi were targeted *because they were Tutsi* and not because they were fighters for the Rwandan Patriotic Front (RPF)”¹⁸ and found that the “Tutsi refugees were targeted solely on the basis of their ethnic group.”¹⁹

In *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ explained it this way:

When examining the facts brought before the Court in support of the accusations of the commission of acts of genocide, it is necessary to have in mind the identity of the group against which genocide may be considered to have been committed.²⁰

¹⁵ ISRAEL-HAMAS CONFLICT 2023: HUMANITARIAN EFFORTS, MINISTRY OF FOREIGN AFFAIRS (Dec. 14, 2023), <https://www.gov.il/en/Departments/General/israel-hamas-conflict-2023-humanitarian-efforts>.

¹⁶ *Reported Impact Snapshot, Gaza Strip*, U.N. OCHA (July 23, 2025), <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-23-july-2025>.

¹⁷ *Krstic*, *supra* note 6, at ¶ 561 (“[T]he victims of genocide must be targeted *by reason of* their membership in a group.”) (citations omitted) (emphasis in original).

¹⁸ *Prosecutor v. Ntakirutimana et al.*, Case No. ICTR-96-17, Judgement and Sentence, ¶ 312 (Dec. 13, 2004), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-17/MS41245R0000540233.PDF> (emphasis added).

¹⁹ *Id.* ¶ 340.

²⁰ *Bosn. and Herz. v. Serb. and Montenegro*, *supra* note 13, at ¶ 191.

. . .

It is a group which must have particular positive characteristics — national, ethnical, racial or religious — and not the lack of them. The intent must also relate to the group “as such.” That means that the crime requires an intent to destroy a collection of people who have a particular group identity. It is a matter of who those people are, not who they are not. . . .”²¹

In *Krstic*, the International Criminal Tribunal for the Former Yugoslavia similarly emphasized that

victims of genocide must be targeted *by reason of* their membership in a group. This is the only interpretation coinciding with the intent which characterises the crime of genocide. The intent to destroy a group as such, in whole or in part, presupposes that the victims *were chosen by reason of* their membership in the group whose destruction was sought.²²

A clear example that meets this element of the crime of genocide is October 7, 2023, when terrorists from Gaza targeted civilians specifically because they were Jewish Israelis. Consistent with the terror attack, the Hamas Charter proclaims the violent elimination of Israel and the Jewish people.²³ Hamas and its allies have made statements expressing their genocidal intent since 1987 when Hamas was established. Hamas has acted on its stated intent and deliberately attacked Israeli civilians from its inception. Hamas’s actions of October 7 were just one expression of its stated intent to annihilate the State of Israel and the Jewish people. The entire operation was intended to murder, rape, torture, and kidnap as many Israeli civilians as possible. 1,200 innocent civilian deaths were not incidental casualties during a legitimate military operation. The reason for Hamas’s attack was not self-defense. 1,200 people were attacked and killed *because of* their national, ethnic, racial, and religious identity, i.e., because they were Jewish Israelis, not because they were members of the Israeli military.

Israel, on the other hand, has not attacked anyone in Gaza *because of* their Palestinians identity. Contrary to the UN Commission of Inquiry’s absurdly false accusations of sexual and reproductive violence, Israeli soldiers are not raping Palestinian women. Israeli soldiers are not torturing and murdering civilians or taking them hostage. There is no evidence whatsoever that Israel is deliberately targeting Palestinian civilians *because of their Palestinian identity*. Israel is only targeting Hamas in self-defense in response to horrific criminal attacks perpetrated by Hamas. Any alleged illegality of collateral loss of human life must be determined according to the IHL rules of distinction and proportionality combined with Hamas’s deliberate use of civilian facilities.

²¹ *Id.* at ¶ 193.

²² *Krstic*, *supra* note 6, at ¶ 561 (emphasis added).

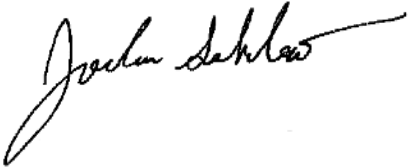
²³ THE COVENANT OF THE ISLAMIC RESISTANCE MOVEMENT, 18 Aug. 1988, pmbl. (Hamas), https://avalon.law.yale.edu/20th_century/hamas.asp.

CONCLUSION

A cursory legal analysis of the law of genocide and the publicly known facts shows that any accusation of genocide against Israel would be ludicrous. There is no evidence supporting that Israel is deliberately targeting civilians in Gaza *because of* their national, ethnic, racial, or religious identity *with the specific intent to destroy* Palestinians in whole or in part. Collateral loss of innocent life on the battlefield is a sad reality of war, not a crime, much less a crime of most heinous nature. If anybody, it is Hamas and other terrorist organizations in Gaza that are committing such crimes.

We respectfully urge you to not succumb to the pressure to disregard the law but instead seek and allow justice to prevail. Protecting civilians on both sides is a worthy cause. But it cannot be achieved by falsely accusing and vilifying the wrong party to the conflict. The ends do not justify the means. Instead of falsely accusing Israel of genocide and war crimes or rewarding the terrorist organizations with recognition of Palestinian statehood, the international community must hold Hamas, PIJ, and other terrorist organizations responsible and take measures to dismantle them. Returning Israeli hostages and dismantling the terrorist organizations will bring an end to the conflict and the suffering of innocent people put in harm's way by such terrorist organizations.

Respectfully submitted,



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